



Real Estate Assets Department
SDC003

Surf Cup Sports
G7301RU-006-A00

Document Type

LEGAL DOCUMENTS



Sub - Category

SUBLEASES



112
117
117

SD Department of Real Estate
and Airport Management

Document Routing Form

Consent to License Agreement

Title of document to be signed

Matthew Ostlund

Program Manager/Supervisor Signature

Print name of City Attorney: Kevin Reisch

Date City Attorney approval: 2/9/2023

Heide Farst

Your Name/Property Agent's Name

Mar 13, 2023

Date

NORA: ☒ Yes Date: 05/25/22
☐ No, see explanation below

Appeal: ☐ Yes ☒ No ☐ N/A

Explanation/Notes:

Attached for your approval is the Consent to License Agreement between Surf Cup Sports, LLC and Soccer Women's Team, known as San Diego Wave, as well as supporting documents. The License Agreement is effective February 1, 2022.

Surf Cup Sports added a Side Letter Agreement to the License Agreement providing for an Exclusive Use of a certain portion of the playing fields used by San Diego Wave. The Exclusive Use clause also includes an Exclusivity Fee of \$200,000 in year one followed by annual CPI increases. The Side Letter Agreement resulted in a First Amendment to Side Letter Agreement to ensure the Exclusivity Fee would be included in Surf Cups' percentage rent calculation of 10%, which is paid to the City on a quarterly basis.

Thank you.

Environmental Determination Notes (if applicable):

In addition to the NORA, the Planning Department recorded a Notice of Exemption dated May 17, 2022 with the San Diego County Clerk's office.

Deputy Signature: *Lucy Contreras* Date: Mar 14, 2023

Attachments:

Staff Memo

City Attorney Approval

Consent to License Agree.

NORA removed 5/25/22

First Amend to Side Letter

Surf Cup Lease Agree



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: March 13, 2023

TO: Penny Maus, Director, Department of Real Estate and Airport Management

FROM: Heide Farst, Supervising Property Agent, Department of Real Estate and Airport Management via Lucy Contreras, Deputy Director – Department of Real Estate and Airport Management

Subject: Consent to License Agreement – License Agreement between Surf Cup Sports, LLC and Soccer Women's Team LLC

Background & Purpose:

Pursuant to that certain City of San Diego Percentage Ground Lease, on file with the San Diego City Clerk as Document No. RR-310619 filed on July 25, 2016, Surf Cup Sports, LLC ("Surf Cup") leases approximately 114 acres from the City to operate soccer programs, activities, events and operations in accordance with the Grant Deed. The City owned property includes the Coast to Crest Trail and runs parallel with the San Dieguito River. This memo is to provide documentation to support the approval of the attached Consent to License Agreement.

Discussion:

Original Lease Agreement for the Property

The Property was originally leased to Fairbanks Polo Club in March 1986, for the use of sponsoring polo tournaments, holding fundraising events, horse training and temporary boarding of horses during Polo season. The Property included open fields for playing horse tournaments, an on-site modular trailer for meetings and gatherings, an arena for training, stables, tack sheds and subletting the open fields for soccer practices and tournaments. This lease expired in March 2012 and remained in holdover through 2016.

Current Lease Agreement for the Property

In 2015, an RFP was issued for the property. The RFP was awarded to Surf Cup Sports, LLC. In July 2016, the City entered into a Percentage Ground Lease with Surf Cup, which expires simultaneously with the Grant Deed on December 31, 2044. There are no options to extend the Lease.

Once Surf Cup assumed the responsibilities of the leasehold, Surf Cup removed all the stables, tack sheds, arena, significant square footage of concrete slab, and several abandoned vehicles that remained from the previous leaseholder.

Additionally, in conjunction with the Olivenhain Water District, Surf Cup installed a new irrigation system utilizing recycled water to irrigate acres of playing fields. Surf Cup leveled the playing fields, installed new sod, graded the fields and created a higher elevated viewing area of the fields for public use and for parents to watch their children's events. This area also provides space for the sale of merchandise, food vendors and sponsors during tournaments.

Surf Cup also added railroad ties to safely direct traffic and parking throughout the Property, replaced the lining in the water retention pond and installed a new fountain in the pond, added benches around the pond for public use and for parents to watch their children play soccer. The Lessee has begun remediation of the Coast to Crest Trail and has removed invasive eucalyptus trees along the San Dieguito River.

License Agreement

In late December 2021, Surf Cup approached the City and requested a Consent to License Agreement. Surf Cup provided a draft of the License Agreement between Surf Cup and Soccer Women's Team LLC, also known as San Diego WAVE, an adult women's soccer team, for use of two fields and the installation of several modular trailers for training purposes.

The License Agreement is a 5-year term with three, 5-year options to extend. If options are exercised, the term would expire in 2042 just prior to the Surf Cup lease and Grant Deed expirations of December 31, 2044. The monthly rent to be paid to Surf Cup by San Diego WAVE will be included in Surf Cup's quarterly Percentage Rent calculation of ten percent (10%).

In consultation with the City Attorney's Office, DREAM prepared a Consent to License Agreement.

In May 2022, the Planning Department completed the CEQA analysis for the License, prepared a Notice of Exemption (NOE) and posted a Notice of Right to Appeal Environmental Determination (NORA) on May 18, 2022, for a five-day appeal period. No appeals were received by the City. The NOE was filed in the San Diego County Clerk's Office as File #2022-000389 on May 19, 2022.

Approval of Subletting

Section 4.2 of the Lease entitled "Encumbrances; Assignments & Subletting" provides that Lessee must obtain City's prior written consent for subletting of any interest in this leasehold.

Percentage Rent

Section 3.1.2 of the Lease entitled "Percentage Rent" provides that Lessee pay to City quarterly percentage Rent equal to ten percent (10%) of all Gross Revenue, which will include ten percent (10%) of the monthly rent Surf Cup will receive from Soccer Women's Team. Ten percent (10%) of the current monthly rent being paid to Surf Cup from Soccer Women's Team will be \$3,500, with future CPI adjustments. In addition to a percentage of the monthly rent, the City will also receive ten percent (10%) of the annual \$200,000 Exclusivity License Fee, with future CPI adjustments.

COVID Rent

The Lessee has thirty-five months of Deferred Rent (\$372,752.50) related to COVID. As of March 2023, the Lessee owes one month of Deferred Rent related to COVID. The Lessee has been making monthly payments and currently owes \$14,151.66 of COVID rent. The last COVID rent payment, in the amount of \$14,151.66, will be made on June 1, 2023.

Insurance

Lessee has maintained the insurance coverages required by the Lease. The current insurance expires on November 4, 2023.

Rent Payment History

Except for COVID deferred rent, the Lessee is current on its rent.

Processing Fee

The Lessee has paid the \$990 processing fee for this Consent to License Agreement on June 6, 2022.

RECOMMENDED FOR APPROVAL:

Heide Farst

Heide Farst
Supervising Property Agent, Lease Administration

Matthew Ostlund

Matt Ostlund
Program Manager, Lease Administration

Attachments: Consent to License Agreement
First Amendment to Side Letter Agreement
Percentage Ground Lease with Surf Cup Sports, LLC

CONSENT TO LICENSE AGREEMENT

(Surf Cup Sports, LLC)

THIS CONSENT TO LICENSE AGREEMENT ("**Consent**") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**City**"), and SURF CUP SPORTS, LLC, a California limited liability company ("**Lessee**"), to be effective upon the respective authorized representatives of City and Lessee all signing this Consent and the form of this Consent being approved by the San Diego City Attorney. This Consent is made and entered into in reference to the following recited facts:

RECITALS

- A. City and Surf Cup Sports, LLC, entered into that certain Percentage Ground Lease filed in the Office of the San Diego City Clerk on July 25, 2016, as Document No. RR-310619 ("**Master Lease**"), relating to that certain City-owned real property described in Exhibit "A" attached to the Master Lease ("**Premises**").
- B. Lessee now desires to enter into a License Agreement for a portion of the Premises, including installation of a modular Temporary Training Facility consisting of between 5,000 and 7,000 rentable square feet located at 14555 El Camino Real and two adjacent full-sized soccer fields ("**Licensed Premises**"), to Soccer Women's Team Co, LLC, a California limited liability company ("**Licensee**"), for use as a soccer training facility, together with uses which are ancillary and incidental thereto including but not limited to office and storage uses, locker rooms, showers, changing rooms and restrooms and for no other purpose or use. A true and correct copy of the License Agreement between Lessee and Sublessee (subject to this Consent being effective) is attached to this Consent as Exhibit "A" ("**License Agreement**").
- C. Master Lease Section 4.2 requires Lessee to obtain City's consent prior to entering into any subletting or licensing of the Premises.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, City and Lessee agree as follows:

1. City Consent to License Agreement. Subject to the terms and conditions of this Consent and the Master Lease, City consents to Lessee licensing to Licensee the Licensed Premises. All terms and conditions of the Master Lease shall control and supersede all inconsistent or contrary provisions in the License Agreement.

2. Licensee Assumption of Lessee's Obligations. City's consent to the License Agreement is conditioned upon Licensee's written agreement to assume and perform all obligations of Lessee under the Master Lease applicable to the Licensed Premises. Licensee's failure to perform one or more of these assumed obligations, or to comply with one or more of the applicable use restrictions, shall be a material default and breach under the Master Lease (subject to any and all applicable cure periods and required notices under the Master Lease) and may subject the Master Lease to termination by City.

3. Licensee's Acknowledgment of this Consent. This Consent is conditioned on City's receipt of an "Acknowledgement of Receipt of Consent to License Agreement" in substantially the form of Exhibit "B" attached to this Consent signed by the authorized representative(s) of Licensee.

4. No Effect on Master Lease. Notwithstanding any provision of this Consent to the contrary, this Consent does not release, discharge, or modify any obligation of Lessee under the Master Lease.

5. Subsequent Subletting or Licensing. This Consent does not constitute City's consent to any subsequent assignment, sublease, or license under the Master Lease or relating to the Master Premises and does not relieve Lessee or any person claiming under or through Lessee, including Licensee, of the obligation to obtain City's consent to any future assignment, sublease, or license pursuant to the Master Lease.

6. Processing Fees. Lessee agrees to pay City all applicable processing and/or administrative fee(s) charged by City for processing this Consent.

7. Brokerage Commissions or Finder's Fees. Lessee acknowledges and agrees that City will not be liable for any brokerage commission or finder's fee in connection with the consummation of the License Agreement. Lessee agrees to protect, defend, indemnify, and hold City harmless from any brokerage commission or finder's fee in connection with the consummation of the License Agreement or this Consent, and from any cost or expense (including attorney fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee. The provisions of this Section 7 shall survive the expiration or earlier termination of the Master Lease, the License Agreement, or this Consent.

8. Consideration Under License Agreement: Lessee represents and warrants to City that a true, correct, and complete copy of the License Agreement and Side Letter to the License Agreement is attached to this Consent as Exhibit "A." Lessee further represents and warrants to City that there are no additional payments of rent or any other consideration of any type that have been paid or provided or are payable or to be provided by Licensee or any other person to Lessee under the License Agreement and Side Letter to the License Agreement or in connection with the Licensed Premises.

9. Subordination. The License Agreement is subject to and subordinate to the terms, covenants and conditions of the Master Lease. The License Agreement may only be in effect while the Master Lease is in effect. Nothing in this Consent modifies the expiration date of the Master Lease or License Agreement. Lessee represents and warrants to City that Lessee provided Licensee a true, correct, and complete copy of the Master Lease, including all exhibits, before Licensee entered into the License Agreement.

9.1 Indemnification. Lessee agrees that its duty to indemnify, defend and hold harmless the City pursuant to Section 7.1 of the Master Lease, includes without limitation, all claims asserted or liability established for damages or injuries to any persons or property, including Lessee's or Licensee's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this Consent, approval of this Consent, Licensee's use of the Master Premises, or Lessee's or Licensee's acts or omissions in the performance of their obligations under the Master Lease or the License Agreement, and all expenses of investigation and defending against the same including without limitation attorney fees and costs.

10. Lessee Estoppels. Lessee certifies the following to City as of the date of this Consent:

10.1 Lessee has not assigned its interest in the Master Lease or otherwise transferred its interest in the Master Lease;

10.2 City does not owe Lessee any money or other performance under the Master Lease;

10.3 City is not in default under the Master Lease;

10.4 The Master Lease is in full force and effect, there have been no amendments, modifications, changes, or additions to the Master Lease since its execution; and

10.5 Lessee is not in default or breach under the Master Lease and no event has occurred that would constitute a default or breach under the Master Lease by Lessee, without regard for any requirement to give notice and/or for the passage of time.

11. No Fee Title Encumbrance. Nothing in this Consent or any document referenced in this Consent is intended to create or authorize the creation of any transfer, lien, or encumbrance affecting the fee title to the Master Premises.

[Remainder of page intentionally blank. Signatures appear on the following page.]

**SIGNATURE PAGE
TO
CONSENT TO LICENSE AGREEMENT
(Surf Cup Sports, LLC: Soccer Women's Team Co, LLC)**

IN WITNESS WHEREOF, this Consent is made and entered into by and through the signatures of the respective authorized representative(s) of City and Lessee, as set forth below:

THE CITY OF SAN DIEGO,
a California municipal corporation

Date: Mar 14, 2023

By: *Penny Maus*
Penny Maus (Mar 14, 2023 11:31 PDT)
Penny Maus, Director
Department of Real Estate and Airport
Management

Approved as to form on Mar 15, 2023.

MARA W. ELLIOTT
City Attorney

By: *Kevin Reisch*
Kevin Reisch (Mar 15, 2023 16:28 PDT)
Kevin Reisch
Sr. Chief Deputy City Attorney

SURF CUP SPORTS, LLC,
a California limited liability company

Date: 1/5/2023

DocuSigned by:
By: *Rob Haskell*
ROB HASKELL
Name: _____
Title: Managing Member

**EXHIBIT A
TO
CONSENT TO LICENSE AGREEMENT
(Surf Cup Sports, LLC: Soccer Women's Team Co, LLC)**

LICENSE AGREEMENT

[Attached behind this cover page.]

LICENSE AGREEMENT

BETWEEN

SURF CUP SPORTS, LLC
a California limited liability company

Licensor

AND

SOCCER WOMEN'S TEAM CO, LLC
a California limited liability company

Licensee

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LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "License") is made effective as of February 1, 2022 (the "Effective Date") by and between SURF CUP SPORTS, LLC, a California limited liability company ("Surf"), and SOCCER WOMEN'S TEAM CO, LLC, a California limited liability company ("Team").

RECITALS

A. Reference is hereby made to that certain land consisting of approximately 114 acres, having assessor's parcel number 302-261-01-00 (the "Surf Cup Sports Land" and, together with the improvements thereon, the "Surf Cup Sports Park"). Surf occupies and uses the Surf Cup Sports Park pursuant to that certain City of San Diego Percentage Ground Lease dated as of August 8, 2016 (the "Ground Lease") between the City of San Diego, its officers, elected officials, employees, agents, and representatives, as landlord (in such capacity, "Ground Landlord"), and Surf, as tenant.

B. Team desires to license from Surf, and Surf desires to license to Team, a portion of the Surf Cup Sports Park on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above, the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Surf and Team (collectively, the "Parties") covenant and agree as follows:

Article 1 PREMISES

1.1 Premises. Surf does hereby license to Team, and Team does hereby license from Surf, the following portions of the Surf Cup Sports Park: (i) a rectangular area in the approximate location shown on Exhibit A attached hereto sufficient to enclose two adjacent full-size soccer fields each with dimensions of 225 feet by 360 feet, unobstructed sideline areas not less than 20 feet in width parallel to the sidelines of each field and unobstructed endline areas not less than 10 feet in width parallel to the endlines of each field, together with an area not less than 50 feet in width between the sidelines of the two fields (such area, the "Playing Field Area" and, as so improved, the "Playing Fields"); (ii) an area of approximately 40 feet by 125 feet for a modular training facility, in the approximate location shown in blue on Exhibit A attached hereto (such area, the "Temporary Training Facility Area" and, as so improved, the "Temporary Training Facility"); and (iv) the parking, signage, access and other rights forth in this Agreement. Subject to the foregoing, the precise location of each element of the Licensed Premises shall be mutually and reasonably agreed by Surf and Team. As used herein, the term "Licensed Premises" shall mean the Playing Field Area and the Temporary Training Facility Area.

1.2 Temporary Training Facility. Team anticipates that the Temporary Training Facility shall consist of a tent-like modular structure with secure, enclosed sides similar to the tent-like modular structures used at corporate and sporting events. Team shall cause the square footage

of the space within the Temporary Training Facility to be not less than 5,000 square feet and not more than 7,000 square feet in the aggregate. Surf and Team shall hereafter mutually and reasonably agree upon a more exact square footage of the Temporary Training Facility based on available space pursuant to Section 4.2. On the expiration or termination of the Term, Team shall transfer ownership of the improvements within the Temporary Training Facility Area to Surf, free of any encumbrances created by Team. On the expiration of the Term, Team may remove its personal property and equipment from the Temporary Training Facility, and Team shall surrender possession of the Temporary Training Facility to Surf in its then as-is where-is condition, without warranty of any kind.

1.3 Ground Landlord Approval. Promptly after execution of this Agreement, Surf shall request that Ground Landlord approve in writing the terms and conditions of this Agreement, including without limitation the performance of Team's Work. The date of such approval is sometimes referred to herein as the "Ground Landlord Approval Date." Surf shall keep Team reasonably informed of the status of such request, including without limitation providing true and complete copies to Team of material communications about such request. Team may reasonably participate in discussions with Ground Landlord about such request.

