

GROUND LEASE BETWEEN THE CITY OF SAN DIEGO AND SAN DIEGO  
UNIFIED SCHOOL DISTRICT FOR  
CITY OF SAN DIEGO RECREATIONAL FACILITIES

THIS GROUND LEASE FOR CITY OF SAN DIEGO RECREATIONAL FACILITIES ["Lease"] is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ["City"], and the SAN DIEGO UNIFIED SCHOOL DISTRICT, a public school district of the State of California ["District"] (collectively, the parties), as follows:

RECITALS

- A. Since 1943, City has constructed three recreational facilities -- the Dolores Magdaleno Memorial Recreation Center ["Recreation Center"], an outdoor basketball court ["Outdoor Basketball Court"], and the Dolores Magdaleno Memorial Pool ["Memorial Pool"], collectively referred to herein as the "Recreational Facilities." The Recreational Facilities straddle the property line between City-owned property and District-owned property (see **Exhibit A: Site Plan**, attached hereto). Although City and District agree that written approvals for the development, maintenance, and operation of each Recreational Facility were given by District at some point in the past, no definitive corroborating archival documents can be located. By this Lease, District ratifies City's past use of that certain District-owned real property ["Premises"] located at Memorial Preparatory for Scholars and Athletes ["MPSA"], 2850 Logan Avenue, San Diego, California 92113 in the Southeastern San Diego Community Planning Area, and as more particularly described in **Exhibit B: Premises**, attached hereto, and leases the Premises to City for its continued use for the development, maintenance, and operation of the Recreational Facilities.
- B. City and District entered into that certain LEASE AGREEMENT BETWEEN THE SAN DIEGO UNIFIED SCHOOL DISTRICT AND THE CITY OF SAN DIEGO PARK AND RECREATION DEPARTMENT filed in the Office of the San Diego City Clerk as Document No. RR-302409 on March 6, 2007 ["Park & Rec Agreement"], attached hereto as **Exhibit C: Lease Agreement between the San Diego Unified School District and the City of San Diego Park and Recreation Department**; whereby certain swimming facilities, including the Memorial Pool, were made available to District students for instructional purposes only at discounted rates.
- C. City intends to reconstruct and reconfigure the Memorial Pool. Such reconstruction may require the removal of the Outdoor Basketball Court. The parties agree that City shall not be obligated to continue to maintain or provide the Outdoor Basketball Court for District's use.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. Property. District hereby leases the Premises to City and City leases the Premises from District. At some time, and from time to time, in the past and up to the commencement date of this Lease, City has developed, maintained, and operated the Recreation Facilities on the Premises. District hereby ratifies and approves City's development, maintenance, and operation of the Recreational Facilities as to all times prior to the commencement date of this Lease.
2. Outdoor Basketball Court. City may remove the Outdoor Basketball Court at any time upon thirty (30) days written notice to the District.
3. Term. This Lease shall be for a term of fifty (50) years, commencing on the later date of its execution by City and the date of its execution by the authorized representative of the District's Board of Education, and when approved by the San Diego City Attorney and the District Board of Education. City may extend the term of this Lease from time to time and for varying periods up to a total of an additional forty-four (44) years upon written notice to District.
4. Termination by City. City may terminate this Lease as to part or all of the Premises upon six (6) months written notice to District.
5. Use of Recreational Facilities. In consideration for this Lease, students attending the school located at MPSA shall have exclusive use of the gymnasium within the Recreation Center ["Gymnasium"] during the traditional or single-track school year beginning thirty (30) minutes before and ending thirty (30) minutes after normal school hours at no cost to District, MPSA, or MPSA students. MPSA students' use of the Outdoor Basketball Court may be reasonably scheduled with City from time to time, with priority given to MPSA students during normal school hours during the traditional or single-track school year, and at no cost to District, MPSA, or MPSA students. District's and MPSA Students' use of the Memorial Pool shall continue under the same terms and conditions set forth in the Park & Rec Agreement, which is incorporated by reference herein; notwithstanding the expiration or earlier termination of the Park & Rec Agreement. This Lease shall not affect the use of the Memorial Pool by other schools within the District pursuant to the Park & Rec Agreement. This Lease shall not affect any other use of the Recreational Facilities pursuant to applicable City permits.
6. Closure for Repairs or Maintenance. Notwithstanding the foregoing, City may close any or all of the Recreational Facilities at any time and from time to time, upon reasonable notice to the District, when necessary for maintenance, repairs, renovation, or replacements, as deemed necessary or appropriate by City, in its sole discretion. City shall, to the extent reasonably possible, schedule such maintenance, repairs, renovations or replacements, so as to avoid or minimize interference with the District's and/or MPSA's use of the Premises and the Recreational Facilities during the times specified in paragraph 5, above.

7. Operating Hours. City shall have no obligation to continuously operate any Recreational Facility during the term of this Lease, or to maintain any particular hours of operation, except during those times identified under paragraph 5, above, as reserved for use by MPSA or as required under the Park & Rec Agreement,. Any use of a Recreational Facility as provided herein shall be subject to such Recreational Facility's normal hours of operation, as may be determined from time to time by City, in its sole discretion, subject to the requirement that the Premises remain open for use by MPSA and/or the District during the times identified in paragraph 5, above or as required under the Park & Rec Agreement.
8. Maintenance. City shall maintain the Premises and the Recreational Facilities in a manner consistent with City standards for like property and facilities. City shall pay the cost of maintenance, repairs, and service charges of all utilities servicing the Recreational Facilities. City shall conduct its maintenance obligations under this Lease in a timely and workmanlike manner and, to the extent possible, in such a manner to avoid interference with the District and/or MSPA's use of the Premises and the Recreational Facilities.
9. Improvements. City may make improvements to the Premises for public recreation purposes. However, no improvements shall be installed, and no construction of any improvements shall begin, until District has approved the proposed plans for the improvements, which shall not be unreasonably withheld, conditioned, or delayed. All City-financed improvements installed on the Premises shall remain the property of the City. At the expiration or termination of this Lease, District may, at District's sole discretion, require City, at City's sole cost and expense, to remove any or all improvements, fixtures, structures and installations or additions to the Premises constructed or placed on the Premises by City and to restore the affected portion of the Premises to ground-level grade condition within a reasonably practicable period of time.
10. Default by City; District Right to Terminate. It is specifically agreed to by the parties that this Lease shall be non-terminable by District, except as expressly provided for herein or upon written agreement between the District and the City. In the event of the City's breach of this Lease, District agrees that District shall not have the remedy of eviction against the City and that District's sole remedy in case of a breach of this Lease shall be an action for specific performance; except that, if the City shall fail to maintain all or any portion of the Premises and/or the Recreational Facilities in a safe and operable condition, as determined or verified by a public officer of competent authority, for a period of sixty (60) consecutive days after receipt of a written notice thereof from District, or if the City shall fail or refuse to make necessary repairs, as determined or verified by a public officer of competent authority, for a period of six (6) months after receipt of a written demand therefor from District, then District may immediately terminate this Lease as to that portion of the Premises affected, and City shall thereafter remove the applicable Recreational Facility and restore the affected portion of the Premises to ground-level grade condition within a reasonably practicable period of time.

11. Subordination, Non-Disturbance, and Attornment.

- a. This Lease shall be superior to any and all other encumbrances which may be recorded against the Premises, that any sale of the Premises must be subject to this Lease, and that City may record a "Notice of Lease" with the San Diego County Recorder. It is also agreed that any encumbrance holder may elect that this Lease shall be senior to or have priority over that encumbrance or underlying lease whether this Lease is dated before or after the date of the encumbrance or underlying lease. No such subordination shall be effective unless and until District obtains from the holder of the encumbrance placed against the Premises a nondisturbance agreement in recordable form, providing that in the event of any foreclosure, sale under a power of sale, or transfer in lieu of any of the foregoing, or the exercise of any other remedy under any such encumbrance: (a) City's use, possession and enjoyment of the Premises shall not be disturbed, and this Lease shall continue in full force and effect as long as City is not in default; and (b) this Lease shall automatically become a lease directly between any successor to District's interest and City, as if that successor were the lessor originally named in this Lease. City further reserves the right to cure any default on behalf of District to a senior encumbrance which could cause a foreclosure of the Premises. City waives the effect of any future statute or common law that would cause the forfeiture of this Lease in connection with the foreclosure of an encumbrance contrary to the encumbrance holder's election.
- b. If requested to do so by the transferee, City shall attorn to the transferee of District's interest in the Premises by foreclosure, deed in lieu of foreclosure, exercise of any remedy provided in any encumbrance or underlying lease or operation of law (without any deductions or setoffs) expressly provided in this Lease or in any non-disturbance agreement, and to recognize the transferee as the lessor under this Lease.

12. Insurance and Indemnification.

- a. Indemnity. City shall defend, indemnify, protect, and hold District, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to City's employees, invitees, guests, agents, or officers, caused by the independent acts of City, its agents or employees in connection with the performance of this Lease and/or the use of the Premises. City's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of District, its agents, officers, or employees.
- b. Insurance. City acknowledges and warrants that it is self-insured in compliance with the laws of the State of California, that its self-insurance covers persons acting on its behalf or under its control, and that its self-insurance covers its use

of the Premises and the City's facilities covered in this Lease. District warrants that it carries general liability insurance (with a legally permissible self-insured retention or deductible) and that its insurance covers persons acting on its behalf or under its control. The parties further agree that they will notify the other party of any insurance coverage change at least thirty (30) days prior to the change. Any coverage change must be approved by the other party, which shall not be unreasonably withheld.