1.4 Parking. During the Conditional Period and the Term, Surf shall make available to Team within the Surf Cup Sports Park, in areas adjacent to the Temporary Training Facility Area, a number of automobile parking spaces reasonably suitable for Team's uses of the Licensed Premises, respectively, and satisfying Legal Requirements. During the Conditional Period and the Term, each of Team's employees and invitees shall have the non-exclusive right to use the vehicular parking spaces within the Surf Cup Sports Park at all times without charge, and on a first-come, first-served basis. During the Conditional Period and the Term, Surf shall cause such parking spaces to be accessible from public streets over internal roadways. Such internal roadways shall be paved or otherwise have all-weather surfaces, and shall be maintained in good condition, including without limitation proper drainage and free of potholes. Without limiting the generality of the foregoing, during the Term, Surf shall make available to Team 5 reserved parking spaces adjacent to the Temporary Training Facility (the "Reserved Parking Spaces") for the use of Team's employees and invitees, provided that such spaces shall not be reserved during soccer tournaments at the Surf Cup Sports Park for which Surf reasonably determines that, without such parking spaces, there would be insufficient parking for attendees at such soccer tournament. During the Term, Team may install, maintain and replace appropriate signage at the Reserved Parking Spaces, identifying the foregoing terms, and may enforce such terms against violators thereof.

1.5 Suitability. Surf hereby represents and warrants to Team that as of the Effective Date, (a) Surf has good and indefeasible leasehold title to the Licensed Premises, free from any mortgages, deeds of trust or other security instruments; (b) other than the Ground Lease, Surf has not entered into any lease or other occupancy agreement other than temporary event agreements for upcoming events with respect to the Licensed Premises, or any portion thereof, and (ii) leases or occupancy agreements which have expired or otherwise terminated prior to the date hereof; and (c) no lien, covenant, agreement or other instrument is recorded in the real property records which would adversely affect Team's use and enjoyment of the Licensed Premises on the terms and conditions set forth in this Agreement.

Article 2

TERM

2.1 Conditional Period. The period between the date that Team commenced the performance of Team's Work and the Ground Landlord Approval Date is sometimes referred to herein as the "Conditional Period." Surf has advised Team of Surf's belief, based on its prior experience as tenant under the Ground Lease, and its relationship with City, that neither Ground Landlord's nor City's approval or consent are required prior to (a) the installation by Team of the Temporary Training Facility or (b) the use by Team of the Playing Field in its current condition. On such basis, at any time during the Conditional Period, Team may install the Temporary Training Facility within the Temporary Training Facility Area. If Ground Landlord does not approve in writing the terms and conditions of this Agreement, including without limitation the performance of Team's Work, on terms and conditions which are satisfactory to Team, within 60 calendar days after the Effective Date, or if Team determines in its reasonable discretion at an earlier date that such approval is unlikely, then Team may at any time thereafter during the Conditional Period deliver to Surf a written notice terminating this Agreement. Any such notice shall be effective immediately. Notwithstanding the foregoing, if this License is terminated during the Conditional Period, then Team may elect to remove the Temporary Training Facility from the Surf Cup Sports Park, and shall have a reasonable opportunity to do so.

2.2 Term. The term of this Agreement (the "Initial Term") shall commence on the date which is 90 days after the Ground Landlord Approval Date (the "Commencement Date"). Notwithstanding the foregoing, if the Ground Landlord Approval Date occurs, and Team completes Team's Work with respect to the Playing Fields prior to the expiration of such 90-day period, then the Commencement Date shall be the date on which Team completes such work. The Initial Term shall expire at 11:59 PM San Diego time on the calendar day immediately preceding the fifth anniversary of the Commencement Date (the "Expiration Date"). As used herein, the term "License Year" shall have the following meaning: (a) the first License Year shall be the period commencing on the Commencement Date and expiring at 11:59 PM San Diego time on the calendar day immediately preceding the first anniversary of the Commencement Date; and (b) the second and each subsequent License Year shall mean the successive 12 month periods ending at 11:59 PM San Diego time on the calendar day immediately preceding each subsequent anniversary of the Commencement Date. As used in this Agreement, the term "Term" shall mean the Initial Term, as extended pursuant to Section 2.3, subject to any earlier termination expressly provided in this Agreement.

2.3 Extension Options. Surf hereby grants to Team options to extend the Term for 3 consecutive periods of 5 License Years each (each such period being herein referred to herein as an "Extension Period") on the same terms, covenants and conditions as set forth in this Agreement. To exercise an option for an Extension Period, Team shall deliver to Surf written notice (each, an "Extension Exercise Notice") of Team's election to exercise the option at least 180 calendar days prior to the expiration of the Term, as theretofore extended. If Team delivers an Extension Exercise Notice, then the Term shall be so extended for the Extension Period.

2.4 Long-Term Facility. A reasonable time after completion of Team's Work, which the Parties presently estimate to be approximately 1 year after the Ground Landlord Approval Date, if it occurs, Surf and Team shall engage in good faith discussions regarding a definitive

written agreement, which might take the form of an amendment to this Agreement (any such agreement, the “Long-Term Facility Agreement”), pursuant to which Team would replace the improvements initially made by Team on the Licensed Premises (the “Long-Term Facilities”), on terms and conditions satisfactory to Team in its sole discretion. As of the date hereof, the Parties contemplate that the Long-Term Facilities would include further improvements to the Playing Field Area and a new modular training facility consisting of joined trailers, adjacent to the Playing Field Area in the approximate location shown in red on Exhibit A attached hereto. Surf and Team acknowledge that the success of any such discussions shall dependent upon, among other things, the willingness of the Ground Landlord and the City to approve the installation of such more durable and secure improvements on terms and conditions satisfactory to Team. Except as otherwise expressly provided in Section 2.6, no discussions about a Long-Term Facility Agreement shall affect the rights or obligations of the Parties under this Agreement, unless and until a Long-Term Facility Agreement is executed and delivered. Surf shall be solely responsible for obtaining any approvals from the City required under the Deed Restrictions in connection with the proposed improvements contemplated in this section.

2.5 Milan Property. Reference is hereby made to that certain land consisting of approximately 21.34 acres, having assessor’s parcel number 302-090-31-00 (the “Milan Parcel”), as shown on Exhibit B attached hereto. The Milan Parcel is located immediately to the north of the portion of the Surf Land on which the Licensed Premises are located. If Surf hereafter acquires any or all of the Milan Parcel, then each of Surf and Team shall thereafter engage in good faith discussions regarding a definitive written agreement, which might take the form of an amendment to this Agreement (any such agreement, the “Milan Relocation Agreement”), pursuant to which Team would relocate its use from the Surf Land to the Milan Parcel, and construct and/or install more permanent improvements thereon, on terms and conditions satisfactory to Team in its sole discretion. Discussions about the Milan Relocation Agreement shall include, among other things, the portion of the Milan Property on which such relocated and/or more permanent facilities would be located. Surf and Team acknowledge that the success of any such discussions shall dependent upon, among other things, the willingness of the City to approve the construction and/or installation of such improvements on terms and conditions satisfactory to Team. Except as otherwise expressly provided in Section 2.6, no discussions about a Milan Relocation Agreement shall affect the rights or obligations of the Parties under this Agreement, unless and until the Milan Relocation Agreement is executed and delivered by the Parties.

2.6 Termination Right. If Surf and Team do not, on or prior to the 3rd anniversary of the Effective Date, execute and deliver either the Long-Term Facility Agreement or the Milan Relocation Agreement, or if either party determines in its reasonable discretion at an earlier date that either such agreement will not likely be executed, then each party may at any time thereafter deliver to the other party a written notice terminating this Agreement. Any such notice shall state the effective date of such termination, which shall be a date not earlier than 365 days after delivery of such notice.

Article 3 LICENSE FEE

3.1 License Fee. On or before the first calendar day of each calendar month during the Term, Team shall pay to Surf a license fee (the “License Fee”) as follows:

3.1.1 In and for the first License Year, a fixed amount equal to \$35,000 per calendar month.

3.1.2 In and for the second and each subsequent License Year, an amount equal to the License Fee for the immediately preceding License Year multiplied by the greater of (a) 1.03 and (b) the CPI Adjustment.

3.1.3 As used herein, (a) the term "CPI Adjustment" means a number, expressed to the third place after the decimal, equal to a fraction the numerator of which is the Current CPI and the denominator of which is the Base CPI; (b) the term "Current CPI" means, for any License Year, the CPI for the 10th calendar month of the immediately preceding License Year; (c) "Base CPI" means the CPI for the month in which the Commencement Date occurs; and (d) the term "CPI" means the Consumer Price Index for All Urban Consumers (Base Year 1982-84=100) for the San Diego Area, All Items, as published by the United States Department of Labor, Bureau of Labor Statistics.

3.2 Percentage Rent. On or before the first calendar day of each calendar month during the Term, Team shall pay to Surf, in addition to the License Fee, an amount equal to 10% of the License Fee for such calendar month (each such payment, a "Percentage Rent Contribution"), as Team's contribution toward Surf's obligation to pay Percentage Rent to Ground Landlord pursuant to the terms of the Ground Lease. Team shall have no obligation to pay or contribute any other or additional amount toward Surf's obligation to pay Percentage Rent to Ground Landlord.

3.3 Property Improvements. If the Ground Landlord Approval Date occurs, then Team pay an amount up to \$250,000 in the aggregate (the "Improvements Amount") for improvements to be made at the Surf Cup Sports Park after the Commencement Date on the terms and conditions set forth in this Section. At any time and from time to time during the Term, each of Surf and Team may deliver written notice to the other in which Surf or Team proposes improvements to the Surf Cup Sports Park that benefit both Surf and Team (the "Mutually Beneficial Improvements"). Such notice shall describe the location, nature and estimated cost of the proposed Mutually Beneficial Improvements in reasonable detail. If either Party delivers any such notice to the other, the Parties shall negotiate in good faith regarding such Mutually Beneficial Improvements, including without limitation the nature of the mutual benefit, the need therefor, when such improvements should be made, and by whom. If the Parties execute and deliver a written agreement to make such Mutually Beneficial Improvements, and if such agreement provides for payment therefor from the Improvements Amount, then Team shall pay the cost of such improvements, on the terms and conditions set forth in such written agreement. If the Ground Landlord Approval Date occurs, and Team has not thereafter paid an aggregate amount equal to the Improvements Amount prior to the expiration or termination of this Agreement, then the replacement value at such time of both (y) the Temporary Training Facility and (z) the improvements by Team to the Playing Field Area shall be credited against the unexpended balance of the Improvements Amount, and the balance of the Improvements Amount, if any, remaining thereafter shall be used to support regular maintenance at the Surf Cup Sports Park.

3.4 Payment. All payments and charges required to be made by Team hereunder, including the License Fee and Percentage Rent Contribution shall be payable in United States funds, at the address of Surf set forth herein, or such other address within the United States

provided by Surf to Team for payments in writing from time to time, provided that no change of address for payments shall be effective until five business days after receipt. Upon request by Team, Surf shall promptly provide instructions pursuant to which Team may pay the License Fee and the Percentage Rent Contribution pursuant to wire transfer and/or electronic funds transfer to an account in the United States, and Team may make payment in such manner at any time or from time to time.

3.5 Proration. If the Commencement Date is not the first calendar day of a calendar month, then the License Fee and the Percentage Rent Contribution for the first and last calendar months of the Term shall be prorated based on the number of days within such calendar month of the Term and the actual number of days in such calendar month.

3.6 Gross Agreement. This Agreement is intended as a "gross" agreement and, other than the License Fee and the Percentage Rent Contribution, and any other amount that this Agreement expressly provides that Team shall pay, Team shall have no obligation to pay, reimburse or contribute any amount of any kind to Surf.

Article 4

INITIAL WORK AND ALTERATIONS

4.1 Definitions.

4.1.1 "Approved Team's Plans" means the final Team's Plans which are agreed to by the Parties pursuant to the provisions of this Agreement, together with any changes to such plans which are agreed to by the Parties pursuant to the provisions of this Agreement.

4.1.2 "City" means the City of San Diego, in its capacity as a government agency with regulatory authority over zoning and construction.

4.1.3 "Deed Restrictions" means the restrictions on use imposed by that certain Grant Deed dated as of September 19, 1983 and recorded in the San Diego County Recorder's Office on October 24, 1983 in favor of the City and the restrictions set forth in that certain Ground Lease from the City, as landlord, to Surf, as tenant.

4.1.4 "Legal Requirements" means any statutes, rulings, orders, rules, regulations, permits, administrative decisions, directives or ordinances issued by any federal, state, county or municipal governmental body, bureau, department, court or agency which is binding on and applicable to Surf, Team, the Licensed Premises or the Surf Cup Sports Park, as applicable, including without limitation applicable building codes.

4.1.5 "Surf Parties" means employees, agents, officers, directors, partners, members, shareholders, customers, patrons, guests or contractors.

4.1.6 "Team's Plans" means the plans and specifications for Team's Work.

4.1.7 "Team's Plans Approval Date" means the day on which the Parties first reach agreement on Team's Plans, resulting in such Team's Plans being deemed to be the Approved Team's Plans.

4.1.8 "Team's Work" means (a) improvements to the Playing Field Area which Team deems necessary or appropriate for Team's use, including without limitation renovation of the turf, installation of goals, installation of irrigation and installation of perimeter fencing; (b) installation of the Temporary Training Facility within the Temporary Training Facility Area (including disassembly of any tents owned by Surf which are then located within the agreed Temporary Training Facility Area, and relocation thereof to another location within the Surf Cup Sports Park mutually and reasonably agreed by the Parties); (c) installation of utilities within the Surf Cup Sports Park associated therewith, including without limitation new, additional or replacement irrigation equipment to serve the Playing Fields and new, additional or replacement electrical, water, sewer, communications and other utility lines and equipment to serve the Playing Fields and the Temporary Training Facility, it being understood that, among other things, the Temporary Training Facility may include locker rooms, changing rooms, showers and restrooms; and (d) installation within the Surf Cup Sports Park of Team's signage as provided herein. Surf shall be solely responsible for obtaining any approvals from the City required under the Deed Restrictions in connection with the proposed improvements contemplated in this section.

4.2 Team's Work.

4.2.1 Approval of Team's Plans. Team shall deliver Team's Plans to Surf. Surf shall review Team's Plans for consistency with the requirements of this Agreement. Surf shall not unreasonably withhold, condition or delay its approval thereof. Team's Plans shall be deemed approved by Surf unless, within 10 calendar days after Surf's receipt thereof, Surf delivers to Team a written notice of disapproval, stating each of the reasons for Surf's disapproval in reasonable detail. If Surf delivers a notice of disapproval within the time and in the manner provided herein, then the Parties shall engage in good faith efforts to resolve all disapproved aspects of Team's Plans, in an effort to resolve all disapproved aspects of Team's Plans within 10 calendar days after delivery of such notice of disapproval.

4.2.2 Team's Plans Change Orders. No changes shall be made to the Approved Team's Plans or to any work based on the Approved Team's Plans without the prior written approval of such change by the Parties, which shall not be unreasonably withheld, conditioned or delayed. After such approval, such change shall be part of the Approved Team's Plans."

4.2.3 Performance of Team's Work. Team shall perform and complete Team's Work in a good and workmanlike manner, and in accordance with the Approved Team's Plans and Legal Requirements. Surf shall be solely responsible, prior to commencement of the Team's Work, for obtaining any approvals from the City required under the Deed Restrictions in connection with the Team's Work and Team's use of the Licensed Premises.

4.3 Alterations by Team. During the Term, Team may perform other improvements, alterations and changes to the Licensed Premises (the "Alterations") with the prior written consent of Surf, not to be unreasonably withheld, conditioned or delayed.

4.4 Team's Liens. If any mechanic's, materialman's or other lien is filed against the Licensed Premises as a result of any work, labor, services or materials performed or furnished, or alleged to have been performed or furnished, to or for Team, then Team, at its expense, shall cause the lien to be discharged of record or fully bonded to the satisfaction of Surf within 30 calendar

days after notice of the filing thereof. If Team fails to discharge or bond against said lien within 30 calendar days after notice of the filing thereof, Surf may, but without obligation to do so, bond against such lien, and all reasonable sums incurred in procuring the bond shall be paid by Team within 30 calendar days after Team's receipt of written demand therefor.

4.6 Ground Landlord Consent. If and to the extent any approval by Ground Landlord is necessary or appropriate for Team's Work or any Alterations, then Surf shall promptly apply for and diligently pursue issuance of such approval, and Team shall reasonably cooperate in connection therewith.

4.7 City Permits. If and to the extent any permit by the City is necessary for any Mutually Beneficial Improvements, then Surf shall promptly apply for and diligently pursue issuance of such permit, and Team shall reasonably cooperate in connection therewith. If and to the extent any permit by the City is necessary for Team's Work or any Alterations, then Team shall promptly apply for and diligently pursue issuance of such permit, and Surf shall reasonably cooperate in connection therewith.

Article 5 USE OF PREMISES

5.1 Permitted Uses. During the Conditional Period and the Term, Team may use, occupy, manage and operate the Licensed Premises, collectively, as a soccer training facility, together with uses which are ancillary and incidental thereto including but not limited to meeting spaces and storage uses, locker rooms, showers, changing rooms and restrooms, and any other uses consistent generally with the foregoing from time to time (collectively, the "Permitted Uses"). Team shall comply, at Team's sole cost, with all Legal Requirements applicable to its particular use of the Licensed Premises. Team shall have vehicular and pedestrian access to and use of the Licensed Premises on a 24/7/365 basis, provided that any access and use before dawn or after dusk, including the use of lighting of the Playing Fields during such after-hours period, shall be subject to reasonable conditions mutually agreed by Surf and Team.