- c. Workers' Compensation Insurance. The parties acknowledge and warrant that they maintain, and shall maintain for the term of this Lease, Workers' Compensation coverage as required by law.
13. Nondiscrimination. The parties shall not discriminate in any manner against any person or persons on the basis of race, color, gender, religion, national origin, ethnicity, sexual orientation, age, marital status, or disability in the providing of goods, services, facilities, and advantages and the holding and obtaining of employment. The parties shall not allow such discrimination by others who are within their respective control and who from time to time may use the recreational facilities with the permission and on the terms and conditions specified by either party.
14. Notices. Any demand upon or notice required or permitted to be given by one party to the other shall be in writing. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one party to the other party shall be effective: (a) when delivered to the recipient by personal delivery or confirmed facsimile transmission; (b) on the second business day after mailing by certified or registered United States mail, return receipt requested; or (c) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express), postage or fee prepaid as appropriate, and addressed to the party at the address shown below:

City of San Diego  
202 "C" Street, MS-32C  
San Diego, CA 92101  
Attention: Park & Recreation Director

*With a copy by First Class Mail to:*  
San Diego City Attorney  
Real Property Section  
1200 Third Avenue, Suite 1100  
San Diego, CA 92101

And

San Diego Unified School District  
4100 Normal Street

San Diego, California 92103-2682  
Attention: Superintendent

15. General Provisions.

- a. Waiver. The waiver by either party of any breach of any term, covenant or condition herein shall not be deemed to be waiver of any other term, covenant, or conditions, or any subsequent breach of the same or any other term, covenant, or condition of this Lease.
- b. Time of the Essence. Time is of the essence of each and all of the terms and provisions of Lease.
- c. Legal Proceedings. The parties agree that the laws of the State of California shall be used in interpreting this Lease and shall govern all disputes under this Lease and will determine all rights hereunder.
- d. Entire Agreement. This Lease contains the complete expression and the whole agreement between the parties hereto, and there are no promises, representations, agreements, warranties, or inducements, either expressed verbally or implied except as are fully set forth herein. This Lease may not be enlarged, modified, or changed in any respect except by a written agreement signed by the parties.
- e. Severance. If any part of this Lease is found by a court of competent jurisdiction to be void or voidable, that portion which is so held to be defective shall be severed from the remainder hereof, and the latter shall remain in full force and effect.
- f. Successors in Interest. This Lease and all rights and obligations herein shall be in effect whether or not one or both parties to this Lease have been succeeded by another entity, and all rights and obligations of each party signatory to this Lease shall be vested and binding on their successors' interest.
- g. Compliance with Law. City shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all current applicable laws, statutes, ordinances, and regulations of the County, State and Federal governments to which City may be subject.
- h. Quiet Possession. Provided City is not in default of this Lease, City shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises.
- i. Assignment. City shall not assign this Lease or any interest herein without District's prior written consent. Except as expressly provided herein, District shall not assign this Lease, or any interest herein, without City's prior written consent. Any such assignment without such consent shall be void. However,

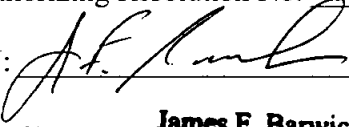
notwithstanding the above, in the event that the District, in its sole discretion, should determine to locate a different school on the MPSA campus, the students attending said school shall have the same rights of use of the Premises and the facilities as granted to MPSA under this Lease. This Lease shall inure to the benefit of and be binding upon the parties hereto and any successors thereof as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations, and agreements in this Lease shall extend to and bind any successor(s) of the parties.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

- j. City and District Approval. Whenever required or permitted under this Lease, City's consent or approval shall mean the written consent or approval of the City Manager of San Diego, or his or her designee ("City Manager"), unless otherwise expressly provided. City's discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. "City Manager" shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of The City Charter of the City of San Diego, California. Whenever required or permitted under this Lease, District's consent or approval shall mean the written consent or approval of the Superintendent or his or her designee; subject to approval of the District's Board of Education as required by law.

IN WITNESS WHEREOF, Lease is executed to be effective as of the later date of City's signature and the date of District's signature, when approved by the San Diego City Attorney.

THE CITY OF SAN DIEGO, a  
California Municipal Corporation,  
Authorizing Resolution No. 305894

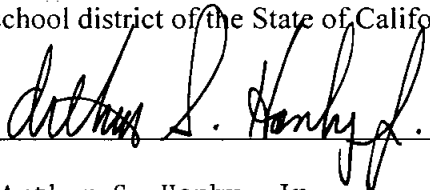
BY: 

Name: James F. Barwick, CCIM  
Director, Real Estate Assets

Title: \_\_\_\_\_

Date: 6/21/10

SAN DIEGO UNIFIED SCHOOL DISTRICT  
a public school district of the State of California

BY: 

Name: Arthur S. Hanby, Jr.

Title: Strategic Sourcing & Contracts Officer

Date: 6/9/2010

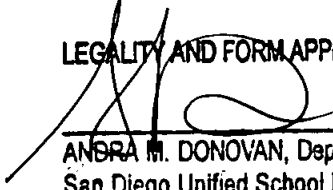
*APPROVED AS TO FORM AND LEGALITY:*

JAN I. GOLDSMITH, City Attorney

BY: 

Name: Brock Ladewig  
Title: Deputy City Attorney

**LEGALITY AND FORM APPROVED**

 4.19.10  
ANDREA M. DONOVAN, Deputy General Counsel  
San Diego Unified School District

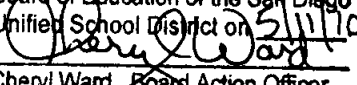
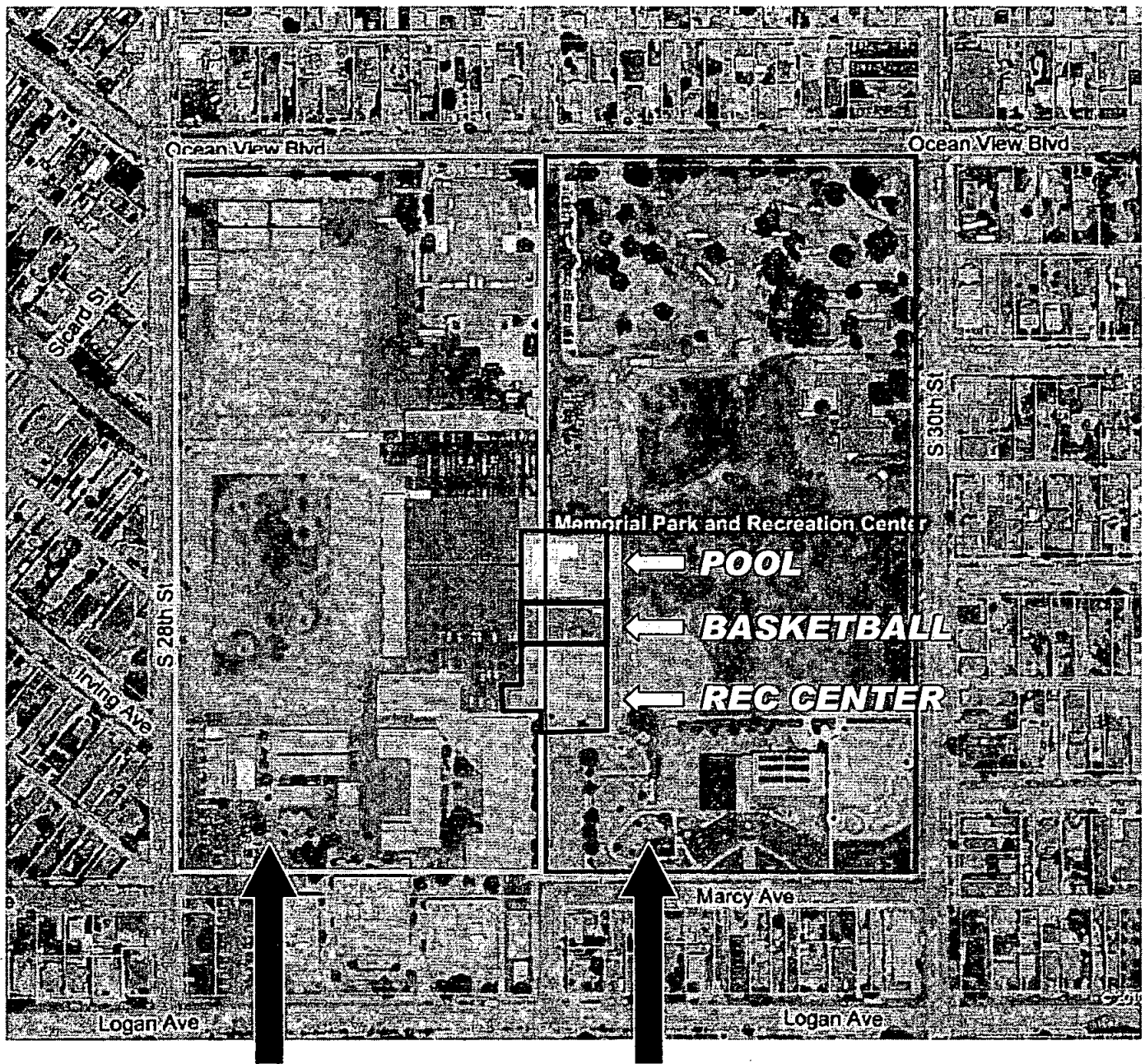
Approved in public meeting of the  
Board of Education of the San Diego  
Unified School District on 5/11/10  
  
Cheryl Ward, Board Action Officer,  
Board of Education

Exhibit A: Site Plan



SDUSD Property

City of San Diego Property

**Exhibit B: Premises**

**LEGAL DESCRIPTION**

A portion of Lots A and N in Block 7, and Lots A and N in Block 9, together with a portion of 29<sup>th</sup> Street (vacated) and a portion of Vine Court (vacated) of La Binda Park, in the City of San Diego, County of San Diego, State of California, according to Map 1538, filed in the office of the County Recorder of said County February 13, 1913, described as follows:

COMMENCING at the northeast corner of Block 2 of said Map 1538, thence along the north line of said Block 2 and its prolongation South 89°00'37" West 629.69 feet, more or less, to the centerline of 29<sup>th</sup> Street (vacated) as shown on said map; thence along said centerline South 00°23'30" East 622.50 feet to the TRUE POINT OF BEGINNING; thence continuing along said centerline South 00°23'30" East 338.00 feet; thence leaving said centerline South 89°36'30" West 53.00 feet; thence North 00°23'30" West 40.00 feet; thence North 89°36'30" East 23.00 feet; thence North 00°23'30" West 74.00 feet; thence South 89°36'30" West 10.00 feet; thence North 00°23'30" West 224.00 feet; thence North 89°36'30" East 40.00.00 feet to the TRUE POINT OF BEGINNING.

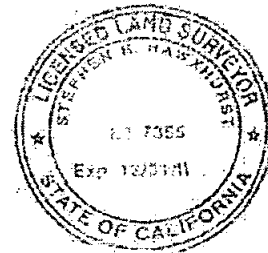
CONTAINING: 13,300 Sq. Ft., more or less.

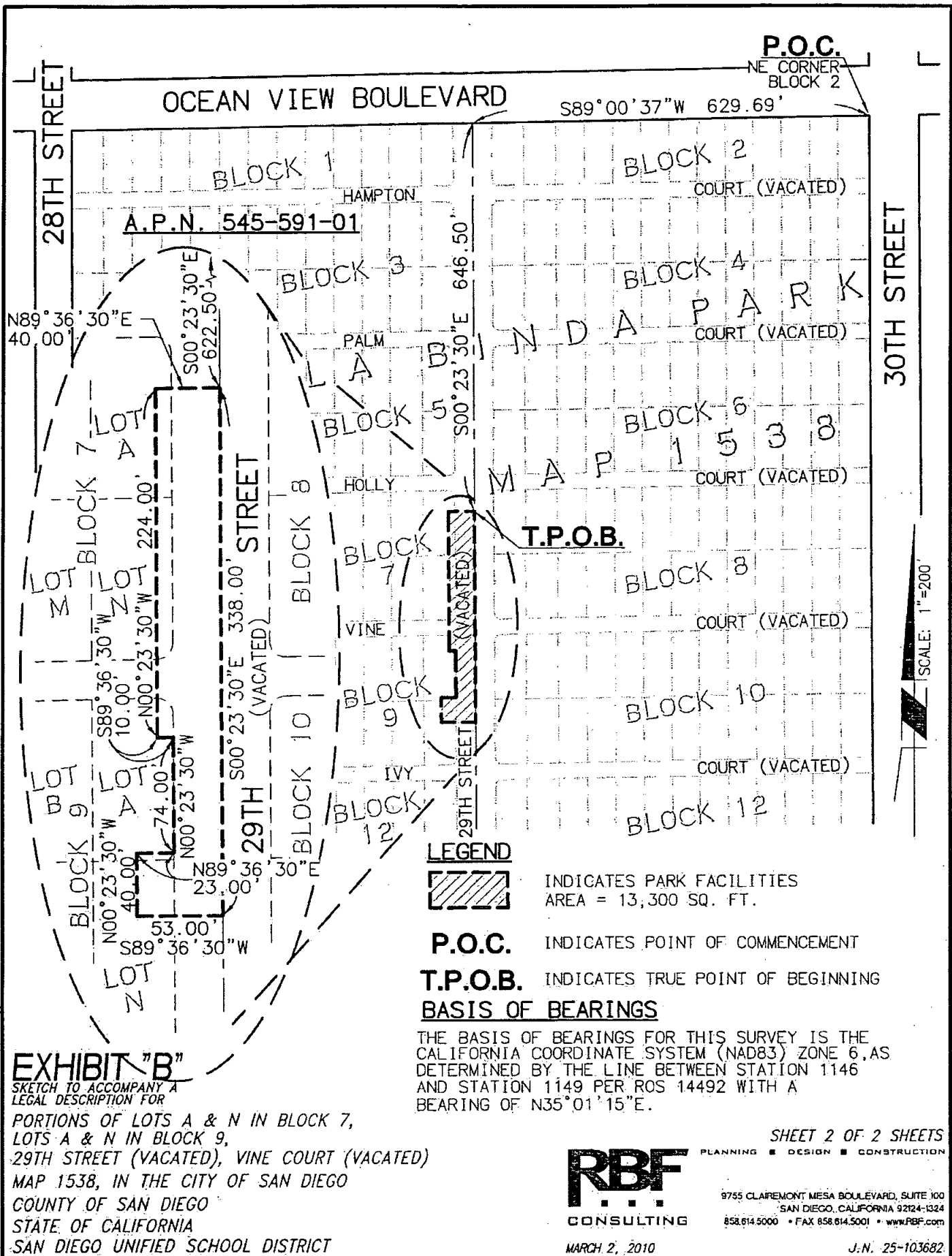
Exhibit "B" attached and by this reference is made a part hereto.

This description was prepared by me or under my direction.

 3/2/10  
Stephen R. Hawkhurst, LS 7355  
Expires 12/31/11

RSF CONSULTING  
9755 Clairemont Mesa Boulevard, Suite 100  
San Diego, California 92124  
JN 25-103682





DUPLICATE ORIGINAL  
B.C. 4

LEASE AGREEMENT BETWEEN THE  
SAN DIEGO UNIFIED SCHOOL DISTRICT  
AND  
THE CITY OF SAN DIEGO  
PARK AND RECREATION DEPARTMENT

THIS AGREEMENT is entered by and between the SAN DIEGO UNIFIED SCHOOL DISTRICT ("DISTRICT"), a public school district of the State of California and the CITY OF SAN DIEGO, a municipal corporation ("CITY"), (collectively, the Parties).

WITNESSETH:

WHEREAS, CITY operates swimming facilities, known as Allied Gardens, City Heights, Clairemont, Colina Del Sol, Bud Kearns, Kearny Mesa, Martin Luther King, Jr., Memorial, Ned Baumer, Swanson and Tierrasanta Community Pool, and CITY desires to assist DISTRICT in making said facilities available for use by participants of DISTRICT instructional programs.

NOW, THEREFORE, and in consideration of the mutual promises, covenants, and agreements hereinafter set forth and the payment of rent herein provided, the parties hereto agree as follows:

1. AUTHORIZED USE

The CITY shall make available to DISTRICT swimming facilities, "facilities" including heated swimming pools and locker rooms and showers, during the period from July 1, 2006, and ending June 30, 2011. The current rate schedule for DISTRICT use is attached as Exhibit 1.

NOTE: DISTRICT shall not have exclusive use of the facilities. CITY shall have exclusive use of the facilities in connection with its public recreational program at all times not reserved for DISTRICT use.

CITY may schedule pool closures as deemed appropriate during DISTRICT use and will provide the DISTRICT with 30 days written notice. City will make every effort to accommodate DISTRICT but is not obligated to do so in the event a pool is closed.

The CITY has implemented the policy, attached as Exhibit 2, to increase the safety and minimize the risk of injury of users who enter head-first (dive) from either the deck and/or starting blocks and to identify acceptable locations and use of starting blocks at CITY pools.

2. RENT

DISTRICT agrees to pay CITY a monthly rental fee listed in Exhibit 1 to this Agreement for interscholastic athletics and instructional swimming purposes and understands that all monthly rental fees are subject to change on an annual basis. Payment is due and payable upon receipt of invoice. Invoice for rental shall be addressed to the financial clerk at the specific school site renting the pool.

3. DISTRICT USE OF FACILITIES

DISTRICT shall not use or permit the use of facilities for any purpose other than for instructional purposes included in this Agreement.

DOCUMENT NO. RP-302409  
MAR 06 2007  
FILED  
OFFICE OF THE CITY CLERK

4. CITY CONTROL OF FACILITIES

Facilities, including keys, thereto are at all times under the control of CITY.

5. LIFEGUARDS

The CITY shall provide a certified lifeguard, who shall be in attendance during all DISTRICT instructional times. DISTRICT agrees that no one will be allowed on the pool deck or in the water without a lifeguard on deck. The pools are under the direct supervision and control of the City of San Diego Park and Recreation Department Aquatic Management and lifeguards. DISTRICT students, instructors, and other observers must at all times obey posted rules and requests of the pool staff. DISTRICT is responsible for reporting any injuries or accidents to pool management/pool staff.

6. INDEMNIFICATION

DISTRICT agrees to defend, indemnify, protect and hold CITY and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to DISTRICT employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of DISTRICT, and its agents, officers or employees, in using the facilities herein, and all expenses of investigating and defending against same.

DISTRICT agrees to pay for any damage to facilities resulting from DISTRICT use or occupancy thereof, whether damage results from DISTRICT, its agents, officers or employees, or persons participating in or attending DISTRICT programs at the facilities.

CITY agrees to defend, indemnify, protect and hold DISTRICT and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CITY employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of CITY, and its agents, officers or employees, in using the facilities herein, and all expenses of investigating and defending against same.

7. DUTIES AND RESPONSIBILITIES

The CITY shall provide daily maintenance to the pool, rest rooms, decks and shall maintain proper pool water chemistry.

DISTRICT is responsible for the set up and breakdown of activity/facility. All equipment used by DISTRICT must be returned to storage area and must be in the same condition as prior to DISTRICT use; i.e., DISTRICT is responsible for breakage of equipment or facilities not included within normal wear and tear.

DISTRICT is responsible for the daily removal/replacement of pool blankets (if applicable).

DISTRICT is responsible for daily removal/replacement of lane lines.

DISTRICT is responsible for removal of any debris left on pool deck, in restrooms or surrounding areas.

DISTRICT is responsible for promptly reporting any safety hazards and/or needed repairs to equipment to CITY.

8. CERTIFICATION

DISTRICT instructors must provide CITY with copies of their certifications: WSI, EWS, or Lifeguarding; CPR, First Aid, upon request.

9. INSURANCE

DISTRICT must have and maintain during the entire term of Agreement a Three Million Dollar (\$3,000,000.00) liability policy acceptable to CITY, with the CITY named as an "additional insured." A copy of the DISTRICT Certificate of Insurance must be provided to the CITY within ten (10) days of executing this Agreement.

10. TERMINATION

Should facilities not be available, or be damaged or destroyed so as to substantially interfere with their use by DISTRICT, or should unforeseen occurrences beyond the control of CITY that prevent DISTRICT from using facilities in the manner herein provided, DISTRICT shall have the right to terminate this Agreement and shall be liable for rent due up to the time of such occurrence.

11. ASSIGNMENT

Neither this Agreement nor any right of DISTRICT hereunder may be assigned, sublet, or in any manner transferred to another.

12. DISCRIMINATION

DISTRICT, CITY, and all others who use the facilities, may not discriminate in any manner against any person or persons on account of race, creed, color, gender, religion, national origin, age, physical impairment, or sexual orientation, or on any other basis prohibited by law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized representatives.

THE CITY OF SAN DIEGO

BY:

Ted Martinez, Jr.