5.1.1 Other Uses. Any proposed uses of the Licensed Premises by Team other than the Permitted Uses shall require approval in advance by Surf, which shall not be unreasonably withheld, conditioned or delayed.

5.1.2 Youth Academy. During the Term, Team shall not form and operate a youth academy using the Licensed Premises unless approved in writing by Surf.

5.2 Secure Use. During the Conditional Period and the Term, Team shall have exclusive use of the Temporary Training Facility and the Playing Fields, except to the extent otherwise expressly provided with respect to the Playing Fields in Section 5.3. Without limiting the generality of the foregoing, except to the extent otherwise expressly provided in Section 5.3, When not in active use for practice, training, or maintenance, Team shall make available the Playing Fields to the public to engage in approved uses pursuant to the Ground Lease and Legal Requirements as long as in their reasonable judgment any such use will not cause damage to the Playing Fields.

5.3 Shared Use.

5.3.1 Proposed Uses. If Surf desires to use any portion of the Playing Field Area for use as a playing field for one or more competitive soccer games at any time during the Conditional Period or the Term, Surf shall deliver to Team a written or electronic notice not less than 60 days prior to such event, stating the time or times and date or dates of such event and stating in reasonable detail the nature of the event and the proposed use of the Playing Field Area. Surf and Team shall engage in good faith discussions regarding the proposed use of the Playing Field Area for such event, while acknowledging that Surf Cup Youngers, Surf Cup Olders, Manchester City Cup and College Cup (collectively, the "Cup Events") are pre-approved by Team to use the Playing Field Area for the length of each such event. If Surf schedules any use of the Playing Field Area during the Conditional Period or the Term pursuant to this Section, then Surf shall use all reasonable efforts to minimize the impacts for any such use by scheduling younger teams and female teams, and using the Playing Field Area only if other fields on the Property are not available. If Team cannot, or is unwilling to, accommodate Surf's event use scheduled for the Playing Field Area (other than Cup Events), Team shall compensate Surf that percentage of net revenue represented by the loss of use of the Playing Field Area. For this purpose, "net revenue" shall mean all revenue which Surf demonstrates it could reasonably expect to derive from the use of the Playing Field Area, including registration revenue, hotel revenue, parking revenue, concessions and merchandise sales less any associated expenses. Not later than January 1st of each calendar year during the Conditional Period and the Term, Surf may propose a tentative schedule of proposed event uses of the Playing Field Area for the calendar year pursuant to this Section. Surf and Team shall engage in good faith discussions regarding such tentative schedule of proposed event uses, with the understanding that the dates of such events are subject to change for a variety of reasons. Team shall use commercially reasonable efforts to accommodate such changes.

5.3.2 Reasonable Conditions. Team may impose reasonable conditions on any use pursuant to this Section, including without limitation with respect to the cancellation, suspension, relocation and/or re-scheduling of a previously-agreed use because weather conditions on or about the day of use could reasonably be expected to cause such use to result in damage to any element of the Playing Fields. Surf shall cause a representative of Surf with full authority with respect to any use made pursuant to this Section to be present during the entire period of any such use. Team shall have the right, but no obligation, to have a representative of Team present during any such use. Surf's representative shall cause all persons using the Playing Field Area, including without limitation spectators, to comply with reasonable rules, regulations and directions of Team, including those given by Team's representative, if any, present during the period of any such use. If use of the Playing Field Area pursuant to this Section results in damage to any element of the Playing Field Area beyond reasonable damage expected from such use, then Team may repair such damage at Surf's expense, and to offset the actual costs incurred in connection with such repair from the next installments of the License Fee payable hereunder, until such costs have been repaid in full.

Article 6

NAMES, LOGOS, SIGNAGE AND PUBLIC RELATIONS

6.1 Team Names and Logos. During the Conditional Period and the Term, Team and its employees shall have the exclusive right to use and display any one or more of the names, tradenames and logos of Team and/or its sponsors and advertising partners (collectively, the “Team IP”) on their clothing, uniforms and/or equipment. Surf shall have no right to use or display any Team IP at any location for any purpose without the prior written consent of Team, which Team may give or withhold in Team’s sole discretion.

6.2 Surf Names and Logos. During the Conditional Period and the Term, Surf and its employees shall have the exclusive right to use and display any one or more of the names, tradenames and logos of Surf and/or its sponsors and advertising partners (collectively, the “Surf IP”) on their clothing, uniforms and/or equipment. Team shall have no right to use or display any Surf IP at any location for any purpose without the prior written consent of Surf, which Surf may give or withhold in Team’s sole discretion. Notwithstanding the foregoing, Team may identify the Surf Cup Sports Park by name as the location of Team’s training facility.

6.3 Signage.

6.3.1 Signage within the Licensed Premises. During the Term, subject to compliance by Team with the Deed Restrictions, Team shall have the exclusive right to install, maintain, repair and replace, at its sole cost and expense, signs within or on the Licensed Premises, in such locations and of a size and type as Team deems appropriate. Such signs may include displays of the Team IP and/or safety and directional signage, and may not include direct marketing or advertisement of the Team. Team shall not install any such sign without the prior written consent of Surf, not to be unreasonably withheld, conditioned or delayed. Upon the expiration or earlier termination of this Agreement, Team shall remove from the Licensed Premises any signs that include displays of the Team IP.

6.3.2 Signage outside the Licensed Premises. During the Term, subject to compliance by Team with Legal Requirements, Team shall have the non-exclusive right to install, maintain, repair and replace signs within the Surf Cup Sports Park (but outside the Licensed Premises). Such sign may include displays of the Team IP and/or directional signage. Team shall not install any such sign without the prior written consent of Surf, not to be unreasonably withheld, conditioned or delayed. Upon the expiration or earlier termination of this Agreement, Team shall remove from the Sports Cup Sports Park any signs that include displays of the Team IP.

6.4 [RESERVED]

6.5 Public Relations. Subject to Section 6.1 and Section 6.2, both Parties agree to use commercially reasonable efforts to promote the other in news releases, social media and in other forms of public communication. Surf shall have approval rights with respect to all media produced by Team or with permission of Team involving any names, logos or personnel of Surf. Team shall have approval rights with respect to all media produced by Surf or with permission of Surf involving any names, logos or personnel of Team.

6.6 Youth Soccer. If and to the extent practicable, Team shall use players from the San Diego Surf Club youth soccer teams for training, media relations and other purposes at the Licensed Premises for which youth soccer players are needed. Surf shall use commercially reasonable efforts to make such players available for such purpose.

Article 7 MAINTENANCE AND REPAIR

7.1 Licensed Premises. During the Term, Team shall, at Team's sole cost and expense, maintain the Licensed Premises, including all improvements thereon, including without limitation the Playing Field Area, in good condition, repair and appearance, in a manner consistent with other reputable privately-operated outdoor sports venues in the City. In addition, Team shall, at Team's sole cost and expense, maintain any utilities within the Surf Cup Sports Park if and to the extent such utilities exclusively serve the Licensed Premises.

7.2 Surf Cup Sports Park. During the Term, Surf shall, at Surf's sole cost and expense, maintain the Surf Cup Sports Park (other than the Licensed Premises), including all improvements thereon, in good condition, repair and visual appearance, in a manner consistent with other reputable privately-operated outdoor sports venues in the City.

7.3 Playing Fields. Without limiting the generality of Section 7.1, during the Conditional Period and the Term, Team shall have the exclusive right and authority with respect to maintenance, repair and care of the Playing Fields and the Playing Field Area, including without limitation with respect to all aspects of turf maintenance and repair, fence maintenance and repairs, irrigation, aeration, fertilization, grass cutting, grass trimming and field lining. Surf shall not suffer or allow any of the Surf Parties to perform any such maintenance, repair or care at any time without the prior consent of Team, which consent may be granted or withheld in Team's sole discretion. Team may elect, in its sole discretion, to coordinate any such maintenance with maintenance performed by Surf on other playing fields at the Surf Cup Sports Park and, if Team elects to do so, Team shall pay a prorated share of the costs of any such maintenance. If Team so elects, then Surf shall cooperate and also cause its contractors to cooperate in connection therewith.

7.4 Cleaning.

7.4.1 Team Cleaning. During the Conditional Period and the Term, Team shall, at Team's sole cost, clean the Licensed Premises and remove trash therefrom in a manner consistent with other reputable privately-operated outdoor sports venues in the City. During the Conditional Period and the Term, Team shall, at Team's sole cost, use commercially reasonable efforts to control pests and vermin within the Licensed Premises in a manner consistent with other reputable privately-operated outdoor sports venues in the City.

7.4.2 Surf Cleaning. During the Conditional Period and the Term, Surf shall, at Surf's sole cost, clean the Surf Cup Sports Park (other than the Licensed Premises) and remove trash therefrom in a manner consistent with other reputable privately-operated outdoor sports venues in the City. During the Conditional Period and the Term, Surf shall, at Surf's sole cost, use commercially reasonable efforts to control pests and vermin within the Surf Cup Sports Park (other than the Licensed Premises) in a manner consistent with other reputable privately-operated

outdoor sports venues in the City. During the Conditional Period and the Term, Surf shall make one or more trash receptacles or dumpsters of suitable capacity available to Team for depositing trash from the Licensed Premises, and Team may deposit trash in reasonable quantities for its use of the Licensed Premises in such receptacles and dumpsters. Surf shall, at Surf's sole cost, cause such trash to be removed off-site from the Surf Cup Sports Park in a manner and at times consistent with reasonable best practices.

7.5 Odors. Team shall use commercially reasonable efforts to prevent use of the Licensed Premises in a manner that results in smoke and/or odors emanating from the Licensed Premises that materially adversely affects uses by others of the Surf Cup Sports Park. Surf shall use commercially reasonable efforts to prevent use of the Surf Cup Sports Park (other than the Licensed Premises) in a manner that results in smoke and/or odors emanating from the Surf Cup Sports Park that materially adversely affects the Permitted Uses by Team.

Article 8 UTILITIES

Surf shall pay directly for the usage of all electrical, water, sewer and natural gas utilities at the Surf Cup Sports Park, including without limitation usage of such utilities at the Licensed Premises. Team shall have no obligation to pay or reimburse Surf any amount in respect thereof.

Article 9 PROPERTY TAXES

Surf shall pay directly all property taxes levied on or assessed against the Surf Cup Sports Park, or any possessory interest therein. Team shall have no obligation to pay or reimburse Surf any amount in respect thereof.

Article 10 INSURANCE, INDEMNITY AND LIABILITY

10.1 Team's Insurance. During the Conditional Period and the Term, Team shall maintain or cause to be maintained, at Team's sole cost and expense, insurance policies providing for the following coverage:

10.1.1 Commercial general liability insurance providing coverage for bodily injury and property damage liability, with minimum limits of \$3,000,000 each occurrence and \$5,000,000 in the aggregate. This coverage shall be primary and non-contributory to any coverage available to the Surf, and Surf's insurance shall be excess thereto. This coverage shall include a waiver of subrogation in favor of Surf. This coverage shall include Surf Parties and the Ground Landlord.

10.1.2 Commercial auto liability insurance for each vehicle owned by Team and used at the Surf Cup Sports Park, providing a minimum limit of \$1,000,000 each accident combined single limit for all owned, non-owned and hired automobiles.

10.1.3 Umbrella excess liability insurance with a minimum limit of \$5,000,000 each occurrence and \$5,000,000 in the aggregate. This coverage shall be excess over the commercial auto liability and commercial general liability policies.

10.1.4 Workers' compensation with statutory limits under applicable law.

All policies of insurance provided for in this Section shall be issued by insurance companies with a Best's Rating of not less than A- and a Best's Financial Performance Rating of not less than VIII as rated in the most current available *A.M. Best Company Key Rating Guide* and qualified to do business in the State of California. Team shall, prior to the Commencement Date, and thereafter upon request, deliver to Surf certificates evidencing the insurance required to be maintained by Team hereunder. In addition, evidence of each renewal of each such policy shall be delivered by Team to Surf at least 10 days prior to the expiration of such policy.

10.2 Surf's Insurance. During the Conditional Period and the Term, Surf shall maintain or cause to be maintained, at Surf's sole cost and expense, insurance policies providing for the following coverage:

10.2.1 Commercial general liability insurance providing coverage for bodily injury and property damage liability, with minimum limits of \$1,000,000 each occurrence and \$2,000,000 in the aggregate. This policy shall include Team and its parent, subsidiaries, affiliates, directors, officers and employees as additional insureds.

10.2.2 Commercial auto liability insurance for each vehicle owned by Team and used at the Surf Cup Sports Park, providing a minimum limit of \$1,000,000 each accident combined single limit for all owned, non-owned and hired automobiles.

10.2.3 Commercial umbrella excess liability insurance with a minimum limit of \$5,000,000 each occurrence and \$5,000,000 in the aggregate. This coverage shall be excess over the commercial auto liability and commercial general liability policies.

10.2.4 Workers' compensation with statutory limits under any applicable law.

All policies of insurance provided for in this Section shall be issued by insurance companies with a Best's Rating of not less than A- and a Best's Financial Performance Rating of not less than IX as rated in the most current available *A.M. Best Company Key Rating Guide* and qualified to do business in the State of California. Surf shall, prior to the Commencement Date, and thereafter upon request, deliver to Team certificates evidencing the insurance required to be maintained by Surf hereunder. In addition, evidence of each renewal of each such policy shall be delivered by Surf to Team at least 10 days prior to the expiration of such policy.

10.3 Indemnification by Team. Team shall and hereby does indemnify, defend and hold Surf Parties and Ground Landlord, City, and all elected officials, officers, employees, agents, and representatives of Ground Landlord and City harmless from and against any and all third-party claims, actions, damages, liability, losses, suits, obligations, fees, and expenses (including reasonable attorneys' fees) (collectively, "Claims"), to the extent arising from or out of Team's use and occupancy of the Licensed Premises, except to the extent caused by the gross negligence or intentional misconduct of any of the Surf Parties.

10.4 Indemnification by Surf. Surf shall and hereby does indemnify, defend and hold Team Parties harmless from and against any and all Claims to the extent arising out of use and occupancy of the Surf Cup Sports Park (other than the Licensed Premises, except use and occupancy of the Licensed Premises pursuant to Section 5.3), except to the extent caused by the gross negligence or intentional misconduct of any of the Team Parties.

Article 11
DESTRUCTION OF LEASED PREMISES

11.1 No Termination. This Agreement shall not be terminated or otherwise affected by fire or other casualty on or within the Surf Cup Sports Park.

11.2 Restoration. If the improvements on the Surf Cup Sports Park (other than the Licensed Premises) are damaged by fire or other casualty, then Surf shall promptly repair the same at Surf's sole cost and expense. If the improvements on the Licensed Premises are damaged by fire or other casualty, then Team shall promptly repair the same at Team's sole cost and expense.

Article 12
CONDEMNATION

12.1 Eminent Domain. If, during the Conditional Period or the Term, the whole or any part of the Surf Cup Sports Park shall be permanently taken by condemnation or in any other manner for any public or quasi-public use or purpose (each, a "Taking"), then, except as otherwise expressly provided in the following provisions of this Section, this Agreement shall nevertheless continue in full force and effect upon all the same terms and conditions.

12.1.1 If a Taking of the whole of the Surf Cup Sports Park or any material portion of the Licensed Premises occurs, then this Agreement shall terminate as of the date of possession is awarded (herein called the "Date of the Taking"), and the License Fee and Percentage Rent Contribution for the month of the Taking shall be prorated and adjusted as of the Date of the Taking.

12.1.2 If a Taking of less than the whole of the Surf Cup Sports Park or the Licensed Premises occurs, which does not result in termination of this Agreement, then the following provisions shall apply:

(i) If any portion of the Licensed Premises are taken, then the Licensed Premises shall be relocated within the Surf Cup Sport Park to provide an area of equivalent size, in a location or locations mutually and reasonably agreed by Surf and Team.

(ii) Team shall perform the work necessary for the repair, restoration and/or relocation of the Licensed Premises as Team reasonably determines appropriate, and Surf shall make available condemnation proceeds therefor.

12.2 Temporary Taking. Notwithstanding anything to the contrary in this Article 12, the taking of the Licensed Premises or any part thereof for purposes arising out of a temporary emergency or other temporary situation or circumstances shall not constitute a Taking, and for the duration of any period of use and occupancy of the Licensed Premises by the requisitioning

authority, all the Terms and provisions of this Agreement and obligations of Team hereunder shall continue to apply, except that Team shall not be required to perform any obligations hereunder during such taking which require possession by Team for their performance, and Team shall have a reasonable time after such taking ends and any award therefor is made to cure any defaults caused by or resulting from such Taking, and Team shall be entitled to whatever compensation may be payable from the taking authority for the use and occupation of the Licensed Premises for the period involved.

12.3 Award. Except as otherwise provided in Section 12.1 and Section 12.2, Surf shall be entitled to receive the entire award or payment allocable to the Licensed Premises in connection with any Taking. Team shall be entitled to maintain a separate action (or make a separate claim in any condemnation proceedings) for compensation in respect of Team's property as well any moving expenses and goodwill.

Article 13

ASSIGNMENT, SUBLETTING AND ENCUMBERING LEASE

13.1 Consent Required. Except as otherwise expressly provided in this Agreement, including without limitation in Sections 13.2, Team shall not assign this Agreement, sublicense all or any part of the Licensed Premises or mortgage, pledge, encumber or otherwise hypothecate this Agreement or the Licensed Premises without the prior written consent of Surf and Ground Landlord, which shall not be unreasonably withheld, conditioned or delayed. Any purported sublicense, assignment, encumbrance or transfer of this Agreement in violation of the foregoing covenant shall be null and void and shall not confer any rights upon any purported sublessee, assignee, mortgagee or transferee. The consent by Surf and Ground Landlord to a particular assignment, subletting or mortgaging shall not be considered a consent by Surf and Ground Landlord to any other or further assignment, subletting or mortgaging. No transfer shall release the transferor from any obligation or liability under this Agreement.

13.2 Permitted Transfer. Notwithstanding the provisions of Section 13.1 and subject to prior written approval by the Ground Landlord, Team shall have the right at any time to sublicense, assign or otherwise transfer all or any portion of the Licensed Premises to (i) any entity which Team controls, or which controls Team or which is under common control with Team or (ii) a Successor Entity (any of the foregoing herein referred to as a "Permitted Transfer"). A "Successor Entity" means: (a) a surviving corporation, partnership or other business entity into which or with which Team or any direct or indirect owner of Team, or its successors or permitted assigns, is merged or consolidated in accordance with applicable statutory provisions, or (b) a corporation, partnership or other business entity acquiring all or substantially all of the assets of Team or of the direct or indirect owner of Team.

Article 14

SUBORDINATION, ATTORNMENT AND ESTOPPEL

14.1 Subordination and Attornment. Upon written request by Surf, Team shall subordinate in writing its interest under this Agreement to the lien of any first-priority mortgage or deed of trust that now or may hereafter encumber the Surf Cup Sports Park, provided that the lender thereunder executes and delivers to Team, in recordable form, a subordination, non-

disturbance and attornment agreement in form and substance mutually and reasonably satisfactory to Team and such lender, which agreement shall provide, among other things, that Team's interest in the Licensed Premises pursuant to this License shall not be disturbed unless an Event of Default exists and is continuing at the time of foreclosure.

14.2 Estoppel Certificate. Either Party shall, without charge therefor, at any time and from time to time, within 20 calendar days after written request therefor, execute and deliver to the other Party a written estoppel certificate, in reasonable form, certifying to the requesting Party, or any proposed mortgagee or purchaser of the requesting Party or any other person reasonably designated by the requesting Party, as of the date of such estoppel certificate: (a) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified and setting forth such modifications); (b) upon actual knowledge, whether or not there are then existing any set-offs or defenses against the enforcement of any right or remedy of the requesting Party, or any duty or obligation of the certifying Party (and, if so, specifying the same in detail); (c) that rent is paid currently (and if not, specifying the same in detail); (d) upon actual knowledge, whether or not there is then existing any claim of default under this Agreement and, if so, specifying the same in reasonable detail; and (e) any other factual matter relating to the this Agreement that the requesting Party may reasonably request, provided that such facts are accurate and ascertainable.

Article 15 DEFAULT AND REMEDIES

15.1 Team's Default. Each of the following shall constitute an "Event of Default":

15.1.1 Team fails to pay any amount required to be paid by Team to Surf under this Agreement as and when due hereunder and such failure remains uncured for 5 calendar days after written notice thereof is delivered to Team.

15.1.2 Team fails to observe or perform any other covenant on its part to be observed or performed, and such failure remains uncured for 10 calendar days after written notice thereof is delivered to Team, provided that if such failure is not reasonably susceptible of being cured within such 10 calendar day period but Team has commenced to cure the same within such 10 calendar day period and thereafter diligently prosecutes such cure to completion, then no Event of Default shall exist.

15.1.3 A receiver is appointed by a court of competent jurisdiction for all or substantially all of the business, property, affairs and revenues of Team, and the receivership is not discharged or terminated within 60 calendar days after appointment.

15.1.4 Team files a voluntary petition in bankruptcy, and such petition is not dismissed within 60 calendar days after filing, or any other person commences an involuntary case in bankruptcy, or under the insolvency laws of any state naming Team as a debtor, and such case is not dismissed within 60 days after commencement, or Team makes a general assignment for the benefit of creditors.

15.2 [RESERVED]

15.3 Surf's Default. The following shall constitute a "Surf Default": Surf fails to observe or perform any other covenant on its part to be observed or performed, and such failure remains uncured for 10 calendar days after written notice thereof is delivered to Surf, provided that if such failure is not reasonably susceptible of being cured within such 10 calendar day period but Surf has commenced to cure the same within such 10 calendar day period and thereafter diligently prosecutes such cure to completion, then no Surf Default shall exist.

15.4 Team's Remedies. During the continuance of a Surf Default, Team may incur any reasonable expense necessary to cure the default giving rise to the Surf Default. Surf shall reimburse Team for any expenses so incurred within 10 calendar days of written demand therefor, together with reasonable evidence of the amount thereof. If Surf does not so reimburse, then Team may offset the amount of such expenses against one or more installments of the License Fee thereafter payable under this Agreement until the amount thereof has been offset in full.

Article 16 END OF TERM

16.1 Surrender. On the expiration of the Term, Team shall surrender possession of the Licensed Premises to Surf in good condition, normal wear and tear, casualty and condemnation excepted, unless otherwise expressly provided in this Agreement.

16.2 Holding Over. If Team remains in possession of the Licensed Premises after the expiration of the Term, then Team shall be deemed a licensee from month-to-month, with a license fee payable at a rate equal to 125.00% of the License Fee in effect immediately preceding the expiration of the Term for the initial 30 calendar days of such holdover, and 200.00% of the License Fee thereafter, and otherwise subject to all of the Terms, covenants and conditions of this Agreement. Nothing herein shall be deemed to grant Team any right to holdover, and in no event shall the acceptance of any license fee preclude Surf from commencing and prosecuting any holdover or eviction proceeding.

Article 17 COVENANT OF QUIET ENJOYMENT

Surf covenants that, for so long as no Event of Default is continuing, Team shall peaceably have, hold and enjoy the Licensed Premises, without any interruption or disturbance from Surf or anyone lawfully or equitably claiming through or under Surf.

Article 18 MISCELLANEOUS

18.1 Entire Agreement. This Agreement, the Exhibits and any other instruments and agreements expressly referenced herein set forth the entire agreement between the Parties, and supersede any prior agreements and understandings, oral or written, between them. No amendment to this Agreement shall be valid or effective unless the same is in writing and signed by the Parties. No waiver of any of the provisions of this Agreement shall be valid or effective unless in writing signed by the Party against whom it is sought to be enforced.

18.2 Notices. No notice required or permitted to be given under this Agreement shall be effective unless the same is (a) in writing and is delivered in person or by Federal Express or other reputable national courier service, provided that any such courier service provides written evidence of delivery; or (b) in electronic form and is delivered via e-mail as a readily identifiable attachment thereto in portable document format (pdf). Any such notice shall be sent by the Parties or their respective attorneys, and addressed as follows or to such other address as Surf or Team may from time to time designate to the other Party in writing:

If to Surf:

Surf Cup Sports, LLC
2037 Park Dale Lane
Encinitas, California 92024
Attn: Rob Haskell
Telephone: (760) 889-1002
E-mail: Rob@SurfCupSports.com

If to Team:

Soccer Women's Team Co, LLC
9130 West Sunset Boulevard
Los Angeles, CA 90057
Attn: G. Blake Klenovich
Telephone: 847-274-9923
Email: blake.klenovich@yucaipaco.com

With a copy to:

Loeb & Loeb LLP
10100 Santa Monica Blvd, Suite 1800
Los Angeles, CA 90067
Attn: Allen Hubsch, Esq.
Telephone: (310) 282-2112
E-mail: ahubsch@loeb.com

The date of service of any notice given by courier service (as described above) shall be the date of actual delivery. The date of service of any e-mail shall be the date on which the e-mail is actually delivered to the email inbox of the required addressees and cotypees. If any notice is delivered on a non-business day or after 5:00 pm local time on a business day at any required recipient's address, then the notice shall be deemed delivered on the next business day.

18.3 Hazardous Materials.

18.3.1 Definitions. For the purposes of this Agreement, "Hazardous Materials" means (a) asbestos and any asbestos-containing material and any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Law or any other Legal Requirement as a "hazardous substance," "hazardous material," "hazardous waste," "infectious

waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or Toxicity Characteristic Leaching Procedure (TCLP) toxicity, (b) any petroleum and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources, and (c) any petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive material (including any source, special nuclear, or byproduct material), medical waste, chlorofluorocarbon, lead or lead-based product, and any other substance whose presence could be detrimental to the Licensed Premises or hazardous to health or the environment. For the purpose of this Agreement, "Environmental Law" means any present and future law and any amendments (whether common law, statute, rule, order, regulation or otherwise), permits and other requirements or guidelines of governmental authorities applicable to the Surf Cup Sports Park and relating to the environment and environmental conditions or to any Hazardous Material.

18.3.2 Environmental Indemnity by Team. Team shall not cause any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Licensed Premises in violation of Environmental Laws. Team shall and hereby does indemnify and hold the City and the Surf Parties harmless from and against any damage, injury, loss, liability, charge, demand or claim based on or arising out of the presence, removal or remediation of, or failure to remove, Hazardous Materials generated, used, released, stored or disposed of by Team or any of its employees, agents, officers, directors, partners, members, shareholders, customers, patrons, guests or contractors (collectively, "Team Parties") in, on, under or about the Licensed Premises.

18.3.3 Environmental Indemnity by Surf. Surf shall not cause any Hazardous Materials to be generated, used, released, stored or disposed of in or about the Surf Cup Sports Park in violation of Environmental Laws. Surf shall and hereby does indemnify and hold Team and Team Parties harmless from and against any damage, injury, loss, liability, charge, demand or claim based on or arising out of (a) the presence, removal or remediation of, or failure to remove, Hazardous Materials located in or about the Surf Cup Sports Park which existed prior to Team's occupancy thereof; and (b) the presence, removal or remediation of, or failure to remove, Hazardous Materials generated, used, released, stored or disposed of by any Surf Parties or any other tenant or occupant or any of their employees, agents, officers, directors, partners, members, shareholders, customers, patrons, guests or contractors (other than Team Parties) in, on, under or about the Surf Cup Sports Park.

18.4 Governing Law; Jurisdiction. This Agreement shall be governed by the laws of the State of California, without giving effect to conflict of law rules. Venue for any action or proceeding to interpret or enforce this Agreement shall be exclusively in any court of competent jurisdiction in San Diego, California.

18.5 Limited Liability. None of the constituent partners, officers, members, principals, shareholders, agents or employees of Surf or Team shall have any personal liability hereunder.

18.6 Successors. This Agreement and all rights and liabilities herein given to, or imposed upon, the respective Parties shall extend and inure to and bind the several respective successors and assigns of the Parties.

18.7 No Partnership. Notwithstanding anything to the contrary herein, or in any other communications to, from or between Surf and Team, prior to the Effective Date or thereafter, Surf and Team are not and shall not be deemed to be partners or joint venturers. Neither Surf nor Team has or shall have any fiduciary duty to one another, it being understood that the relationship between them is contractual, and governed solely by this Agreement and any other written agreements expressly referenced herein.

18.8 Waiver of Jury Trial. SURF AND TEAM HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON, OR IN RESPECT OF, ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

18.9 Severability. If any provision of this Agreement, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

18.10 No Waiver. No failure by either Party to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Agreement to be kept, observed or performed by either Party, and no failure by either Party to exercise any right or remedy available upon a breach of any such term, covenant, agreement, provision, condition or limitation of this Agreement, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition or limitation of this Agreement. The consent or approval by either Party to or of any act requiring such Party's consent or approval shall not be deemed to waive or render unnecessary the consent or approval by such Party to or of any subsequent similar act.

18.11 General Rules of Construction. (a) this Agreement may be executed in several counterparts, and the counterparts shall constitute one and the same instrument; (b) a scanned or electronically reproduced copy or image of this Agreement bearing the Party's signatures shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven; (c)(i) wherever appropriate herein, the singular includes the plural and the plural includes the singular; (ii) whenever the word "including" is used herein, it shall be deemed to mean "including, but not limited to"; (d) this Agreement shall be interpreted in accordance with the words thereof, without reference to extrinsic evidence of any Party's intent, and neither this Agreement nor any provision hereof shall be interpreted against any Party by virtue of such Party having drafted this Agreement or such provision; and (e) it would be unreasonable under the circumstances for either Party to rely upon any purported oral modification or waiver of any provision of this Agreement.

18.12 No Recording. Team shall not record this Agreement (or any memorandum hereof), or any instrument amending this Agreement (or any memorandum thereof).

18.13 Effective Date. The Effective Date shall be the date that the last of Surf or Team execute and deliver this Agreement.

18.14 Headings. The captions, section numbers, article numbers and index appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Agreement nor in any way affect this Agreement.

18.15 Due Authorization.

18.15.1 Team hereby represents and warrants that: (a) Team is a duly formed limited liability company in good standing, qualified to do business in California; (b) the persons signing on behalf of Team are duly authorized to execute and deliver this Agreement; and (c) this Agreement constitutes a valid and binding agreement of Team in accordance with the terms hereof.

18.15.2 Surf hereby represents and warrants that: (a) Surf is a limited liability company in good standing, qualified to do business in California; (b) the persons signing on behalf of Surf are duly authorized to execute and deliver this Agreement; and (c) this Agreement constitutes a valid and binding agreement of Surf in accordance with the terms hereof.

18.16 Attorneys' Fees. In any action or proceeding to enforce or interpret this Agreement, the prevailing Party shall be entitled to an award of its reasonable costs and expenses in such action or proceeding, including reasonable attorneys' fees, costs and expenses.

18.17 Brokerage Commissions. Each of Surf and Team hereby represent and warrant to the other that it has not engaged any broker in connection with the negotiation of this Agreement. Each of Surf and Team shall and hereby does indemnify, defend and hold the other harmless from and against any and all claims for a commission or finder's fee from any broker claiming for represent the indemnifying Party.

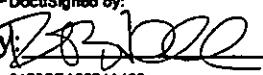
18.18 Survival. All terms and provisions of this Agreement shall survive the termination or expiration of this Agreement, except those that by their nature would ordinarily terminate upon termination or expiration of a real property license.

[signatures on following page]

IN WITNESS WHEREOF, Surf and Team have executed and delivered this Agreement as of the date first above written.

SURF:

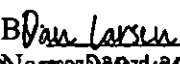
SURF CUP SPORTS, LLC
a California limited liability company,

DocuSigned by:
By: 
8129CEA3024AA60...

Name: ROB HASKELL
Title: Managing Member

TEAM:

SOCCER WOMEN'S TEAM CO, LLC,
a California limited liability company

DocuSigned by:
By: 
Name: Dan Larsen

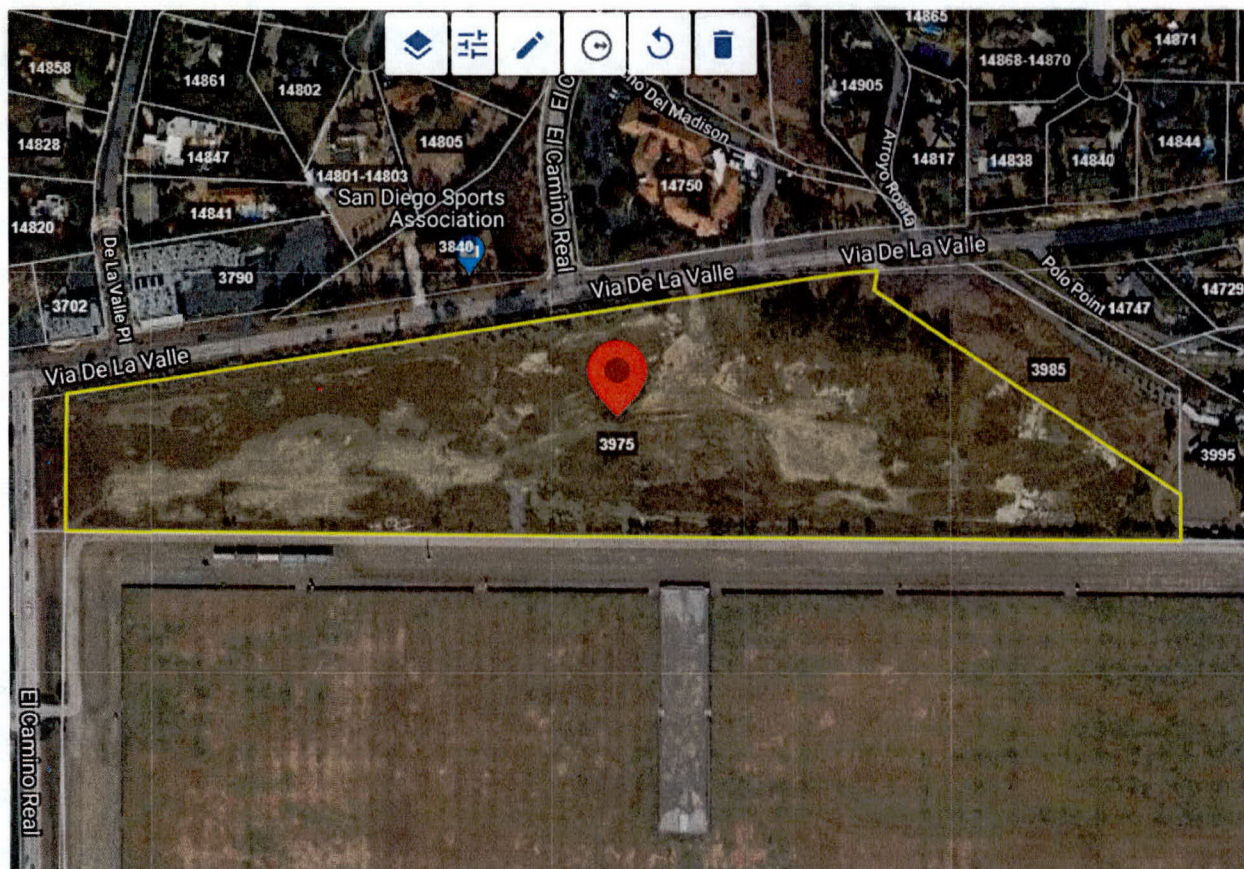
Title: Assistant VP & Secretary

EXHIBIT A Site Plan





EXHIBIT B
Milan Parcel



SIDE LETTER AGREEMENT TO LICENSE AGREEMENT

THIS SIDE LETTER AGREEMENT TO LICENSE AGREEMENT ("Side Letter") is made effective as of February 1, 2022 ("Side Letter Effective Date") by and between **SURF CUP SPORTS, LLC**, a California limited liability company ("Surf"), and **SOCCER WOMEN'S TEAM CO, LLC**, a California limited liability company ("Team"). Surf and Team may be referred to herein individually as "Party" and together as the "Parties".