Deputy Chief, Neighborhood and Customer Services

SAN DIEGO UNIFIED SCHOOL DISTRICT

By:

R.F. Kiesling

Chief Facilities Officer

LEGALITY AND FORM APPROVED

Sandra T.M. Chong 5/16/06  
SANDRA T.M. CHONG, Assistant General Counsel  
San Diego Unified School District

Approved in public meeting of the  
Board of Education of the San Diego  
Unified School District on 5/19/06

Exhibit 1

Monthly rental nonexclusive shared use (long term agreements)

|                                                  | <u>Hourly Fee</u> |
|--------------------------------------------------|-------------------|
| One month rental<br>(10 hours/month minimum)     | \$ 41.75          |
| Three month rental<br>(30 hours/month minimum)   | \$ 35.75          |
| Six month rental<br>(60 hours/month minimum)     | \$30.25           |
| Twelve month rental<br>(70+ hours/month minimum) | \$ 30.00          |

Rentals will be invoiced on a monthly basis.

- (1) Permittee must adhere to stated hours (stated hours include set-up, take down and vacating site) or be charged a penalty fee ( hourly rate billed in half-hour increments).
- (2) Number of lifeguards needed may be dependent on activity being conducted. Activities with over 25 participants [i.e., Special events such as Swim Meets and Water Polo Games will require additional lifeguard(s).] Cost for additional lifeguards is based on the annual Park and Recreation fee schedule. The charge beginning July 1, 2006 is \$18.44 per hour.
- (3) All permittees holding classes must be certified instructors in the activity being conducted.
- (4) Insurance is required. (See Insurance, section 9 of agreement)
- (5) DISTRICT may or may not have exclusive use facility.
- (6) Usage period is as follows:

|     |                      |                            |
|-----|----------------------|----------------------------|
| (7) | <u>Summer Season</u> | <u>Winter Season</u>       |
|     | May 1 – September 30 | October 1 – April 30       |
|     | 5:00 to 8 a.m.       | Usage times are negotiable |
|     | 6:30 to 10 p.m.      |                            |

Please note: Rental rates are per facility and may not be combined, unless due to pool closure by City. Monthly rental fees, breakdown of hours for monthly rentals, and cost of additional guards are subject to change on an annual basis; however, the other information provided on this page will not change.

CITY OF SAN DIEGO PARK & RECREATION DEPARTMENT  
HEAD-FIRST ENTRY STANDARDS FOR SWIMMING POOL FACILITIES

Purpose: To increase the safety and minimize the risk of injury of users who enter head-first (dive) from either the deck and/or starting blocks, and to identify acceptable locations and use of starting blocks at City pools.

|                     |                         |             |
|---------------------|-------------------------|-------------|
| Allied gardens      | Colina Del Sol          | Ned Baumer  |
| Bud Kearns Memorial | Kearny Mesa             | Swanson     |
| City Heights        | Martin Luther King, Jr. | Tierrasanta |
| Clairemont          | Memorial                |             |

Pool Inventory as of 3/2006

Policy: To permit head-first entries (diving) into pools, for competitive and training purposes, from a starting block where the water depth is 6 ½ feet deep, and where there is at least 25 feet of forward clearance, and from the deck where water depth is 6 ½', and where there is at least 15 feet of forward clearance (see pages 2 and 3).

When entering head-first (diving) from the deck, the area in which the swimmer is intending to dive is to be clear of all swimmers before entering, and entry into the pool is to be perpendicular to a lane, exception is only permitted when entering head-first (diving) from a starting block designated for training purposes (see pages 2 and 3).

The use of starting blocks will be prohibited except under the direct supervision of an instructor or coach during competition or training for competition, and the starting blocks will be removed or be made physically inaccessible when not actually in use.

For pools that do not permit head-first entries (diving), in-water starts will be the method of starting a race during competitions (see pages 2 and 3).

All individuals and user groups, to include rentals, joint use agreements and special use groups, that utilize any of the City pool facilities for competition and/or training for competition purposes, are required to have a \$3,000,000 liability policy naming the City of San Diego as an Additional Insured, and must adhere to the policy as set forth. Failure to comply, could result in revoking of pool use privileges for such activity.

A variance from the policy to allow for the use of starting blocks for competitive swim training purposes only at specified pools has been granted. The pools are: Bud Kearns, Colina Del Sol, Kearny Mesa, Martin Luther King, Jr., Memorial and Swanson (see pages 2 and 3).

| ACCEPTABLE LOCATIONS AND USE OF STARTING BLOCKS AT CITY POOLS |                                                 |                                                               |                                                                                                                   |                                                                                                                           |
|---------------------------------------------------------------|-------------------------------------------------|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| Pool Name                                                     | Use of starting blocks for competitive purposes | Use of starting blocks for competitive swim training purposes | Permit diving from deep end of deck at 6 ½' or greater, and in-water starts at the shallow end during competition | Comments                                                                                                                  |
| Allied Gardens                                                | Yes*                                            | Yes*                                                          | Yes*                                                                                                              | *Lanes 2 thru 8 only                                                                                                      |
| Bud Kearns                                                    | No                                              | Yes*                                                          | No**                                                                                                              | *One starting block across the width of pool at deepest point not directly over main drain grates. **In-water starts only |
| City Heights                                                  | Yes                                             | Yes                                                           | Yes                                                                                                               |                                                                                                                           |
| Clairemont                                                    | Yes*                                            | Yes*                                                          | Yes                                                                                                               | *Lanes 2 thru 8 only                                                                                                      |
| Colina Del Sol                                                | No                                              | Yes*                                                          | Yes                                                                                                               | *One starting block across the width of pool at deepest point not directly over main drain grates.                        |
| Kearny Mesa                                                   | No                                              | Yes*                                                          | Yes                                                                                                               | *One starting block across the width of pool at deepest point not directly over main drain grates.                        |

# ACCEPTABLE LOCATIONS AND USE OF STARTING BLOCKS AT CITY POOLS

| Pool Name               | Use of starting blocks for competitive purposes | Use of starting blocks for competitive swim training purposes | Permit diving from deep end of deck at 6 ½' or greater, and in-water starts at the shallow end during competition | Comments                                                                                           |
|-------------------------|-------------------------------------------------|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| Martin Luther King, Jr. | No                                              | Yes*                                                          | Yes                                                                                                               | *One starting block across the width of pool at deepest point not directly over main drain grates. |
| Memorial                | No                                              | Yes*                                                          | Yes                                                                                                               | *One starting block across the width of pool at deepest point not directly over main drain grates. |
| Ned Baumer              | Yes                                             | Yes                                                           | Yes                                                                                                               |                                                                                                    |
| Swanson                 | No                                              | Yes*                                                          | No**                                                                                                              | *One starting block at deep end of 25-meter length. **In-water starts only                         |
| Tierrasanta             | Yes*                                            | Yes*                                                          | Yes                                                                                                               | *Lanes 1 thru 6 only                                                                               |

As of 05/08/06

100  
(R-2007-125) 3/6/07  
DUP LEASE

RESOLUTION NUMBER R- 302409

DATE OF FINAL PASSAGE MAR 12 2007

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A  
FIVE-YEAR LEASE AGREEMENT WITH THE SAN DIEGO  
UNIFIED SCHOOL DISTRICT FOR USE OF CITY OF SAN  
DIEGO SWIMMING POOLS.

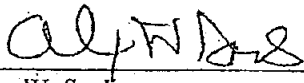
WHEREAS, the City operates swimming facilities, known as Allied Gardens, City Heights, Clairemont, Colina Del Sol, Bud Kearns, Kearny Mesa, Martin Luther King Jr., Memorial, Ned Baumer, Swanson and Tierrasanta Community Pool; and

WHEREAS, the City desires to assist the San Diego Unified School District [District] in making said facilities available for use by participants of District instructional programs NOW,  
THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor or his representative is authorized to execute, for and on behalf of the City, a five year lease agreement with the San Diego Unified School District for the use and rental of the following City owned swimming pools: Allied Gardens, City Heights, Clairemont, Colina Del Sol, Bud Kearns, Kearny Mesa, Martin Luther King Jr., Memorial, Ned Baumer, Swanson and Tierrasanta Community Pool, under the terms and conditions set forth in the lease agreement on file in the office of the City Clerk as Document No. RR- 302409

BE IT FURTHER RESOLVED, that this activity is exempt from the California  
Environmental Quality Act [CEQA] pursuant to Section 15061(B)(3), as defined by the State  
CEQA Guidelines.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
Alex W. Sachs  
Deputy City Attorney

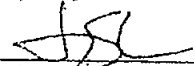
AWS:pev  
08/03/06  
Aud.Cert.: N/A  
Or.Dept: Park & Rec.  
R-2007-125

I hereby certify that the foregoing Resolution was passed by the Council of the City of San  
Diego, at this meeting of MAR 06 2007

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 3.12.07  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

R-302409

Passed by the Council of The City of San Diego on MAR 06 2007, by the following vote:

| Council Members   | Yeas                                | Nays                     | Not Present              | Ineligible               |
|-------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Scott Peters      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Kevin Faulconer   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Toni Atkins       | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Anthony Young     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Brian Maienschein | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Donna Frye        | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Jim Madaffer      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Ben Hueso         | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date of final passage MAR 12 2007

AUTHENTICATED BY:

JERRY SANDERS  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Mary Zimmerman, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R-302409

RESOLUTION NUMBER R- 305894  
DATE OF FINAL PASSAGE JUN 21 2010

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE  
AND DELIVER A 50-YEAR GROUND LEASE AGREEMENT  
FOR SAN DIEGO UNIFIED SCHOOL DISTRICT-OWNED  
LAND UNDER CITY-OWNED RECREATION FACILITIES AT  
2902 MARCY AVENUE.