RECITALS

WHEREAS, the Parties are entering into a License Agreement concurrent with this Side Letter wherein Surf will license to Team a portion of Surf Cup Sports Park as set forth therein and under the terms and conditions described therein ("Original Agreement");

WHEREAS, the Parties now wish to enter into this Side Letter that shall, in addition to the Original Agreement, govern the relationship between Surf and Team.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. **Exclusivity Fee.** In addition to monies owed by Team to Surf under the Original Agreement, in exchange for having Exclusive Rights (as defined below) to the License Premises, and for so long as Team retains such Exclusive Rights, Team shall pay a non-refundable exclusivity license fee each License Year ("Exclusivity License Fee"), with the Exclusivity License Fee amount for the first License Year being two hundred thousand dollars (\$200,000).

Team agrees to pay the first License Year Exclusivity License Fee in one of two ways:

(a) one hundred thousand dollars (\$100,000) of the Exclusivity License Fee paid promptly following execution of this Side Letter by both Parties, and then paying monthly installments of twenty thousand dollars (\$20,000.00) for the remainder of 2022, with payments due as follows:

<u>Payment Due Date</u>	<u>Amount</u>
August 1, 2022	\$20,000.00
September 1, 2022	\$20,000.00
October 1, 2022	\$20,000.00
November 1, 2022	\$20,000.00
December 1, 2022	\$20,000.00

or (b) two hundred thousand dollars (\$200,000) promptly following execution of this Side Letter by both Parties.

For the second License Year and each License Year thereafter, the Exclusivity License Fee shall be paid in twelve (12) equal monthly installments due on the first of each month. The monthly installments of the Exclusivity License Fee shall be payable at the same time as the License Fee (i.e., on or before the first calendar day of each calendar month during the Term), and under the same terms and conditions as described in the Original Agreement.

Unless the Exclusive Rights are terminated as set forth in this Side Letter, for the second License Year, the Exclusivity License Fee shall be two hundred thousand dollars (\$200,000), payable in twelve (12) equal monthly installments of sixteen thousand six hundred sixty-six and 66/100 dollars (\$16,666.66), and the Exclusivity License Fee in and for the third and each subsequent License Year shall be an amount equal to the Exclusivity License Fee for the immediately preceding License Year multiplied by the greater of (a) 1.03 or (b) the CPI adjustment.

2. **Exclusive Use.**

(a) Notwithstanding anything to the contrary in the Original Agreement, including for avoidance of doubt Section 5.3 (Shared Use) of the Original Agreement, commencing on the Commencement Date and continuing during the first License Year, the Team shall have the sole and exclusive use of and access to the Temporary Training Facility and the Playing Fields ("Exclusive Rights").

(b) The Team's Exclusive Rights described above shall automatically renew for each subsequent License Year unless: (i) Team is in breach of its payment requirements to Surf with respect to the Exclusivity License Fee described above, or any other fees to be paid to Surf in the Original Agreement, and such breach continues beyond any grace or cure periods provided under the Original Agreement; or (ii) the Team provides written notice of its election not to continue the Exclusive Rights no later than ninety (90) days prior the expiration of the then current License Year (together, "Non-Exclusivity Condition(s)"). Upon the happening of any Non-Exclusivity Condition, Section 5.3 (Shared Use) of the Original Agreement shall govern use of the Playing Field Area and, for avoidance of doubt, the Team shall have no further obligations to pay the Exclusivity License Fee.

3. **Commencement Date and Commencement of Payments By Team.** Notwithstanding anything to the contrary in the Original Agreement, the Parties acknowledge and agree that the Commencement Date shall be deemed to have occurred on February 1, 2022. All amounts owed by Team under the Original Agreement and this Side Letter shall begin to accrue as of February 1, 2022. Promptly following execution of this Side Letter by both Parties. Team shall pay any accrued and unpaid License Fees and other amounts due under the Original Agreement.

4. **Termination Rights.** The Parties acknowledge and agree that the date by which the Parties shall have executed and delivered either the Long-Term Facility Agreement or the Milan Relocation Agreement set forth in Section 2.6 of the Original Agreement, and the termination rights triggered by such date, shall be the second Anniversary of the Commencement Date, and the Original Agreement shall be deemed modified by this Section 4. If the Parties do not, on or prior to the second anniversary of the Commencement Date, execute and deliver either the Long-Term Facility Agreement or the Milan Relocation Agreement, or if either Party determines in its reasonable discretion at an earlier date that either such agreement will not likely be executed, then each Party may at any time thereafter deliver to the other party a written notice terminating the Original Agreement and this Side Letter. Any such notice shall state the effective date of such termination, which shall be a date not earlier than 365 days after delivery of such notice.

5. **[Reserved.]**

6. **Term.** The term of this Side Letter shall run concurrent with the Term of the Original Agreement.

7. **Definitions.** Capitalized terms used in this Side Letter but not defined herein shall have the meaning assigned to them in the Original Agreement.

8. **Assignment.** This Side Letter may not be transferred or assigned (whether by operation of law or otherwise) by Team without the prior written consent of Surf.

9. **Governing Law; Dispute Resolution.** This Side Letter shall be governed by the laws of the State of California. Any dispute arising out of this Side Letter shall be handled in accordance with provisions concerning dispute resolution in the Original Agreement.

10. **Successor and Assigns.** This Side Letter shall be binding on and shall inure to the benefit of the Parties hereto, and their heirs, administrators, successors, and assigns.

[Signature Page Follows]

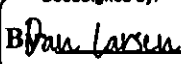
SIGNATURE PAGE
[SIDE LETTER AGREEMENT TO LICENSE AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Side Letter as of the Side Letter Effective Date listed above.

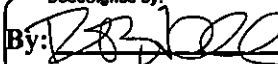
AGREED TO BY:

SOCCER WOMEN'S TEAM CO, LLC

SURF CUP SPORTS, LLC

DocuSigned by:

108BE84D687D4C4
Name: Dan Larsen

Title: Assistant VP & Secretary

DocuSigned by:

8129CEA3924A480
Name: ROB HASKELL

Title: Managing Member

EXHIBIT B
TO
CONSENT TO LICENSE AGREEMENT
(Surf Cup Sports, LLC: Soccer Women's Team Co, LLC)

ACKNOWLEDGMENT OF RECEIPT OF CONSENT TO LICENSE AGREEMENT

(Surf Cup Sports, LLC: Soccer Women's Team Co, LLC)

Soccer Women's Team Co, LLC, a California limited liability company ("**Licensee**"), makes the following acknowledgments, representations, and warranties for the benefit of The City of San Diego, a California municipal corporation ("**Master Landlord**"), as "Lessor" under that certain Percentage Ground Lease filed in the Office of the San Diego City Clerk on July 25, 2016, as Document No. RR-310619 ("**Master Lease**"), relating to that certain City-owned real property described in Exhibit "A" attached to the Master Lease ("**Master Premises**"), originally entered into with Surf Cup Sports, LLC, a California limited liability company, as the "**Lessee**":

1. Licensee acknowledges entering into that certain License Agreement, with Lessee, dated February 1, 2022 ("**License Agreement**"), for Lessee to license to Licensee that certain portion of the Master Premises, including installation of a modular Temporary Training Facility consisting of approximately 5,000 to 7,000 rentable square feet and two adjacent full-sized soccer fields, located at 14555 El Camino Real, identified as the "Licensed Premises" in the License Agreement, for use as a soccer training facility, together with uses which are ancillary and incidental thereto including but not limited to office and storage uses, locker rooms, showers, changing rooms and restroom and for no other purpose or use.

2. Licensee acknowledges receipt of a copy of that certain Consent to License Agreement (Surf Cup Sports, LLC: Soccer Women's Team Co, LLC), dated [**TO BE DETERMINED**], between Master Landlord and Lessee relating to the License Agreement ("**Consent**").

3. Licensee further acknowledges receipt of a copy of the Master Lease, including all exhibits, prior to entering into the License Agreement, and acknowledges that the License Agreement and Licensee's use of the License Premises is subordinate and subject to the Master Lease and the Corporation Grant Deed dated as of September 19, 1983 and recorded in the San Diego County Recorder's Office on October 24, 1983 granting the fee interest in the Master Premises to the City attached to the Master Lease as Exhibit B.

4. Licensee further acknowledges, represents, and warrants that a true and correct copy of the License Agreement is attached as Exhibit "A" to the Consent.

SOCCER WOMEN'S TEAM CO, LLC,
a California limited liability company

Date: _____

By: _____

FIRST AMENDMENT TO SIDE LETTER AGREEMENT TO LICENSE AGREEMENT

THIS FIRST AMENDMENT TO SIDE LETTER AGREEMENT TO LICENSE AGREEMENT ("First Amendment") is entered as of January 31, 2023 ("Effective Date"), by and between **SURF CUP SPORTS, LLC**, a California limited liability company (the "Surf") and **SOCCER WOMEN'S TEAM CO, LLC**, a California limited liability company ("Team"). Surf and Team may be referred to herein individually as a "Party" and together as the "Parties".

RECITALS

WHEREAS, on or about February 1, 2022, the Parties entered into a Side Letter Agreement to License Agreement ("Original Agreement"), a copy of which is attached hereto as **Exhibit A**;

WHEREAS, the Parties wish to amend the Original Agreement as described below.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. **Paragraph 1 – Exclusivity Fee.** The following language shall be added to the end of Paragraph 1. (Exclusivity Fee) of the Original Agreement, and be considered part thereof as of the Effective Date herein:

The Exclusivity License Fee (as defined herein) shall be considered "Gross Revenue" under, and as defined in § 3.1.2.2 of, the City of San Diego Percentage Ground Lease dated on or about August 8, 2016 ("Ground Lease"). As such, Surf shall owe to the City of San Diego ten percent (10%) of the Exclusivity License Fee as "Percentage Rent", in accordance with §3.1.2 of the Ground Lease.

2. **Paragraph 2(a) – Exclusive Use.** Paragraph 2(a) of the Original Agreement shall be replaced with the following with bolded language added below for ease of reference:

(a) Notwithstanding anything to the contrary in the Original Agreement, including for avoidance of doubt **Section 5.2 (Secure Use) and Section 5.3 (Shared Use)** of the Original Agreement, commencing on the Commencement Date and continuing during the first License Year, the Team shall have the sole and exclusive use of and access to the Temporary Training Facility and the Playing Fields ("Exclusive Rights").

3. **Miscellaneous.**

a. Any term not specifically defined herein shall have the meaning and understanding as defined in the Original Agreement.

b. This First Amendment shall be binding on and shall inure to the benefit of the Parties hereto, and their heirs, administrators, successors, and assigns.

c. Except as described herein, all remaining terms and conditions of the Original Agreement shall remain unchanged, and govern the relationship between the Parties.

d. This First Amendment may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and shall be effective as of the formal date hereof. This First Amendment may be executed and transmitted via e-mail

and/or facsimile transmission and in such event shall be effective and binding on the Parties hereto and their successors and assigns as if originally executed.

IN WITNESS WHEREOF, the Parties have duly executed this First Amendment as of the Effective Date herein.

SOCCER WOMEN'S TEAM CO, LLC

DocuSigned by:
By: Dan Larsen
108BE84D687D4C4...

Name: Dan Larsen

Title: Assistant VP & Secretary

SURF CUP SPORTS, LLC

DocuSigned by:
By: Rob Haskell
8129CEA3024A460...

Name: Rob Haskell

Title: Managing Member

EXHIBIT A

SIDE LETTER AGREEMENT TO LICENSE AGREEMENT (2-1-22)

SIDE LETTER AGREEMENT TO LICENSE AGREEMENT

THIS SIDE LETTER AGREEMENT TO LICENSE AGREEMENT ("**Side Letter**") is made effective as of February 1, 2022 ("**Side Letter Effective Date**") by and between **SURF CUP SPORTS, LLC**, a California limited liability company ("**Surf**"), and **SOCCER WOMEN'S TEAM CO, LLC**, a California limited liability company ("**Team**"). Surf and Team may be referred to herein individually as "**Party**" and together as the "**Parties**".

RECITALS

WHEREAS, the Parties are entering into a License Agreement concurrent with this Side Letter wherein Surf will license to Team a portion of Surf Cup Sports Park as set forth therein and under the terms and conditions described therein ("**Original Agreement**");

WHEREAS, the Parties now wish to enter into this Side Letter that shall, in addition to the Original Agreement, govern the relationship between Surf and Team.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. **Exclusivity Fee.** In addition to monies owed by Team to Surf under the Original Agreement, in exchange for having Exclusive Rights (as defined below) to the License Premises, and for so long as Team retains such Exclusive Rights, Team shall pay a non-refundable exclusivity license fee each License Year ("**Exclusivity License Fee**"), with the Exclusivity License Fee amount for the first License Year being two hundred thousand dollars (\$200,000).

Team agrees to pay the first License Year Exclusivity License Fee in one of two ways:

(a) one hundred thousand dollars (\$100,000) of the Exclusivity License Fee paid promptly following execution of this Side Letter by both Parties, and then paying monthly installments of twenty thousand dollars (\$20,000.00) for the remainder of 2022, with payments due as follows:

Payment Due Date	Amount
August 1, 2022	\$20,000.00
September 1, 2022	\$20,000.00
October 1, 2022	\$20,000.00
November 1, 2022	\$20,000.00
December 1, 2022	\$20,000.00

or (b) two hundred thousand dollars (\$200,000) promptly following execution of this Side Letter by both Parties.

For the second License Year and each License Year thereafter, the Exclusivity License Fee shall be paid in twelve (12) equal monthly installments due on the first of each month. The monthly installments of the Exclusivity License Fee shall be payable at the same time as the License Fee (i.e., on or before the first calendar day of each calendar month during the Term), and under the same terms and conditions as described in the Original Agreement.

Unless the Exclusive Rights are terminated as set forth in this Side Letter, for the second License Year, the Exclusivity License Fee shall be two hundred thousand dollars (\$200,000), payable in twelve (12) equal monthly installments of sixteen thousand six hundred sixty-six and 66/100 dollars (\$16,666.66), and the Exclusivity License Fee in and for the third and each subsequent License Year shall be an amount equal to the Exclusivity License Fee for the immediately preceding License Year multiplied by the greater of (a) 1.03 or (b) the CPI adjustment.

2. **Exclusive Use.**

(a) Notwithstanding anything to the contrary in the Original Agreement, including for avoidance of doubt Section 5.3 (Shared Use) of the Original Agreement, commencing on the Commencement Date and continuing during the first License Year, the Team shall have the sole and exclusive use of and access to the Temporary Training Facility and the Playing Fields ("Exclusive Rights").

(b) The Team's Exclusive Rights described above shall automatically renew for each subsequent License Year unless: (i) Team is in breach of its payment requirements to Surf with respect to the Exclusivity License Fee described above, or any other fees to be paid to Surf in the Original Agreement, and such breach continues beyond any grace or cure periods provided under the Original Agreement; or (ii) the Team provides written notice of its election not to continue the Exclusive Rights no later than ninety (90) days prior the expiration of the then current License Year (together, "Non-Exclusivity Condition(s)"). Upon the happening of any Non-Exclusivity Condition, Section 5.3 (Shared Use) of the Original Agreement shall govern use of the Playing Field Area and, for avoidance of doubt, the Team shall have no further obligations to pay the Exclusivity License Fee.

3. **Commencement Date and Commencement of Payments By Team.** Notwithstanding anything to the contrary in the Original Agreement, the Parties acknowledge and agree that the Commencement Date shall be deemed to have occurred on February 1, 2022. All amounts owed by Team under the Original Agreement and this Side Letter shall begin to accrue as of February 1, 2022. Promptly following execution of this Side Letter by both Parties. Team shall pay any accrued and unpaid License Fees and other amounts due under the Original Agreement.

4. **Termination Rights.** The Parties acknowledge and agree that the date by which the Parties shall have executed and delivered either the Long-Term Facility Agreement or the Milan Relocation Agreement set forth in Section 2.6 of the Original Agreement, and the termination rights triggered by such date, shall be the second Anniversary of the Commencement Date, and the Original Agreement shall be deemed modified by this Section 4. If the Parties do not, on or prior to the second anniversary of the Commencement Date, execute and deliver either the Long-Term Facility Agreement or the Milan Relocation Agreement, or if either Party determines in its reasonable discretion at an earlier date that either such agreement will not likely be executed, then each Party may at any time thereafter deliver to the other party a written notice terminating the Original Agreement and this Side Letter. Any such notice shall state the effective date of such termination, which shall be a date not earlier than 365 days after delivery of such notice.

5. **[Reserved.]**

6. **Term.** The term of this Side Letter shall run concurrent with the Term of the Original Agreement.

7. **Definitions.** Capitalized terms used in this Side Letter but not defined herein shall have the meaning assigned to them in the Original Agreement.

8. **Assignment.** This Side Letter may not be transferred or assigned (whether by operation of law or otherwise) by Team without the prior written consent of Surf.

9. **Governing Law; Dispute Resolution.** This Side Letter shall be governed by the laws of the State of California. Any dispute arising out of this Side Letter shall be handled in accordance with provisions concerning dispute resolution in the Original Agreement.

10. **Successor and Assigns.** This Side Letter shall be binding on and shall inure to the benefit of the Parties hereto, and their heirs, administrators, successors, and assigns.

[Signature Page Follows]

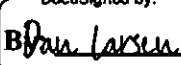
SIGNATURE PAGE
[SIDE LETTER AGREEMENT TO LICENSE AGREEMENT]

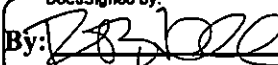
IN WITNESS WHEREOF, the Parties have executed this Side Letter as of the Side Letter Effective Date listed above.

AGREED TO BY:

SOCCER WOMEN'S TEAM CO, LLC

SURF CUP SPORTS, LLC

DocuSigned by:

108BE8AD687D4C4
Name: Dan Larsen
Title: Assistant VP & Secretary

DocuSigned by:

8129CEA3824A468
Name: ROB HASKELL
Title: Managing Member

Farst, Heide

From: Reisch, Kevin
Sent: Thursday, February 09, 2023 9:30 AM
To: Farst, Heide
Cc: Ostlund, Matthew
Subject: RE: [EXTERNAL] Re: Consent to License Agreement

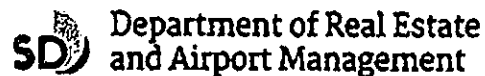
Yes, these documents are acceptable. Thanks.

From: Farst, Heide <HFarst@sandiego.gov>
Sent: Thursday, February 9, 2023 9:28 AM
To: Reisch, Kevin <KReisch@sandiego.gov>
Cc: Ostlund, Matthew <MOstlund@sandiego.gov>
Subject: RE: [EXTERNAL] Re: Consent to License Agreement

Hi Kevin,

I wanted to send these to you one last time to ensure I will be routing the correct Consent and First Amendment documents for signature that you have approved. Thank you.

Heide E. Farst, CSM
Supervising Property Agent, Real Estate Lease Administration
Department of Real Estate and Airport Management
City of San Diego
(619) 236-6727
hfurst@sandiego.gov



From: Reisch, Kevin <KReisch@sandiego.gov>
Sent: Wednesday, February 08, 2023 10:43 AM
To: Farst, Heide <HFarst@sandiego.gov>
Cc: Ostlund, Matthew <MOstlund@sandiego.gov>
Subject: RE: [EXTERNAL] Re: Consent to License Agreement

Okay, if the playing fields are within the solid yellow shaded areas, then I'm fine with the most recent version of the consent and side letter documents.

From: Farst, Heide <HFarst@sandiego.gov>
Sent: Wednesday, February 8, 2023 10:04 AM
To: Reisch, Kevin <KReisch@sandiego.gov>
Cc: Ostlund, Matthew <MOstlund@sandiego.gov>
Subject: RE: [EXTERNAL] Re: Consent to License Agreement

The small solid yellow area on the west side of the property towards El Camino Real is now part of the playing fields. The yellow areas on the east side of the property are not playing field areas.



Date of Notice: May 17, 2022

NOTICE OF RIGHT TO APPEAL

ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT

PROJECT NAME: Consent to License Agreement – Surf Cup Sports, LLC

COMMUNITY PLAN AREA: Fairbanks Ranch Country Club

COUNCIL DISTRICT: 1

LOCATION: 14555 El Camino Real, Del Mar, CA 92014

PROJECT DESCRIPTION: Authorize the Mayor or his designee to sign a Consent to License Agreement allowing Surf Cup Sports, LLC (Surf Cup) to enter into a License Agreement with Women's Soccer Team Co, LLC (Soccer Team), to use a portion of Surf Cup's soccer fields which it leases from the City for soccer training purposes. The Licensed Premises include 1) two full size adjacent soccer fields measuring approximately 360' by 225' each on existing soccer fields; 2) portable modular trailers installed on an existing parking lot adjacent to the two soccer training fields; and 3) parking in the existing parking lot adjacent to the two soccer training fields. The Surf Cup Lease contemplates and allows Surf Cup to rent or license portions of the City-owned property with the City's consent.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: This activity is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 15301 (Existing Facilities), 15303 (New Construction or Conversion of Small Structures), 15304 (Minor Alterations to Land), 15323 (Normal Operations of Facilities for Public Gatherings), 15311 (Accessory Structures) and Section 15061(b)(3) (common sense).

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment pursuant to CEQA Guidelines Section 15301 (Existing Facilities) which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alterations of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use; Section 15303 (New Construction or Conversion of Small Structures) that consists of the construction and location of limited numbers of new, small facilities or structures; Section 15304 (Minor Alterations to Land) which consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes; Section 15323

(Normal Operations of Facilities for Public Gatherings) consists of the normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose. For the purposes of this section, "past history" shall mean that the same or similar kind of activity has been occurring for at least three years and that there is a reasonable expectation that the future occurrence of the activity would not represent a change in the operation of the facility; Section 15311 (Accessory Structures) that consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities and Section 15061(b)(3) (common sense). The exceptions listed in CEQA Guidelines Section 15300.2 would not apply in that no cumulative impacts were identified, no significant effects on the environment were identified, the project is not adjacent to a scenic highway, no historical resources would be affected by the action, and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

The proposed Project and associated components allows for continued soccer-related operations on City-owned land where the use has existed for 30 years on already developed land and does not propose any improvements within an environmentally sensitive area which would warrant the preparation of further environmental analysis.

CITY CONTACT: Heide E. Farst, Property Agent
MAILING ADDRESS: 1200 Third Avenue, Suite 1700, MS 51A, San Diego, CA 92101
E-MAIL/PHONE NUMBER: hfurst@sandiego.gov / (619) 236-6727

On May 17, 2022, the City of San Diego made the above-referenced environmental determination pursuant to CEQA. This determination is appealable to the City Council. If you have any questions about this determination, contact the City Contact listed above.

Applications to appeal the CEQA determination to the City Council must be filed with the Office of the Clerk within 5 business days from the date of the posting of this Notice (**May 24, 2022**). Per the revised Public Notice issued by the Office of the City Clerk on September 28, 2021, appeals to the City Clerk must be filed via e-mail or in-person as follows:

1. Appeals filed via Email: Send the appeal by email to Hearings1@sandiego.gov; your email appeal will be acknowledged within 24 hours. You must separately mail the required appeal fee by check payable to the City Treasurer to: **City of San Diego Planning Department, Attn: Greg Johansen, 9485 Aero Drive, MS 413, San Diego, CA 92123**. The appeal filing fee must be postmarked within five (5) business days of the date the appeal is filed.

2. Appeals filed In-Person: The appeal application can be obtained in the Lobby of the City Administration Building located at 202 'C' Street, San Diego, CA 92101. The completed appeal package must include the required appeal fee in the form of a check payable to the City Treasurer to: **City of San Diego Planning Department, Attn: Greg Johansen, 9485 Aero Drive, MS 413, San Diego, CA 92123**.

If you have any questions regarding the procedures to file the appeal, please contact **Greg Johansen** at [gjohansen@sandiego.gov](mailto:gjhansen@sandiego.gov). The revised Public Notice can be found here: https://www.sandiego.gov/sites/default/files/office_of_the_city_clerk_public_notice_rev09252020_v2.pdf.

This information will be made available in alternative formats upon request.

POSTED ON THE CITY'S CEQA WEBSITE

POSTED: 05/17/2022

REMOVED: 05/25/2022

POSTED: G. Johansen

ORIGINAL

**CITY OF SAN DIEGO
PERCENTAGE GROUND LEASE**

THIS CITY OF SAN DIEGO PERCENTAGE GROUND LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as Lessor, and SURF CUP SPORTS, LLC, a California limited liability corporation ("LESSEE"), as Lessee, to be effective as of the date signed by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY owns that certain real property consisting of approximately 114 acres of land (Assessor's Parcel Number 302-261-01-00) including a perimeter fence and a public trail (the "Public Trail") which is a portion of the public trail commonly known as "The Coast to Crest Trail," and all of which is commonly known as "The San Diego Polo Fields," located at 14555 El Camino Real, Del Mar, California 92014, and more particularly described as San Diego County Assessor's Map 10730 – Fairbanks Country Club – Unit No. 1 ROS 15403, Lot One, all as more specifically depicted in **Exhibit A: Description of Premises**, attached hereto ("Premises"). Both LESSEE and CITY acknowledge that the Premises has not been surveyed. However, both LESSEE and CITY agree that the Premises is intended to be approximately 114 acres, but that rent hereunder shall not be subject to adjustment should a future survey determine that the aforesaid approximation is actually higher or lower than the survey results.
- B. The Premises was leased to Fairbanks Polo Club on March 31, 1986, by that certain Lease Agreement, on file with the San Diego City Clerk as Document number RR-265268 ("Current Lease"). The Current Lease expired on March 31, 2012 and is on hold over. CITY has commenced termination of the Current Lease and securing CITY's lawful possession of the Premises.
- C. CITY desires to lease the Premises to LESSEE to operate activities, programs and operations similar in scope to those lawfully conducted on the Premises pursuant to the Current Lease and in accordance with that certain Deed, as more specifically set forth in Section 1.2, below.
- D. On July 25, 2016, the City Council approved the award of this Lease to LESSEE pursuant to LESSEE's response to the Request for Proposals issued on July 13, 2015, subject to the terms and conditions set forth in this Lease.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

SECTION 1: PREMISES; ALLOWED USES

- 1.1 Leasing. Effective as of the Commencement Date (as defined below in Section 2.2), CITY hereby leases the Premises to LESSEE, and LESSEE hereby leases the Premises from CITY under the terms and conditions of this Lease.

1.2 Subject to Corporation Grant Deed. This Lease is and shall be subject and subordinate to the conditions and restrictions on the Premises and its allowed uses contained in that certain Corporation Grant Deed, ("Deed") by Watt Industries/San Diego, Inc. ("WISD") to CITY, filed with the San Diego County Recorder's Office as Document Number 83-382964, and attached hereto as **Exhibit B: Corporation Grant Deed**.

1.2.1 LESSEE's Waiver. LESSEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which LESSEE incurs as a result of any dispute, directly or indirectly regarding, whether LESSEE's use of the Premises complies with the covenants, conditions and restrictions of the Deed (any such dispute being hereinafter referred to as a "Violation"). LESSEE agrees to protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all costs, expenses or other damages arising out of CITY being made a party to a suit regarding a Violation, and all expenses of investigating and defending against same, including without limitation attorney fees and costs. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

1.3 Uses. LESSEE shall use the Premises for programs, activities, and operations as set forth in the Deed and any subsequent amendments to the Deed (the "Allowed Uses").

1.3.1 LESSEE's Facilities. "LESSEE's Facilities" shall mean all facilities located or to be installed on the Premises for the Allowed Uses, including without limitation the Turf Fields, as defined in Section 8.8.1, below.

1.3.2 Only Allowed Uses. LESSEE shall not use the Premises for any purpose other than the Allowed Uses. Each and all Allowed Uses shall be conducted in compliance with all laws, rules, regulations and directives of competent governmental authorities.

1.3.3 Hours of Operation and Calendar Year Schedule. A regular schedule of days and hours of operation shall be established and posted by LESSEE. Ninety (90) days prior to the end of each calendar year, LESSEE shall submit to CITY a schedule of programs, activities and operations to be held on the Property for the following calendar year.

1.3.4 Public Access. The general public shall not be wholly or permanently excluded from any portion of the Premises, except as set forth in this Section 1.3.4. LESSEE may develop reasonable restrictions for use of the Premises provided they are consistent with the rights of the general public, and are designed to allow the LESSEE to use the Premises for the Allowed Uses. Access by the general public to

the Premises shall be prohibited after daylight hours. The following regulations shall govern access by the general public to the Premises:

- a. The Public Trail (shown in blue on **Exhibit C**) shall remain open to the general public at all times during daylight hours.
- b. The Passive Use Area (shown in green on **Exhibit C**) shall be open to the general public during daylight hours for passive uses (for example, picnicking, walking and hiking) which do not interfere with LESSEE's rights and obligations under this Lease. LESSEE may reasonably direct the general public to designated areas of the Premises to provide a safety buffer between the general public and the operations of LESSEE.
- c. Unless specifically authorized by LESSEE, motorized vehicles shall be allowed only where designated or directed by LESSEE.
- d. The LESSEE Use Areas (shown in red on **Exhibit C**) shall be reserved for non-general public related activities (for example corrals, barns, exercise facilities, offices, and grounds keeper's storage areas). The general public shall not be permitted in the LESSEE Use Areas without prior authorization from LESSEE. LESSEE may add to or change the location of the LESSEE Use Areas, subject to CITY's prior written approval and the total area of LESSEE Uses Areas shall not exceed ten (10%) percent of Premises at any one time.
- e. Notwithstanding anything to the contrary in this Section 1.3.4, LESSEE may restrict access by the general public to the Premises, except for the Public Trail, during activities which may require only ticketed spectators to attend the activity.
- f. No animals, other than horses, service animals and leashed dogs, shall be allowed on the Premises without prior authorization from LESSEE.
- g. The areas designated for particular uses on **Exhibit C** may be subject to change upon the prior written approval of CITY.

1.3.5 Special Provisions.

- a. The general public shall not be allowed to park on the Premises or at any entrance to the Premises between 8 p.m. and 6 a.m.
- b. No noisemakers or horns shall be allowed or used on the Premises.
- c. LESSEE's guests, invitees, agents and contractors shall be notified that any and all use of the Premises is at the discretion of CITY, subject to reasonable conditions imposed by CITY and no future use is implied or guaranteed.

- 1.3.6 No CITY Representations. CITY makes no representation or warranty regarding either the lawfulness of any of the Allowed Uses, including without limitation whether any or all of the Allowed Uses are permitted under applicable land-use laws, or as to the suitability of the Premises for any or all of the Allowed Uses or any particular use.
- 1.4 Use Objective. LESSEE shall diligently conduct the Allowed Uses on the Premises, using its reasonable best efforts to reasonably maximize revenue from the Allowed Uses for purposes of the percentage rent set forth in Section 3, below.
- 1.5 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest.
- 1.6 Governmental Approvals.
- 1.6.1 By entering into this Lease, neither CITY nor the CITY's City Council (the "City Council") is obligating itself to LESSEE or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, rehabilitation, maintenance or restoration of the Premises or any other improvements thereon. Discretionary action includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals. LESSEE shall be solely responsible for processing all applicable land use, development, and construction approvals required for the occupancy, use, development, rehabilitation, maintenance or restoration of the Premises. This Lease shall not be interpreted by any decision-maker on any CITY issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.
- 1.6.2 LESSEE acknowledges and agrees that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency or legality of any development, rehabilitation, maintenance or restoration of the Premises, LESSEE's Facilities, or any other improvements thereon, any aspect thereof, or issues or matters related thereto. Furthermore, CITY does not represent, warrant or guarantee any future approval of any development, rehabilitation, maintenance or restoration of the Premises or any other improvements thereon, or any aspect thereof by the CITY, in its governmental capacity, or the City Council, nor shall anything in this Lease be interpreted as representing, warranting or guaranteeing any such future approval. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of CITY's or the City Council's failure to approve any construction, alteration, rehabilitation, or improvement of the Premises or LESSEE's Facilities, or any other improvements thereon.
- 1.6.2.1 LESSEE's Waiver. LESSEE expressly waives any claim against CITY

and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which LESSEE incurs as a result of CITY's failure to approve any development, rehabilitation, maintenance or restoration of the Premises or any other improvements thereon.

- 1.7 CITY's Consent, Approval. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided in this Lease or as required by law. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided in this Lease.
- 1.8 Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages.
- 1.9 Reservation of Rights.
- 1.9.1 Mineral Rights. Subject to the Deed, CITY reserves all rights, title and interest in and to any and all subsurface natural gas, oil, minerals and water on or within the Premises.
- 1.9.2 Easements. CITY reserves the right to grant, establish and use easements and rights-of-way over, under, along, across and through the Premises for utilities, thoroughfares or access as it deems advisable for the public good, without provision of consideration to LESSEE or any reduction in rent due under this Lease.
- 1.9.3 The Public Trail. CITY reserves the right to enter the Premises to maintain or cause to be maintained the Public Trail, without provision of consideration to LESSEE or any reduction in rent due under this Lease.
- 1.9.4 Repairs. CITY may at all reasonable times upon not less than 72 hours written notice to the LESSEE (except in the event of an emergency, in which case no prior notice shall be required) enter upon the Premises for the purpose of making repairs to or developing municipal resources and services.
- 1.9.5 Noninterference. In the exercise of the rights reserved under this section, CITY shall not substantially unreasonably interfere with LESSEE's or LESSEE's subtenants' use of the Premises.
- 1.9.6 Costs. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
- 1.10 Property Adjustments. LESSEE has been advised and acknowledges that CITY reserves the right, such right being determined by CITY in its sole discretion, to change or adjust

the legal boundaries of the Premises, for CITY's purpose related to the El Camino Real Bridge Improvement project. LESSEE agrees that it shall not be entitled to any consideration or rent adjustment in connection with any such change to or adjustment of the Premises related to the El Camino Real Bridge Improvement project unless an appraisal has determined that said change to or adjustment of the Premises has a material effect on the Base Rent value. If LESSEE elects to seek any type of consideration or a rent reduction, LESSEE may, at its sole cost and expense, utilizing the appraiser selection methodology set forth in Section 3.1.2.1 of this Lease, have a fair market rent appraisal completed based on such change to or adjustment of the legal boundaries of the Premises.