WHEREAS, the City has constructed three recreational facilities located at 2902 Marcy Avenue, San Diego, CA 92113 (i.e., Dolores Magdaleno Memorial Recreation Center, an outdoor basketball court, and Dolores Magdaleno Memorial Pool [Recreation Facilities]) partially on land owned by the San Diego Unified School District [District Property]; and

WHEREAS, the City and the District agree that written approvals for the development and operation of the Recreational Facilities were given by the District at some time in the past, no documentation can be found to establish the City's right to occupy the District Property; and

WHEREAS, the City and the District have negotiated a 50-year ground lease [Ground Lease] to document the City's right to use the District Property; and

WHEREAS, The proposed Ground Lease ratifies the City's past use of the District Property and allows the City to keep in place the existing Recreational Facilities; and

WHEREAS, no financial consideration is involved in the proposed Ground Lease; the District will receive the benefit of using the Recreational Facilities in exchange for the City's right to occupy the District Property; and

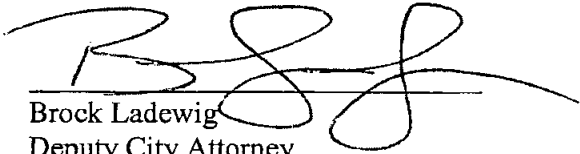
WHEREAS, the District approved the proposed Ground Lease on May 11, 2010; NOW,  
THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the Mayor or his designee is authorized to execute and deliver, for and on behalf of The City of San Diego, a 50-year ground lease agreement with the San Diego Unified School District, a public school district of the State of California, for approximately 13,300 square feet of land, under the terms and conditions set forth in that "Ground Lease between The City Of San Diego and San Diego Unified School District for City of San Diego Recreational Facilities" on file in the Office of the City Clerk as Document No. RR- 305894 [Ground Lease]; and

BE IT FURTHER RESOLVED, the Mayor or his designee is authorized to execute and deliver such other incidental agreements and documents as may be necessary to complete the transactions contemplated by the Ground Lease, on terms and conditions deemed by the Mayor or his designee to be in the best interests of the City.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

  
Brock Ladewig  
Deputy City Attorney

BL:mm  
05/21/2010  
Or.Dept:READ  
R-2010-780  
MMS#12062

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 15 2010

ELIZABETH S. MALAND  
City Clerk

By *Anna Richard*  
Deputy City Clerk

Approved: 6.21.10  
(date)

*JSL*  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

GROUND LEASE BETWEEN THE CITY OF SAN DIEGO AND SAN DIEGO  
UNIFIED SCHOOL DISTRICT FOR  
CITY OF SAN DIEGO RECREATIONAL FACILITIES

THIS GROUND LEASE FOR CITY OF SAN DIEGO RECREATIONAL FACILITIES ["Lease"] is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ["City"], and the SAN DIEGO UNIFIED SCHOOL DISTRICT, a public school district of the State of California ["District"] (collectively, the parties), as follows:

RECITALS

- A. Since 1943, City has constructed three recreational facilities -- the Dolores Magdaleno Memorial Recreation Center ["Recreation Center"], an outdoor basketball court ["Outdoor Basketball Court"], and the Dolores Magdaleno Memorial Pool ["Memorial Pool"], collectively referred to herein as the "Recreational Facilities." The Recreational Facilities straddle the property line between City-owned property and District-owned property (see **Exhibit A: Site Plan**, attached hereto). Although City and District agree that written approvals for the development, maintenance, and operation of each Recreational Facility were given by District at some point in the past, no definitive corroborating archival documents can be located. By this Lease, District ratifies City's past use of that certain District-owned real property ["Premises"] located at Memorial Preparatory for Scholars and Athletes ["MPSA"], 2850 Logan Avenue, San Diego, California 92113 in the Southeastern San Diego Community Planning Area, and as more particularly described in **Exhibit B: Premises**, attached hereto, and leases the Premises to City for its continued use for the development, maintenance, and operation of the Recreational Facilities.
- B. City and District entered into that certain LEASE AGREEMENT BETWEEN THE SAN DIEGO UNIFIED SCHOOL DISTRICT AND THE CITY OF SAN DIEGO PARK AND RECREATION DEPARTMENT filed in the Office of the San Diego City Clerk as Document No. RR-302409 on March 6, 2007 ["Park & Rec Agreement"], attached hereto as **Exhibit C: Lease Agreement between the San Diego Unified School District and the City of San Diego Park and Recreation Department**; whereby certain swimming facilities, including the Memorial Pool, were made available to District students for instructional purposes only at discounted rates.
- C. City intends to reconstruct and reconfigure the Memorial Pool. Such reconstruction may require the removal of the Outdoor Basketball Court. The parties agree that City shall not be obligated to continue to maintain or provide the Outdoor Basketball Court for District's use.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. Property. District hereby leases the Premises to City and City leases the Premises from District. At some time, and from time to time, in the past and up to the commencement date of this Lease, City has developed, maintained, and operated the Recreation Facilities on the Premises. District hereby ratifies and approves City's development, maintenance, and operation of the Recreational Facilities as to all times prior to the commencement date of this Lease.
2. Outdoor Basketball Court. City may remove the Outdoor Basketball Court at any time upon thirty (30) days written notice to the District.
3. Term. This Lease shall be for a term of fifty (50) years, commencing on the later date of its execution by City and the date of its execution by the authorized representative of the District's Board of Education, and when approved by the San Diego City Attorney and the District Board of Education. City may extend the term of this Lease from time to time and for varying periods up to a total of an additional forty-four (44) years upon written notice to District.
4. Termination by City. City may terminate this Lease as to part or all of the Premises upon six (6) months written notice to District.
5. Use of Recreational Facilities. In consideration for this Lease, students attending the school located at MPSA shall have exclusive use of the gymnasium within the Recreation Center ["Gymnasium"] during the traditional or single-track school year beginning thirty (30) minutes before and ending thirty (30) minutes after normal school hours at no cost to District, MPSA, or MPSA students. MPSA students' use of the Outdoor Basketball Court may be reasonably scheduled with City from time to time, with priority given to MPSA students during normal school hours during the traditional or single-track school year, and at no cost to District, MPSA, or MPSA students. District's and MPSA Students' use of the Memorial Pool shall continue under the same terms and conditions set forth in the Park & Rec Agreement, which is incorporated by reference herein; notwithstanding the expiration or earlier termination of the Park & Rec Agreement. This Lease shall not affect the use of the Memorial Pool by other schools within the District pursuant to the Park & Rec Agreement. This Lease shall not affect any other use of the Recreational Facilities pursuant to applicable City permits.
6. Closure for Repairs or Maintenance. Notwithstanding the foregoing, City may close any or all of the Recreational Facilities at any time and from time to time, upon reasonable notice to the District, when necessary for maintenance, repairs, renovation, or replacements, as deemed necessary or appropriate by City, in its sole discretion. City shall, to the extent reasonably possible, schedule such maintenance, repairs, renovations or replacements, so as to avoid or minimize interference with the District's and/or MPSA's use of the Premises and the Recreational Facilities during the times specified in paragraph 5, above.

7. Operating Hours. City shall have no obligation to continuously operate any Recreational Facility during the term of this Lease, or to maintain any particular hours of operation, except during those times identified under paragraph 5, above, as reserved for use by MPSA or as required under the Park & Rec Agreement,. Any use of a Recreational Facility as provided herein shall be subject to such Recreational Facility's normal hours of operation, as may be determined from time to time by City, in its sole discretion, subject to the requirement that the Premises remain open for use by MPSA and/or the District during the times identified in paragraph 5, above or as required under the Park & Rec Agreement.
8. Maintenance. City shall maintain the Premises and the Recreational Facilities in a manner consistent with City standards for like property and facilities. City shall pay the cost of maintenance, repairs, and service charges of all utilities servicing the Recreational Facilities. City shall conduct its maintenance obligations under this Lease in a timely and workmanlike manner and, to the extent possible, in such a manner to avoid interference with the District and/or MSPA's use of the Premises and the Recreational Facilities.
9. Improvements. City may make improvements to the Premises for public recreation purposes. However, no improvements shall be installed, and no construction of any improvements shall begin, until District has approved the proposed plans for the improvements, which shall not be unreasonably withheld, conditioned, or delayed. All City-financed improvements installed on the Premises shall remain the property of the City. At the expiration or termination of this Lease, District may, at District's sole discretion, require City, at City's sole cost and expense, to remove any or all improvements, fixtures, structures and installations or additions to the Premises constructed or placed on the Premises by City and to restore the affected portion of the Premises to ground-level grade condition within a reasonably practicable period of time.
10. Default by City; District Right to Terminate. It is specifically agreed to by the parties that this Lease shall be non-terminable by District, except as expressly provided for herein or upon written agreement between the District and the City. In the event of the City's breach of this Lease, District agrees that District shall not have the remedy of eviction against the City and that District's sole remedy in case of a breach of this Lease shall be an action for specific performance; except that, if the City shall fail to maintain all or any portion of the Premises and/or the Recreational Facilities in a safe and operable condition, as determined or verified by a public officer of competent authority, for a period of sixty (60) consecutive days after receipt of a written notice thereof from District, or if the City shall fail or refuse to make necessary repairs, as determined or verified by a public officer of competent authority, for a period of six (6) months after receipt of a written demand therefor from District, then District may immediately terminate this Lease as to that portion of the Premises affected, and City shall thereafter remove the applicable Recreational Facility and restore the affected portion of the Premises to ground-level grade condition within a reasonably practicable period of time.

11. Subordination, Non-Disturbance, and Attornment.

- a. This Lease shall be superior to any and all other encumbrances which may be recorded against the Premises, that any sale of the Premises must be subject to this Lease, and that City may record a "Notice of Lease" with the San Diego County Recorder. It is also agreed that any encumbrance holder may elect that this Lease shall be senior to or have priority over that encumbrance or underlying lease whether this Lease is dated before or after the date of the encumbrance or underlying lease. No such subordination shall be effective unless and until District obtains from the holder of the encumbrance placed against the Premises a nondisturbance agreement in recordable form, providing that in the event of any foreclosure, sale under a power of sale, or transfer in lieu of any of the foregoing, or the exercise of any other remedy under any such encumbrance: (a) City's use, possession and enjoyment of the Premises shall not be disturbed, and this Lease shall continue in full force and effect as long as City is not in default; and (b) this Lease shall automatically become a lease directly between any successor to District's interest and City, as if that successor were the lessor originally named in this Lease. City further reserves the right to cure any default on behalf of District to a senior encumbrance which could cause a foreclosure of the Premises. City waives the effect of any future statute or common law that would cause the forfeiture of this Lease in connection with the foreclosure of an encumbrance contrary to the encumbrance holder's election.
- b. If requested to do so by the transferee, City shall attorn to the transferee of District's interest in the Premises by foreclosure, deed in lieu of foreclosure, exercise of any remedy provided in any encumbrance or underlying lease or operation of law (without any deductions or setoffs) expressly provided in this Lease or in any non-disturbance agreement, and to recognize the transferee as the lessor under this Lease.