- 1.11 Competent Management. LESSEE shall provide competent management of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within LESSEE's industry for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all laws, rules and regulations of competent governmental authority, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.
- 1.12 Supersedes Prior Agreements. As of the Commencement Date (as defined below in Section 2.2), this Lease shall supersede any and all prior agreements, whether oral or in writing, between the parties and related to all or any portion of the Premises.

SECTION 2: TERM AND COMMENCEMENT

- 2.1 Term. The term of this Lease ("Term") shall commence on the Commencement Date, as defined below in Section 2.2, and shall expire on December 31, 2044.
- 2.2 Commencement Date. The Term shall commence on the first day of the calendar month following (the "Commencement Date"): (1) the execution of this Lease by CITY; (2) CITY securing lawful possession of the Premises as a result of the termination of the Current Lease and the Premises being in the condition as set forth in Recital A (i.e., with no structures, fixtures or private property thereon, hereinafter referred to collectively as the "Private Property"); and (3) the City Council has approved this Lease by resolution.

Notwithstanding the foregoing, if CITY is unable to give possession of the Premises to LESSEE within thirty (30) days of the Effective Date of the Lease or by a date of LESSEE's choosing due to the need to remove and/or demolish the Private Property, CITY agrees to authorize LESSEE to assume CITY's responsibility regarding the lawful removal, demolition and disposal of the Private Property left on the Premises in contradiction to the condition as set forth in Recital A. In such a case, the Commencement Date would be upon the first day of the calendar month following the execution of this Lease by CITY, but in no event prior to CITY securing lawful possession of the Premises as a result of termination of the Current Lease and City Council approval of this Lease by resolution.

2.2.1 LESSEE acknowledges and agrees that this Lease is specifically contingent upon CITY securing lawful possession of the Premises as a result of the termination of the Current Lease. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of any delay in the Commencement Date of this Lease or CITY's failure to secure lawful possession of the Premises and in the condition as set forth in Recital A (i.e., with no Private Property).

2.2.1.1 LESSEE's Waiver. LESSEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which LESSEE incurs as a result of any delay in the Commencement Date of this Lease and CITY's failure to secure lawful possession of the Premises and in the condition as set forth in Recital A (i.e., with no Private Property)..

2.2.2 Lease Year. "Lease Year" shall mean each twelve (12)-month period during the Term.

2.3 Early Termination Right. In the event one or more of the primary revenue-producing programs, activities or operations that LESSEE chooses to conduct on the Premises are determined to be a Violation by a final judgment of a court of competent jurisdiction and any appeal thereof (collectively referred to as the "Final Judgment"), LESSEE shall have the right to terminate the Lease, on the terms and conditions set forth in this Section 2.3 (the "Early Termination Right"). In order to exercise the Early Termination Right, LESSEE must: (1) defend and pay, at its sole cost and expense, the defense for LESSEE and CITY of any alleged Violation up to and including any appeal of a superior court judgment; and (2) deliver to CITY within ten (10) business days of the Final Judgment an irrevocable written notice clearly exercising LESSEE's Early Termination Right, which termination will become effective sixty (60) days after CITY's receipt of LESSEE's written notice thereof. Notwithstanding the foregoing, LESSEE shall remain responsible for complying with all applicable terms and conditions of this Lease regarding LESSEE's responsibilities upon a termination of this Lease. For purposes of this Lease, "primary revenue-producing programs, activities or operations" shall mean an individual program, activity or operation resulting in 30% or more of LESSEE's annually projected Gross Revenue

2.4 Holdover. Any holding over by LESSEE after the expiration of this Lease shall not be considered a renewal or extension of this Lease. LESSEE's occupancy of the Premises after the expiration of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that CITY may then demand and receive from LESSEE rent up to two (2) times the then rent for the Premises, which rent shall be effective as of the first day of the holdover period.

2.5 Surrender of the Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender the Premises to CITY free and clear of all liens and encumbrances caused by LESSEE or arising in whole or in part from this Lease, and in a condition reasonably satisfactory to CITY.

- 2.5.1 If the LESSEE fails to so surrender the Premises to CITY free and clear of all liens and encumbrances, and in a condition reasonably satisfactory to CITY, LESSEE shall be solely responsible for and shall pay for (and shall reimburse CITY for any and all costs incurred by CITY for) the removal of such liens and encumbrances and putting the Premises in a condition reasonably satisfactory to CITY; this provision shall survive the expiration or termination of this Lease.
- 2.5.2 On execution of this Lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. CITY may record such deed only on expiration of the Term or earlier termination of this Lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) business days after receipt of written demand therefor.

SECTION 3: RENT

- 3.1 Rent and Adjustments. Rent payable under this Lease shall be the Base Rent in addition to the Percentage Rent (as defined in this section below). Within thirty (30) days after the end of each calendar year quarter (Quarter) during the Term, LESSEE shall deliver to CITY the Base Rent and Percentage Rent payable for that Quarter, a schedule of LESSEE's Gross Revenue for the month, together with a statement of the Percentage Rent payable for that Quarter, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source. "Quarter" shall mean one of the four periods of three months each of a calendar year, beginning on January 1, April 1, July 1 or October 1.
- 3.1.1 Base Rent. LESSEE shall pay to CITY quarterly rent (the "Base Rent") in the amount of Sixty Thousand Dollars (\$60,000) per Quarter.
- 3.1.1.1 Base Rent Adjustment. On each fifth (5th) anniversary of the Commencement Date, the Base Rent shall be adjusted to reflect any net increase in the Consumer Price Index for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California (CPI) based on the average of the then three most recently published monthly indices just prior to each adjustment. If the CPI is no longer published, the index for adjustment shall be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the CPI.
- i. If the Base Rent adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used shall first be converted under a formula supplied by the U.S. Department of Labor's Bureau of Labor Statistics or its successor.
 - ii. If Department of Labor indices are no longer published, the CITY in its sole and absolute discretion may use another index deemed by the CITY

to be reasonably comparable to the CPI, which shall then constitute the CPI under this Lease.

- iii. The CITY's failure to deliver timely notice of any Base Rent adjustment shall not constitute a waiver by the CITY of its rights hereunder.

3.1.1.2. CPI Adjustment Computation. Base Rent adjustments shall be calculated as follows:

- i. The "adjustment multiplier" shall be calculated by dividing the "current index" by the "base index" as defined below:
- ii. The "current index" shall be the average of the three monthly indices most recently published before the adjustment date (Current Indices).
- iii. The "base index" shall be the average of the same months' indices published five (5) years prior to the Current Indices.

The "base figure" for calculating Base Rent shall be the dollar amount of Base Rent for the year immediately preceding the adjustment date. The "base figure" is then multiplied by the "adjustment multiplier" to determine the adjusted Base Rent, as follows:

$$(\text{CURRENT INDEX} \div \text{BASE INDEX}) \times \text{BASE FIGURE} = \text{ADJUSTED BASE RENT}$$

3.1.2 Percentage Rent. The Percentage Rent ("Percentage Rent") payable to CITY shall be equal to ten (10%) of all Gross Revenue as defined in section 3.1.2.2, below.

3.1.2.1 Percentage Rent Adjustment. Upon at least one hundred eighty (180) days prior written notice to LESSEE, CITY may, but shall not be obligated to, adjust the Percentage Rent percentage rate on the first day of the tenth (10th) Lease Year and every ten (10) years thereafter to reflect the then-current fair market rent percentage rate for the Premises, as evidenced by then-recent leases for similar premises similarly improved, operated and located within the region comprised of Ventura County, Los Angeles County, Orange County, and San Diego County, California. The new Percentage Rent percentage rate shall be determined by an appraisal by an appraiser from the list of appraisers held by CITY. The new Percentage Rent percentage rate shall be effective and due as of the first day of the applicable Lease Year.

3.1.2.2 Gross Revenue. "Gross Revenue" shall mean all revenue derived from (i) all field, stall, or arena rental revenue payable and collected from use of the Premises, and (ii) all sublessees, subtenants and licensees on the Premises. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue. Notwithstanding the foregoing, Gross Revenue shall not include: (a) federal, state or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a

separate charge) and paid periodically by LESSEE to a governmental agency and accompanied by a tax return or statement as required by law; or (b) refunds for goods returned for refunds for goods returned for resale on the Premises or refunds of deposits. LESSEE shall clearly indicate the amount of all such taxes and refunds on its books and records.

- 3.2 Payment for Ground Water. It is understood and agreed by CITY and LESSEE that the Base Rent includes and covers LESSEE's right to pump and use water from any CITY wells servicing the Premises for Allowed Uses. However, if in the opinion of CITY an additional water charge is deemed warranted for underground water pumped from said wells, CITY shall notify LESSEE in writing one year prior to implementation of the additional water charge ("Water Charge"). The Water Charge shall be a percentage of the cost of untreated water and will be determined solely by CITY, who shall have the right to periodically adjust the Water Charge upward or downward to reflect changes in the cost of untreated water as determined by the CITY's Water Department. The Water Charge shall be payable in arrears on a quarterly basis. All costs associated with the use of ground water shall be at LESSEE's sole cost and expense.
- 3.2.1 Water Charge Formula. The Water Charge shall be reviewed and adjusted, if necessary, each year on January 1. The Water Charge will be calculated using the San Diego County Water Authority ("CWA") raw water cost to CITY, and take into consideration credit for water pumping cost, infrastructure costs related to said well(s), water returned to groundwater, and water quality. Water pumping cost shall be the utility cost to bring the water to the well head at 40-60 pounds per square inch (PSI). Infrastructure cost is the cost of maintaining the pump and well. Water quality relates to the quality of water, location in the valley, and the Approved Uses.
- 3.2.2 Water Conservation. LESSEE shall practice water conservation and abide by all applicable water conservation and storm water related requirements. LESSEE shall pay any additional water costs resulting from excess water use beyond recommended levels established by the CITY's Water Conservation Manager or CWA. In times when CWA determines that there is a water emergency, or when voluntary or mandatory water use restrictions exist, LESSEE's non-compliance may result in penalties, including without limitation LESSEE's payment of fines and corrective action needed to remedy violations. The Premises is subject to metering and/or sub-metering to demonstrate compliance with these provisions. Failure to do so will constitute a default under this Lease.
- 3.2.3 Water Service Termination. The Santa Fe Irrigation District currently provides the Premises with temporary water service. This service may be terminated. LESSEE is responsible for evaluating water supply options if potable water is to be maintained on the Premises. LESSEE will comply with all state and county requirements for the development of any new sources of supply to the Premises (recycled, groundwater, or other potable water supply sources). CITY does not guarantee water at or on the Premises.

- 3.3 Unauthorized-Use Charge. Except for a use determined invalid by a Final Judgment as set forth in Section 2.2 of this Lease, LESSEE shall pay CITY one hundred (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease (the "Unauthorized Use"), regardless of any related penalties charged LESSEE by competent governmental authorities. Such Unauthorized Use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. No Unauthorized Use charges shall satisfy or credit against any other rent obligations of LESSEE under this Lease. The Unauthorized Use charge shall otherwise be considered "rent" under this Lease, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such Unauthorized Use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.
- 3.4 Annual Statements. Within thirty (30) days after the end of each Lease Year, LESSEE shall deliver to CITY a statement of Gross Revenue for the Lease Year, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source and expenses categorized by type. Each such annual statement shall also include calculations of a summary of the Percentage Rent for each month of the Lease Year and any other amounts payable to CITY under this Lease for the Lease Year. LESSEE shall furnish to CITY, annually, a copy of an audit conducted by a licensed Certified Public Accountant. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such statements. LESSEE shall provide such additional information reasonably requested by CITY regarding the operation of LESSEE's operations and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.
- 3.5 Time and Place of Payment. All rent payments shall be made payable to "City Treasurer" and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

3.6 Records. LESSEE shall keep or cause to be kept true, accurate and complete books, records and accounts of all financial transactions in the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Gross Revenue.

3.6.1 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records and supporting documentation throughout the Term and for five (5) years thereafter. LESSEE shall make such books, records and documentation available for inspection and audit by CITY in one location within the County of San Diego. LESSEE shall maintain separate books and records related to LESSEE's use of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises as CITY may deem necessary, in its sole discretion, to protect CITY's rights under this Lease. If required by competent governmental authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to LESSEE's operations and activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.

3.6.2 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit:

- a. For any given Lease Year, if an audit reveals an underpayment of rent of more than five percent (5%) on an annual basis, calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or
- b. LESSEE failed to maintain materially true, accurate and complete books, records, accounts and supporting source documents as required by this Lease.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

3.7 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains

unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount being a total of ten percent (10%), which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

SECTION 4: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

4.1 Leasehold Encumbrances. Subject to CITY's written consent, LESSEE may encumber LESSEE's leasehold estate by deed of trust, mortgage, or other security instrument to assure the payment of LESSEE's debts, upon the condition that the proceeds of such loan or loans be devoted exclusively to capital expenditures for the purpose of rehabilitating, improving, repairing or maintaining the Premises. Proceeds from refinancing may also be used for the internal capital restructuring of LESSEE and/or to reduce LESSEE's equity upon the condition that all proceeds cause substantial benefit to CITY's interest in the Premises, including without limitation, capital investment in and/or improvement of the Premises. Each such encumbrance shall be subject to all of the terms, covenants and conditions of this Lease, shall not be deemed to amend or alter any of the terms, covenants or conditions of this Lease, and shall be subordinate to CITY's fee interest in the Premises and any and all CITY encumbrances on that fee interest. Approval is conditioned upon:

- a) The principal amount of the total encumbrance(s) on LESSEE's leasehold estate shall not exceed Twenty-Five percent (25%) of the value of the leasehold, as determined by an independent MAI appraiser, reasonably approved by the City, which appraisal shall be prepared at LESSEE's sole cost and expense;
- b) The Debt Service Coverage Ratio shall not be less than 1.25; and
- c) LESSEE shall pay additional consideration to the City as set forth in Section 4.4.4 of this Lease.

4.2 Assignment, Subletting, Refinancing.

- 4.2.1 LESSEE shall not assign this Lease or any interest in this Lease to anyone without CITY's prior written consent in each instance.

- 4.2.2 LESSEE shall not sublet the Premises or any part of the Premises to anyone without CITY's prior written consent in each instance.
- 4.2.3 LESSEE shall not grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents, guests and subtenants, to use or occupy the Premises or any part of the Premises without CITY's prior written consent in each instance.
- 4.2.4 Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's prior written consent in each instance. As used in this Lease, "assignment" shall include without limitation the transfer of any interest in this Lease and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE's general partners, principals or controlling shareholders.

4.3 Additional Consideration to CITY.

- 4.3.1 If this Lease is assigned, or if LESSEE subleases a majority of the Premises, or in the event of a refinancing that encumbers the leasehold, then in addition to any other amounts payable by LESSEE under this Lease, LESSEE shall pay to CITY an amount equal to for assignments, two percent (2%) of the gross amount paid for the leasehold; (b) for majority subleases, two percent (2%) of all amounts paid to LESSEE in consideration of such sublease;
- 4.3.2 In the event of a refinancing that encumbers the leasehold, LESSEE shall pay to CITY an amount equal to two percent (2%) of the amount of any new loan over and above the sum of the balance of the old loan, less the cost of any improvements made to the Premises with proceeds from the refinancing.
- 4.3.3 The amount upon which such two percent (2%) payments shall be based shall be the total consideration resulting from the transaction, including without limitation all cash payments and the market value of non-cash consideration, including without limitation stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY's consent to any assignment, subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this Section 4.3.3, together with an acknowledgment from the proposed assignee, sublessee or the source of the refinancing as to the amount due CITY. The additional consideration payable to CITY for each assignment, sublease, and/or refinancing shall be paid concurrently with the closing of the proposed transaction. The additional consideration due CITY pursuant to this Section 4.4 shall be payable to CITY when accrued regardless of actual receipt by LESSEE. The applicable two-percent (2%) payments required by this Section 4.3.3 shall not apply to:

- a) an assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession or by operation of law for the benefit of the spouse or descendants of the individual who is LESSEE or the owner of a controlling interest in LESSEE; or
 - b) an assignment deemed by CITY, in its sole discretion, not to materially affect the legal and equitable ownership interests in the leasehold, such as a change in LESSEE's legal or fictitious name without any other change in the equity, beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby; or
 - c) any assignment, sale or transfer of any limited partnership interest in LESSEE.
- 4.4 Consent Conditions. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to comply with then-current CITY lease provisions, and that the sublease be subject and subordinate to each and every provision of this Lease.
- 4.5 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its assignees and majority subtenants shall make a full and complete disclosure of the name and identity of all persons and/or entities directly or indirectly involved in this Lease and the precise nature of all interests of all such persons. Each and every person and/or entity proposed to have an interest in this Lease shall be subject to CITY's prior review and approval, in CITY's sole discretion.