12. Insurance and Indemnification.

- a. Indemnity. City shall defend, indemnify, protect, and hold District, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to City's employees, invitees, guests, agents, or officers, caused by the independent acts of City, its agents or employees in connection with the performance of this Lease and/or the use of the Premises. City's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of District, its agents, officers, or employees.
- b. Insurance. City acknowledges and warrants that it is self-insured in compliance with the laws of the State of California, that its self-insurance covers persons acting on its behalf or under its control, and that its self-insurance covers its use

of the Premises and the City's facilities covered in this Lease. District warrants that it carries general liability insurance (with a legally permissible self-insured retention or deductible) and that its insurance covers persons acting on its behalf or under its control. The parties further agree that they will notify the other party of any insurance coverage change at least thirty (30) days prior to the change. Any coverage change must be approved by the other party, which shall not be unreasonably withheld.

- c. Workers' Compensation Insurance. The parties acknowledge and warrant that they maintain, and shall maintain for the term of this Lease, Workers' Compensation coverage as required by law.
13. Nondiscrimination. The parties shall not discriminate in any manner against any person or persons on the basis of race, color, gender, religion, national origin, ethnicity, sexual orientation, age, marital status, or disability in the providing of goods, services, facilities, and advantages and the holding and obtaining of employment. The parties shall not allow such discrimination by others who are within their respective control and who from time to time may use the recreational facilities with the permission and on the terms and conditions specified by either party.
14. Notices. Any demand upon or notice required or permitted to be given by one party to the other shall be in writing. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one party to the other party shall be effective: (a) when delivered to the recipient by personal delivery or confirmed facsimile transmission; (b) on the second business day after mailing by certified or registered United States mail, return receipt requested; or (c) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express), postage or fee prepaid as appropriate, and addressed to the party at the address shown below:

City of San Diego  
202 "C" Street, MS-32C  
San Diego, CA 92101  
Attention: Park & Recreation Director

*With a copy by First Class Mail to:*  
San Diego City Attorney  
Real Property Section  
1200 Third Avenue, Suite 1100  
San Diego, CA 92101

And

San Diego Unified School District  
4100 Normal Street

San Diego, California 92103-2682  
Attention: Superintendent

15. General Provisions.

- a. Waiver. The waiver by either party of any breach of any term, covenant or condition herein shall not be deemed to be waiver of any other term, covenant, or conditions, or any subsequent breach of the same or any other term, covenant, or condition of this Lease.
- b. Time of the Essence. Time is of the essence of each and all of the terms and provisions of Lease.
- c. Legal Proceedings. The parties agree that the laws of the State of California shall be used in interpreting this Lease and shall govern all disputes under this Lease and will determine all rights hereunder.
- d. Entire Agreement. This Lease contains the complete expression and the whole agreement between the parties hereto, and there are no promises, representations, agreements, warranties, or inducements, either expressed verbally or implied except as are fully set forth herein. This Lease may not be enlarged, modified, or changed in any respect except by a written agreement signed by the parties.
- e. Severance. If any part of this Lease is found by a court of competent jurisdiction to be void or voidable, that portion which is so held to be defective shall be severed from the remainder hereof, and the latter shall remain in full force and effect.
- f. Successors in Interest. This Lease and all rights and obligations herein shall be in effect whether or not one or both parties to this Lease have been succeeded by another entity, and all rights and obligations of each party signatory to this Lease shall be vested and binding on their successors' interest.
- g. Compliance with Law. City shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all current applicable laws, statutes, ordinances, and regulations of the County, State and Federal governments to which City may be subject.
- h. Quiet Possession. Provided City is not in default of this Lease, City shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises.
- i. Assignment. City shall not assign this Lease or any interest herein without District's prior written consent. Except as expressly provided herein, District shall not assign this Lease, or any interest herein, without City's prior written consent. Any such assignment without such consent shall be void. However,

notwithstanding the above, in the event that the District, in its sole discretion, should determine to locate a different school on the MPSA campus, the students attending said school shall have the same rights of use of the Premises and the facilities as granted to MPSA under this Lease. This Lease shall inure to the benefit of and be binding upon the parties hereto and any successors thereof as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations, and agreements in this Lease shall extend to and bind any successor(s) of the parties.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

- j. City and District Approval. Whenever required or permitted under this Lease, City's consent or approval shall mean the written consent or approval of the City Manager of San Diego, or his or her designee ("City Manager"), unless otherwise expressly provided. City's discretionary acts hereunder shall be made in the City Manager's discretion, unless otherwise expressly provided. "City Manager" shall be deemed to refer to the Mayor of San Diego or his or her designee for the duration City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of The City Charter of the City of San Diego, California. Whenever required or permitted under this Lease, District's consent or approval shall mean the written consent or approval of the Superintendent or his or her designee; subject to approval of the District's Board of Education as required by law.

IN WITNESS WHEREOF, Lease is executed to be effective as of the later date of City's signature and the date of District's signature, when approved by the San Diego City Attorney.

THE CITY OF SAN DIEGO, a  
California Municipal Corporation,  
Authorizing Resolution No. 305894

BY: [Signature]

Name: James F. Barwick, CCIM  
Director, Real Estate Assets

Title: \_\_\_\_\_

Date: 6/21/10

SAN DIEGO UNIFIED SCHOOL DISTRICT  
a public school district of the State of California

BY: [Signature]

Name: Arthur S. Hanby, Jr.

Title: Strategic Sourcing & Contracts Officer

Date: 6/9/2010

APPROVED AS TO FORM AND LEGALITY:

JAN I. GOLDSMITH, City Attorney

BY: [Signature]

Name: Brock Ladewig  
Title: Deputy City Attorney

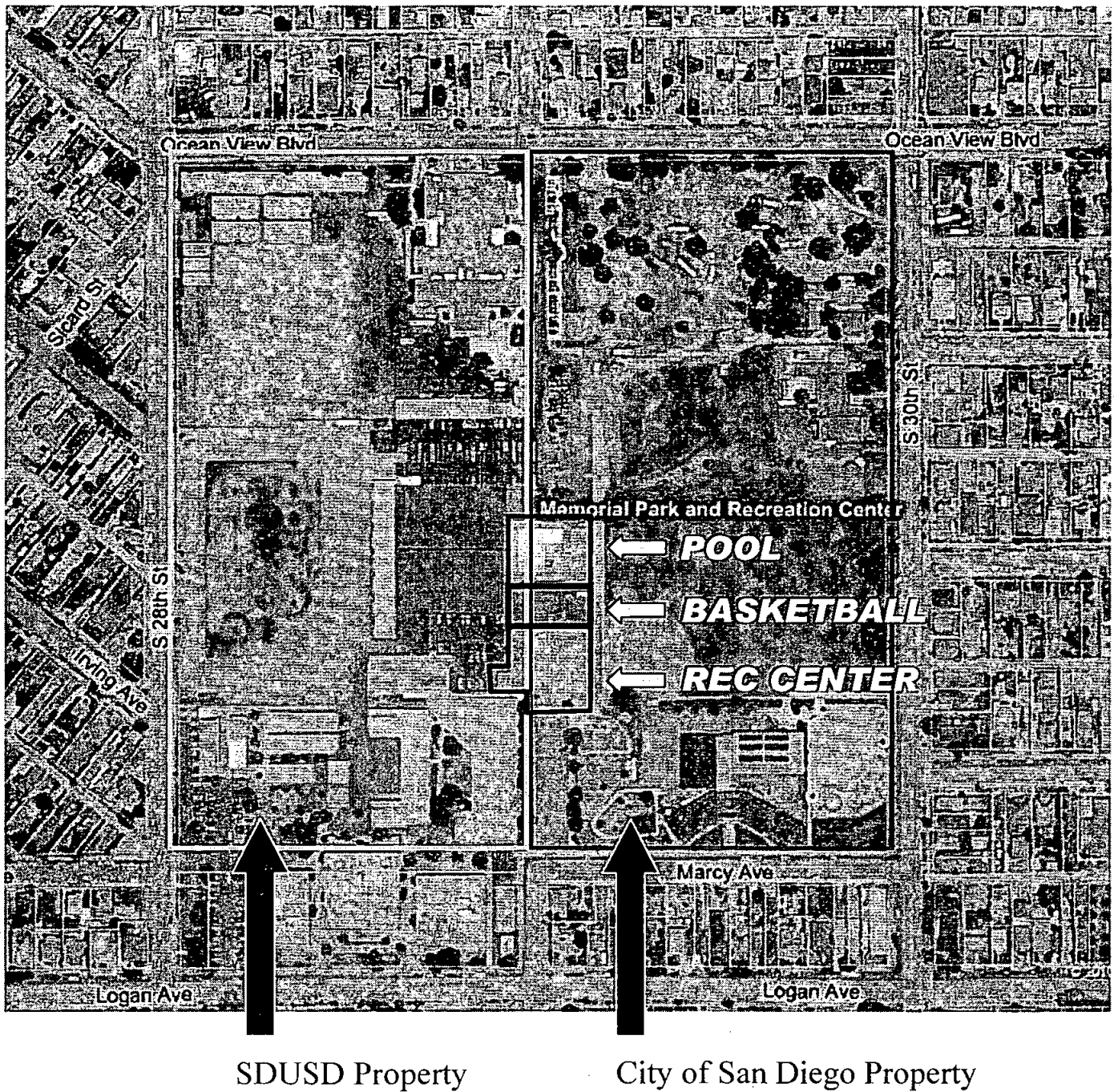
LEGALITY AND FORM APPROVED

4.19.10  
ANDRA M. DONOVAN, Deputy General Counsel  
San Diego Unified School District

Approved in public meeting of the  
Board of Education of the San Diego  
Unified School District on 5/11/10

[Signature]  
Cheryl Ward, Board Action Officer,  
Board of Education

Exhibit A: Site Plan



**Exhibit B: Premises**

**LEGAL DESCRIPTION**

A portion of Lots A and N in Block 7, and Lots A and N in Block 9, together with a portion of 29<sup>th</sup> Street (vacated) and a portion of Vine Court (vacated) of La Binda Park, in the City of San Diego, County of San Diego, State of California, according to Map 1538, filed in the office of the County Recorder of said County February 13, 1913, described as follows:

COMMENCING at the northeast corner of Block 2 of said Map 1538, thence along the north line of said Block 2 and its prolongation South 89°00'37" West 629.69 feet, more or less, to the centerline of 29<sup>th</sup> Street (vacated) as shown on said map; thence along said centerline South 00°23'30" East 622.50 feet to the TRUE POINT OF BEGINNING; thence continuing along said centerline South 00°23'30" East 338.00 feet; thence leaving said centerline South 89°36'30" West 53.00 feet; thence North 00°23'30" West 40.00 feet; thence North 89°36'30" East 23.00 feet; thence North 00°23'30" West 74.00 feet; thence South 89°36'30" West 10.00 feet; thence North 00°23'30" West 224.00 feet; thence North 89°36'30" East 40.00.00 feet to the TRUE POINT OF BEGINNING.

CONTAINING: 13,300 Sq. Ft., more or less.

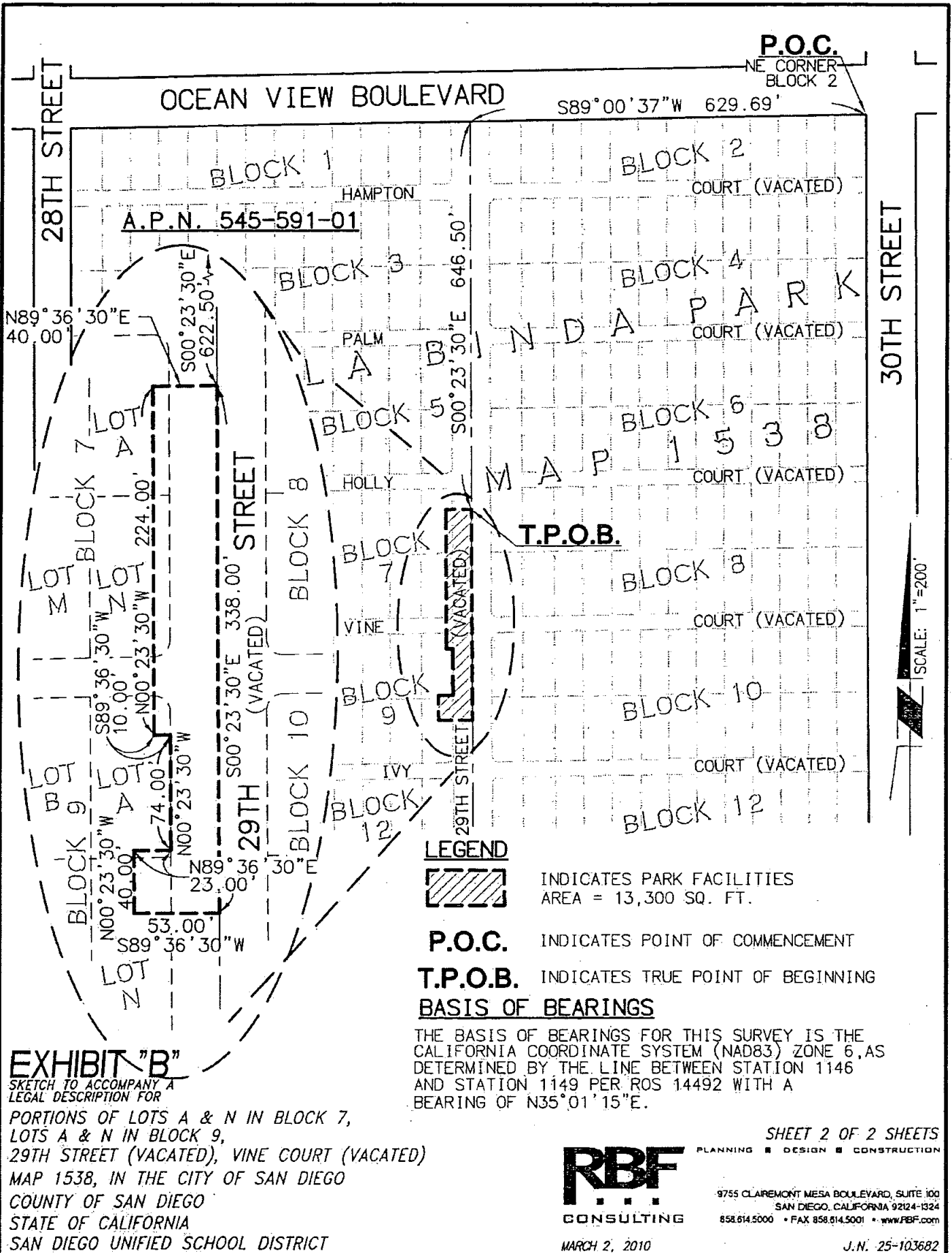
Exhibit "B" attached and by this reference is made a part hereto.

This description was prepared by me or under my direction.

 3/2/10  
Stephen R. Hawkhurst, LS 7355  
Expires 12/31/11

RBF CONSULTING  
9755 Clairemont Mesa Boulevard, Suite 100  
San Diego, California 92124  
JN 25-103682





DUPLICATE ORIGINAL

B.C.4

LEASE AGREEMENT BETWEEN THE  
SAN DIEGO UNIFIED SCHOOL DISTRICT  
AND  
THE CITY OF SAN DIEGO  
PARK AND RECREATION DEPARTMENT

THIS AGREEMENT is entered by and between the SAN DIEGO UNIFIED SCHOOL DISTRICT ("DISTRICT"), a public school district of the State of California and the CITY OF SAN DIEGO, a municipal corporation ("CITY"), (collectively, the Parties).

WITNESSETH:

WHEREAS, CITY operates swimming facilities, known as Allied Gardens, City Heights, Clairemont, Colina Del Sol, Bud Kearns, Kearny Mesa, Martin Luther King, Jr., Memorial, Ned Baumer, Swanson and Tierrasanta Community Pool, and CITY desires to assist DISTRICT in making said facilities available for use by participants of DISTRICT instructional programs.

NOW, THEREFORE, and in consideration of the mutual promises, covenants, and agreements hereinafter set forth and the payment of rent herein provided, the parties hereto agree as follows:

1. AUTHORIZED USE

The CITY shall make available to DISTRICT swimming facilities, "facilities" including heated swimming pools and locker rooms and showers, during the period from July 1, 2006, and ending June 30, 2011. The current rate schedule for DISTRICT use is attached as Exhibit 1.

NOTE: DISTRICT shall not have exclusive use of the facilities. CITY shall have exclusive use of the facilities in connection with its public recreational program at all times not reserved for DISTRICT use.

CITY may schedule pool closures as deemed appropriate during DISTRICT use and will provide the DISTRICT with 30 days written notice. City will make every effort to accommodate DISTRICT but is not obligated to do so in the event a pool is closed.

The CITY has implemented the policy, attached as Exhibit 2, to increase the safety and minimize the risk of injury of users who enter head-first (dive) from either the deck and/or starting blocks and to identify acceptable locations and use of starting blocks at CITY pools.

2. RENT

DISTRICT agrees to pay CITY a monthly rental fee listed in Exhibit 1 to this Agreement for interscholastic athletics and instructional swimming purposes and understands that all monthly rental fees are subject to change on an annual basis. Payment is due and payable upon receipt of invoice. Invoice for rental shall be addressed to the financial clerk at the specific school site renting the pool.

3. DISTRICT USE OF FACILITIES

DISTRICT shall not use or permit the use of facilities for any purpose other than for instructional purposes included in this Agreement.

DOCUMENT NO. RP-302409

MAR 06 2007

FILED

OFFICE OF THE CITY CLERK

4. CITY CONTROL OF FACILITIES

Facilities, including keys, thereto are at all times under the control of CITY.

5. LIFEGUARDS

The CITY shall provide a certified lifeguard, who shall be in attendance during all DISTRICT instructional times. DISTRICT agrees that no one will be allowed on the pool deck or in the water without a lifeguard on deck. The pools are under the direct supervision and control of the City of San Diego Park and Recreation Department Aquatic Management and lifeguards. DISTRICT students, instructors, and other observers must at all times obey posted rules and requests of the pool staff. DISTRICT is responsible for reporting any injuries or accidents to pool management/pool staff.

6. INDEMNIFICATION

DISTRICT agrees to defend, indemnify, protect and hold CITY and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to DISTRICT employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of DISTRICT, and its agents, officers or employees, in using the facilities herein, and all expenses of investigating and defending against same.

DISTRICT agrees to pay for any damage to facilities resulting from DISTRICT use or occupancy thereof, whether damage results from DISTRICT, its agents, officers or employees, or persons participating in or attending DISTRICT programs at the facilities.

CITY agrees to defend, indemnify, protect and hold DISTRICT and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CITY employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of CITY, and its agents, officers or employees, in using the facilities herein, and all expenses of investigating and defending against same.

7. DUTIES AND RESPONSIBILITIES

The CITY shall provide daily maintenance to the pool, rest rooms, decks and shall maintain proper pool water chemistry.

DISTRICT is responsible for the set up and breakdown of activity/facility. All equipment used by DISTRICT must be returned to storage area and must be in the same condition as prior to DISTRICT use; i.e., DISTRICT is responsible for breakage of equipment or facilities not included within normal wear and tear.

DISTRICT is responsible for the daily removal/replacement of pool blankets (if applicable).

DISTRICT is responsible for daily removal/replacement of lane lines.

DISTRICT is responsible for removal of any debris left on pool deck, in restrooms or surrounding areas.

DISTRICT is responsible for promptly reporting any safety hazards and/or needed repairs to equipment to CITY.

8. CERTIFICATION

DISTRICT instructors must provide CITY with copies of their certifications: WSI, EWS, or Lifeguarding; CPR, First Aid, upon request.

9. INSURANCE

DISTRICT must have and maintain during the entire term of Agreement a Three Million Dollar (\$3,000,000.00) liability policy acceptable to CITY, with the CITY named as an "additional insured." A copy of the DISTRICT Certificate of Insurance must be provided to the CITY within ten (10) days of executing this Agreement.

10. TERMINATION

Should facilities not be available, or be damaged or destroyed so as to substantially interfere with their use by DISTRICT, or should unforeseen occurrences beyond the control of CITY that prevent DISTRICT from using facilities in the manner herein provided, DISTRICT shall have the right to terminate this Agreement and shall be liable for rent due up to the time of such occurrence.

11. ASSIGNMENT

Neither this Agreement nor any right of DISTRICT hereunder may be assigned, sublet, or in any manner transferred to another.

12. DISCRIMINATION

DISTRICT, CITY, and all others who use the facilities, may not discriminate in any manner against any person or persons on account of race, creed, color, gender, religion, national origin, age, physical impairment, or sexual orientation, or on any other basis prohibited by law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized representatives.

THE CITY OF SAN DIEGO

BY: [Signature]  
Ted Martinez, Jr. *ACOO*  
Deputy Chief, Neighborhood and Customer Services

SAN DIEGO UNIFIED SCHOOL DISTRICT

By: [Signature] 5/19/06  
R.F. Kiesling  
Chief Facilities Officer

LEGALITY AND FORM APPROVED

[Signature] 5/16/06  
SANDRA T.M. CHONG, Assistant General Counsel  
San Diego Unified School District

Approved in public meeting of the  
Board of Education of the San Diego  
Unified School District on 5/19/06  
[Signature]

Exhibit 1

Monthly rental nonexclusive shared use (long term agreements)

|                                                  | <u>Hourly Fee</u> |
|--------------------------------------------------|-------------------|
| One month rental<br>(10 hours/month minimum)     | \$ 41.75          |
| Three month rental<br>(30 hours/month minimum)   | \$ 35.75          |
| Six month rental<br>(60 hours/month minimum)     | \$30.25           |
| Twelve month rental<br>(70+ hours/month minimum) | \$ 30.00          |

Rentals will be invoiced on a monthly basis.

- (1) Permittee must adhere to stated hours (stated hours include set-up, take down and vacating site) or be charged a penalty fee ( hourly rate billed in half-hour increments).
- (2) Number of lifeguards needed may be dependent on activity being conducted. Activities with over 25 participants [i.e., Special events such as Swim Meets and Water Polo Games will require additional lifeguard(s).] Cost for additional lifeguards is based on the annual Park and Recreation fee schedule. The charge beginning July 1, 2006 is \$18.44 per hour.
- (3) All permittees holding classes must be certified instructors in the activity being conducted.
- (4) Insurance is required. (See Insurance, section 9 of agreement)
- (5) DISTRICT may or may not have exclusive use facility.
- (6) Usage period is as follows:
- (7)

|                      |                            |
|----------------------|----------------------------|
| <u>Summer Season</u> | <u>Winter Season</u>       |
| May 1 – September 30 | October 1 – April 30       |
| 5:00 to 8 a.m.       | Usage times are negotiable |
| 6:30 to 10 p.m.      |                            |

Please note: Rental rates are per facility and may not be combined, unless due to pool closure by City. Monthly rental fees, breakdown of hours for monthly rentals, and cost of additional guards are subject to change on an annual basis; however, the other information provided on this page will not change.

CITY OF SAN DIEGO PARK & RECREATION DEPARTMENT  
HEAD-FIRST ENTRY STANDARDS FOR SWIMMING POOL FACILITIES

Purpose: To increase the safety and minimize the risk of injury of users who enter head-first (dive) from either the deck and/or starting blocks, and to identify acceptable locations and use of starting blocks at City pools.

|                     |                         |             |
|---------------------|-------------------------|-------------|
| Allied gardens      | Colina Del Sol          | Ned Baumer  |
| Bud Kearns Memorial | Kearny Mesa             | Swanson     |
| City Heights        | Martin Luther King, Jr. | Tierrasanta |
| Clairemont          | Memorial                |             |

Pool Inventory as of 3/2006

Policy: To permit head-first entries (diving) into pools, for competitive and training purposes, from a starting block where the water depth is 6 ½ feet deep, and where there is at least 25 feet of forward clearance, and from the deck where water depth is 6 ½', and where there is at least 15 feet of forward clearance (see pages 2 and 3).

When entering head-first (diving) from the deck, the area in which the swimmer is intending to dive is to be clear of all swimmers before entering, and entry into the pool is to be perpendicular to a lane, exception is only permitted when entering head-first (diving) from a starting block designated for training purposes (see pages 2 and 3).

The use of starting blocks will be prohibited except under the direct supervision of an instructor or coach during competition or training for competition, and the starting blocks will be removed or be made physically inaccessible when not actually in use.

For pools that do not permit head-first entries (diving), in-water starts will be the method of starting a race during competitions (see pages 2 and 3).

All individuals and user groups, to include rentals, joint use agreements and special use groups, that utilize any of the City pool facilities for competition and/or training for competition purposes, are required to have a \$3,000,000 liability policy naming the City of San Diego as an Additional Insured, and must adhere to the policy as set forth. Failure to comply, could result in revoking of pool use privileges for such activity.

A variance from the policy to allow for the use of starting blocks for competitive swim training purposes only at specified pools has been granted. The pools are: Bud Kearns, Colina Del Sol, Kearny Mesa, Martin Luther King, Jr., Memorial and Swanson (see pages 2 and 3).

| ACCEPTABLE LOCATIONS AND USE OF STARTING BLOCKS AT CITY POOLS |                                                 |                                                               |                                                                                                                   |                                                                                                                           |
|---------------------------------------------------------------|-------------------------------------------------|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| Pool Name                                                     | Use of starting blocks for competitive purposes | Use of starting blocks for competitive swim training purposes | Permit diving from deep end of deck at 6 ½' or greater, and in-water starts at the shallow end during competition | Comments                                                                                                                  |
| Allied Gardens                                                | Yes*                                            | Yes*                                                          | Yes*                                                                                                              | *Lanes 2 thru 8 only                                                                                                      |
| Bud Kearns                                                    | No                                              | Yes*                                                          | No**                                                                                                              | *One starting block across the width of pool at deepest point not directly over main drain grates. **In-water starts only |
| City Heights                                                  | Yes                                             | Yes                                                           | Yes                                                                                                               |                                                                                                                           |
| Clairemont                                                    | Yes*                                            | Yes*                                                          | Yes                                                                                                               | *Lanes 2 thru 8 only                                                                                                      |
| Colina Del Sol                                                | No                                              | Yes*                                                          | Yes                                                                                                               | *One starting block across the width of pool at deepest point not directly over main drain grates.                        |
| Kearny Mesa                                                   | No                                              | Yes*                                                          | Yes                                                                                                               | *One starting block across the width of pool at deepest point not directly over main drain grates.                        |

| ACCEPTABLE LOCATIONS AND USE OF STARTING BLOCKS AT CITY POOLS |                                                 |                                                               |                                                                                                                   |                                                                                                    |
|---------------------------------------------------------------|-------------------------------------------------|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| Pool Name                                                     | Use of starting blocks for competitive purposes | Use of starting blocks for competitive swim training purposes | Permit diving from deep end of deck at 6 ½' or greater, and in-water starts at the shallow end during competition | Comments                                                                                           |
| Martin Luther King, Jr.                                       | No                                              | Yes*                                                          | Yes                                                                                                               | *One starting block across the width of pool at deepest point not directly over main drain grates. |
| Memorial                                                      | No                                              | Yes*                                                          | Yes                                                                                                               | *One starting block across the width of pool at deepest point not directly over main drain grates. |
| Ned Baumer                                                    | Yes                                             | Yes                                                           | Yes                                                                                                               |                                                                                                    |
| Swanson                                                       | No                                              | Yes*                                                          | No**                                                                                                              | *One starting block at deep end of 25-meter length. **In-water starts only                         |
| Tierrasanta                                                   | Yes*                                            | Yes*                                                          | Yes                                                                                                               | *Lanes 1 thru 6 only                                                                               |

As of 05/08/06

100  
(R-2007-125) 3/6/07  
DUP LEASE

RESOLUTION NUMBER R- 302409

DATE OF FINAL PASSAGE MAR 12 2007

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A  
FIVE-YEAR LEASE AGREEMENT WITH THE SAN DIEGO  
UNIFIED SCHOOL DISTRICT FOR USE OF CITY OF SAN  
DIEGO SWIMMING POOLS.

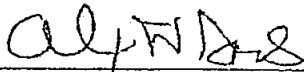
WHEREAS, the City operates swimming facilities, known as Allied Gardens, City Heights, Clairemont, Colina Del Sol, Bud Kearns, Kearny Mesa, Martin Luther King Jr., Memorial, Ned Baumer, Swanson and Tierrasanta Community Pool; and

WHEREAS, the City desires to assist the San Diego Unified School District [District] in making said facilities available for use by participants of District instructional programs NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor or his representative is authorized to execute, for and on behalf of the City, a five year lease agreement with the San Diego Unified School District for the use and rental of the following City owned swimming pools: Allied Gardens, City Heights, Clairemont, Colina Del Sol, Bud Kearns, Kearny Mesa, Martin Luther King Jr., Memorial, Ned Baumer, Swanson and Tierrasanta Community Pool, under the terms and conditions set forth in the lease agreement on file in the office of the City Clerk as Document No. RR- 302409

BE IT FURTHER RESOLVED, that this activity is exempt from the California  
Environmental Quality Act [CEQA] pursuant to Section 15061(B)(3), as defined by the State  
CEQA Guidelines.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
Alex W. Sachs  
Deputy City Attorney

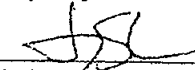
AWS:pev  
08/03/06  
Aud.Cert.: N/A  
Or.Dept: Park & Rec.  
R-2007-125

I hereby certify that the foregoing Resolution was passed by the Council of the City of San  
Diego, at this meeting of MAR 06 2007

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 3-12-07  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

R-302409

Passed by the Council of The City of San Diego on MAR 06 2007, by the following vote:

| Council Members   | Yeas                                | Nays                     | Not Present              | Ineligible               |
|-------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Scott Peters      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Kevin Faulconer   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Toni Atkins       | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Anthony Young     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Brian Maienschein | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Donna Frye        | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Jim Madaffer      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Ben Hueso         | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date of final passage MAR 12 2007

AUTHENTICATED BY:

JERRY SANDERS  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Mary Zimmerman, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R-302409