SECTION 5: DEFAULT AND REMEDIES

- 5.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:
- 5.1.1 LESSEE fails to make any payment required under this Lease when due;
 - 5.1.2 LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
 - 5.1.3 LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
 - 5.1.4 LESSEE is adjudicated a bankrupt; or
 - 5.1.5 LESSEE makes a general assignment for the benefit of creditors.
- 5.2 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, (1) a written "Three Day Notice to Pay or Quit," for failures to make required payments, or (2) a "Notice of Termination" for defaults not

requiring payment to CITY, in order that CITY may seek to terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- 5.2.1 the worth at the time of any unpaid rent that was due at the time of termination;
- 5.2.2 the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- 5.2.3 the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- 5.2.4 any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- 5.2.5 all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses 5.2.1 and 5.2.2, above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 5.2.3, above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

- 5.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- 5.3.1 CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;
- 5.3.2 CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary,

or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and,

- 5.3.3 CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

- 5.4 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.
- 5.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

SECTION 6: EMINENT DOMAIN

- 6.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:
- 6.1.1 Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 6.1.2 Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are unsuitable for continued lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 6.1.3 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the reasonable opinion of CITY, the remaining part of the Premises are suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- 6.1.4 LESSEE's Award. Subject to the rights of mortgagees, LESSEE shall receive the fair market value of its leasehold interest under this Lease for the remaining Term and the value of its loss of goodwill, if any, awarded by the taking authority. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- 6.1.5 Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any LESSEE-owned improvements on the Premises in accordance with this Lease.
- 6.1.6 No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 7: INDEMNITY; HOLD HARMLESS; INSURANCE

- 7.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly

connected with this Lease, approval of this Lease or LESSEE's acts or omissions in the performance of its rights and obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the gross negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives or agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

- 7.2 Insurance. Prior to the Commencement Date, LESSEE shall not begin operating under this Lease until it has: (a) obtained, and upon CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance required in below; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Lease, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Lease may be treated as a material breach of contract by CITY.

Further, LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of this Lease.

- 7.2.1 Types of Insurance. At all times during the term of this Lease, the LESSEE shall maintain insurance coverage as follows:

- 7.2.1.1 Commercial General Liability. Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$3 million per occurrence and subject to an annual aggregate of \$5 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- 7.2.1.2 Commercial Automobile Liability. For all of LESSEE's automobiles including owned, hired and non-owned automobiles, LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA

00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

- 7.2.1.3 Workers' Compensation. For all of LESSEE's employees who are subject to the Lease and to the extent required by the applicable state or federal law, LESSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.
- 7.2.1.4 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses under this Lease or the Premises in an amount to cover one hundred percent (100%) of the replacement cost.
- 7.2.2 Deductibles. All deductibles on any policy shall be the responsibility of LESSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.
- 7.2.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by the Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 7.2.4 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY prior to the Commencement Date.
- 7.2.4.1 Commercial General Liability Insurance Endorsements.
ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include, as an Additional Insured, CITY and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of CITY and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by CITY and its elected officials, officers, employees, agents and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

7.2.4.2 Automobile Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include, as an Additional Insured, CITY and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobile owned, leased, hired or borrowed by or on behalf of LESSEE.

7.2.4.3 Worker's Compensation Insurance Endorsements.

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.

7.2.5 Reservation of Rights and Modification. CITY reserves the right, from time to time, to review LESSEE's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to CITY. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and/or coverage of any insurance required under this Lease at any time, by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.

7.2.6 Additional Insurance. LESSEE may obtain additional insurance not required by the Lease.

- 7.2.7 Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.
- 7.2.8 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

SECTION 8: IMPROVEMENTS; ALTERATIONS; MAINTENANCE

- 8.1 Acceptance of Premises. LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof.
- 8.2 Improvements/Alterations. No improvements shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without CITY's prior written approval, which shall not be unreasonably withheld. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures or installations on the Premises without CITY's prior written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
- 8.3 Construction Bond. If LESSEE constructs improvements on the Premises, LESSEE shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
- 8.4 Liens. LESSEE shall protect, defend, indemnify and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, upgrades, construction or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorney fees. If LESSEE causes improvements, alterations, upgrades, construction or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and, within thirty (30) days after the filing, either: (a) take all actions necessary to record a

valid release of the lien; or (b) file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

- 8.5 Ownership of Improvements and Personal Property. CITY shall not own any improvements, fixtures, structures or installations on the Premises during the Term, unless such ownership is evidenced by a separate writing. LESSEE shall not remove any improvements, fixtures, structures or installations during the Term without CITY's prior written consent in each instance. Upon expiration or termination of this Lease, all improvements, fixtures, structures and installations on the Premises shall be deemed a part of the Premises and owned by CITY. Notwithstanding the foregoing sentence, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures and installations or additions removed by LESSEE upon the termination or expiration of this Lease. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required in this section, CITY may, at its option, remove them at LESSEE's sole cost and expense.

- 8.5.1 Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of the Term, or as soon as practicable after termination of this Lease. Any such items which LESSEE fails to remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.

- 8.5.2 Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements, fixtures, structures or installations or personal property as required, whether by CITY or by LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by an appraisal prepared by a qualified appraiser, who may be CITY staff.

- 8.5.3 CITY's Right to Acquire Personal Property. If LESSEE wants to sell or otherwise dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.

- 8.6 Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash and rubbish in a

manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy and sanitary, LESSEE shall restore the Premises to a decent, safe, healthy and sanitary condition within a reasonable time and to CITY's reasonable satisfaction.

- 8.7 Entry and Inspection. Upon not less than 72 hours written notice to the LESSEE (except in the event of an emergency in which case no prior notice shall be required), CITY, as the lessor under this Lease with no effect on its governmental rights and powers, may, during regular business hours enter and inspect the Premises and the operations conducted on the Premises, provided that such entry and inspection shall not substantially unreasonably interfere with LESSEE's or LESSEE's subtenants' use of the Premises.
- 8.8 Maintenance. Except for the Public Trail, LESSEE shall maintain the Premises and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy and sanitary condition reasonably satisfactory to CITY. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures or installations on the Premises.
- 8.8.1 Turf Fields Maintenance. In addition to maintaining LESSEE's Facilities in a decent, safe, healthy and sanitary condition, LESSEE shall maintain the turf fields ("Turf Fields") to CITY's reasonable satisfaction.
- 8.8.1.1 All maintenance shall be subject to all applicable laws, rules, regulations and directives of competent governmental authorities. LESSEE shall, at its sole cost and expense, seek and obtain all necessary permits and approvals, including environmental clearance, required for the construction, and maintenance of the Turf Fields.
- 8.8.1.2 LESSEE shall deliver to CITY copies of all paid invoices for maintenance of the Turf Fields, as and when paid.
- 8.9 Utilities. LESSEE may order and install utilities, subject to obtaining all necessary approvals and permits. LESSEE shall order, obtain and pay for all utilities and service and installation charges in connection with the Premises.
- 8.9.1 LESSEE agrees and acknowledges that the Premises has two wells, with one well currently dry. LESSEE may install a third well at its sole cost and expense, and subject to LESSEE securing all applicable local, state and federal approvals and permits.
- 8.10 Taxes. LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall

not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.

8.11 Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent or approval. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.

8.12 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.

8.13 Hazardous Substances.

8.13.1 LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substances or otherwise regulated substances in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance in violation of applicable law on the Premises without CITY's written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste in violation of applicable law.

8.13.2 Definitions. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of Hazardous Substances. "Hazardous Substances" shall mean any hazardous liquid, solid, gaseous material, or waste substances listed by the Environmental Protection Agency or the State of California as a Hazardous Substance, and any type of petroleum-related substances and their chemical constituents.

8.13.3 Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises in accordance with all applicable laws, rules and regulations of competent governmental authority.

- 8.13.4 Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances onto the Premises, LESSEE shall remove, or cause to be removed, all such Hazardous Substances from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances from the Premises. LESSEE shall pay any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Premises.
- 8.13.5 Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 8.13.6 Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or within the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- 8.13.7 Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in

what quantities. If any such Hazardous Substances exist in quantities greater than allowed by laws, rules and regulations of competent governmental authority, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws, rules and regulations, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with the laws, rules and regulations of competent governmental authority is achieved, and LESSEE shall pay all costs and expenses therefor.

SECTION 9: SITE DEVELOPMENT PERMIT

- 9.1 Site Development Permit. LESSEE acknowledges that Site Development Permit No. 618626 (SDP) was issued by the City of San Diego Planning Commission to CITY and Rancho Santa Fe Polo Club, as permittee and lessee under the Current Lease, attached hereto as **Exhibit C: Site Development Permit No. 618626**. The SDP was recorded in the San Diego County Recorder's Office as Document No. 2011-0473204 and is a covenant running with the Premises. The private exercise track for equestrians for equestrians has been completed. The restoration of the Public Trail remains to be completed in conformance with the SDP.

SECTION 10: GENERAL PROVISIONS

- 10.1 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises have not been inspected by a Certified Access Specialist (CASP).
- 10.2 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States Postal Service, postage prepaid and addressed as follows:

If to LESSEE:

Mike Connerley, President
Surf Cup Sports, LLC
2683 Via De La Valle G #209
Del Mar, CA 92014

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)

- 10.3 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules and regulations of competent legal authority, at LESSEE's sole cost and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE fire-suppression equipment).
- 10.4 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the California Public Records Act (CPRA). If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY, with such notice, specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
- 10.4.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.
- 10.4.2 LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.
- 10.5 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, gender expression, gender identity, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon

each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 10.6 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE certifies that it will maintain such equal benefits throughout the term of this Lease.
- 10.7 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with California Government Code sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable laws, rules and regulations of competent governmental authority protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:
- 10.7.1 LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment.
- 10.7.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE.
- 10.7.3 LESSEE shall include language in each commercial sublease agreement which indicates the commercial sublessee's agreement to abide by the foregoing provisions of this section. LESSEE and each of its commercial sublessees shall be individually responsible for their own ADA employment programs.
- 10.7.4 LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 10.7.5 Where required by law, all improvements, fixtures, structures or installations on the Premises shall comply with municipal disabled-access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at LESSEE's sole cost and expense.
- 10.7.6 LESSEE acknowledges and agrees that failure to comply with the above

requirements and/or submitting false information in response to these requirements shall be a default of this Lease.

- 10.8 Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

10.8.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and

10.8.2 Establish a drug-free awareness program to inform employees about all of the following:

10.8.2.1 The dangers of drug abuse in the workplace;

10.8.2.2 LESSEE's policy of maintaining a drug-free workplace;

10.8.2.3 Any available drug counseling, rehabilitation, and employee assistance programs; and

10.8.2.4 The penalties that may be imposed upon employees for drug abuse.

LESSEE shall include in each of its sublicenses and contracts related to this Lease language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

- 10.9 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.

- 10.10 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. To the extent legally required under applicable law with respect to any work on the Premises, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.

- 10.11 Water Quality Best Management Practices. CITY and LESSEE are committed to the implementation of controls ("best management practices" or "BMPs") to manage activities

on the Premises in a manner which aids in the protection of the CITY's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of the San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

- 10.12 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees on the Premises.
- 10.13 Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 10.14 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 10.15 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 10.16 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
- 10.17 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration or amendment of this Lease shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Lease is binding upon such party in accordance with its terms.

- 10.18 Partial Invalidity. If any term, covenant, condition or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 10.19 Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date.

Date: 7-4-2015

Surf Cup Sports, LLC, a California limited liability company

BY: R. Michael Connerley
R. Michael Connerley
President

Date: 8/8/16

THE CITY OF SAN DIEGO, a California municipal corporation

BY: Cybele Thompson
Cybele Thompson, CCIM
Director, Real Estate Assets Department

Approved as to form:

JAN I. GOLDSMITH, CITY ATTORNEY

By: Hilda R. Mendoza
Name: Hilda R. Mendoza
Title: Deputy City Attorney
Date: 8/9/16

Exhibit A: Legal Description of Premises
Exhibit B: Corporation Grant Deed
Exhibit C: Site Map
Exhibit D: Site Development Permit No. 618626

Exhibit A: Description of Premises



 Premises Boundary Line

Exhibit B: Corporation Grant Deed

RECORDING REQUESTED BY
Deed to open space jobs and golf course lot in Fairview Country Club
 1878
 CITY CLERK
 202 C ST.
 SAN DIEGO CA 92101
 AND FOR DEPOSIT TO

282964
 RECORDED IN
 OFFICIAL RECORDS
 OF SAN DIEGO COUNTY, CA.
 1983 OCT 24 PM 2:21
 VERA LYLE
 COUNTY RECORDER

NO-FEE

Corporation Grant Deed

486-079-01

TO 1431 CA 112-104
 THIS FORM FURNISHED BY TROOR TITLE INSURANCE

The undersigned grantor(s) declare(s):
 Documentary transfer tax is \$ NONE
 () computed on full value of property conveyed, or
 () computed on full value less value of liens and encumbrances remaining at time of sale.
 () Unincorporated area; () City of _____ and
 FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **MATT INDUSTRIES/SAN DIEGO, INC.**
 a corporation organized under the laws of the State of California hereby GRANTS to
THE CITY OF SAN DIEGO, a municipal corporation
 the following described real property in the City of San Diego
 County of San Diego, State of California:
 See legal description of property granted hereby set forth on Exhibit "A" attached hereto and by this reference made a part hereof.
 The covenants, conditions and restrictions set forth on Exhibit "B" attached hereto are by this reference made a part hereof.
 RESERVING THEREFROM, until December 31, 2044, as a mineral interest and not as a royalty interest, all of the minerals of every kind, including, but not limited to, oil, gas, hydrocarbons and associated substances in, under or that may be extracted, produced and saved from said real property but without the right of entry to the surface of said real property or the top 500 feet of the subsurface of said real property for the purposes of exploring for, developing and removing such materials.

In Witness Whereof, said corporation has caused its corporate name and seal to be affixed hereto and this instrument to be executed by its Vice President and Assistant Secretary thereunto duly authorized.
 Dated: September 18, 1983
MATT INDUSTRIES/SAN DIEGO, INC.
 By [Signature] Vice President
[Signature] Assistant Secretary

STATE OF CALIFORNIA } ss.
 County of San Diego }
 On September 18, 1983 before me, the undersigned, a Notary Public in and for said State, personally appeared Stephen C. Gagey known to me to be the Vice President, and Robert Mincer known to me to be the Asst. Secretary of the Corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the Corporation (being named, and acknowledged to me that each Corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors).

WITNESS my hand and official seal.
 Signature [Signature]
 (This area for official notarial seal)

File Order No. _____ Entry or Lien No. _____



MAIL TAX STATEMENTS AS DIRECTED ABOVE

1879

EXHIBIT "A" TO GRANT DEED

Lots 1, 2, 4, 9 and 10 of Map No. 10730 of
FAIRBANKS COUNTRY CLUB NO. 1 filed in the
Office of the County Recorder of San Diego
County, on SEPTEMBER 29, 1983

This is to certify that the interest in real property conveyed
by this instrument to the City of San Diego, a municipal
corporation, is hereby accepted by the undersigned officer
on behalf of the City of San Diego, pursuant to authority
conferred by Resolution No. 198686, adopted by the Council
of the City of San Diego on December 10, 1959, and the
grantee consents to recording thereof by the duly
authorized officer.

Dated 9-29-83 by [Signature]
ASSISTANT TO THE City Manager

AFTER RECORDING, MAIL TO CITY CLERK

R- 259343

1880

EXHIBIT "D" TO GRANT DEED

BY THE CONVEYANCE AND ACCEPTANCE of this Grant Deed, WATT INDUSTRIES/SAN DIEGO, INC., a California corporation ("Grantor") and THE CITY OF SAN DIEGO, a municipal corporation ("Grantee"), declare, covenant and agree as follows:

1. Grantor is the owner, owns an interest in or is a partner of a partnership which is the owner (or formerly was such owner) of that certain real property located in the City of San Diego, County of San Diego, California, more particularly described as follows:

Lots 1 through 18, inclusive, of Parcel Map No. 12638 filed in the Office of the County Recorder of San Diego County on March 25, 1983

("Benefited Land").

2. Pursuant to that certain Percentage Lease between Grantor and Grantee approved by San Diego City Council Resolution No. R-257594 on December 6, 1982 ("Lease"), the real property conveyed by this Grant Deed consists of (a) premises leased for the purpose of constructing and maintaining a country club, golf course and related activities, more particularly described as follows:

Lot 2 of Map No. 10730 of FAIRBANKS COUNTRY CLUB NO. 1 filed in the Office of the County Recorder of San Diego County on SEPT. 29, 1983

("Country Club"), and (b) real property contiguous to the Country Club to be preserved and maintained as "Open Space" areas, more particularly described as follows:

Lots 1, 4, 9 and 10 of Map No. 10730 of FAIRBANKS COUNTRY CLUB NO. 1 filed in the Office of the County Recorder of San Diego County on SEPT. 29, 1983

The Open Space is referred to herein as the "Affected Land", and, pursuant to the Lease, is to be maintained by Grantor.

3. The Affected Land is presently designated open space and as floodway zone, floodplain fringe zone and Agricultural zone (A-1-1) by the City of San Diego Progress Guide and General Plan, the Fairbanks Country Club Specific Plan and the City of San Diego's zoning maps.

4. Grantee for and on behalf of itself, and on behalf of each successive owner, during its, his, her or their ownership of any portion of the Affected Land herein granted by Grantor to Grantee, and each person having any interest in the Affected land derived through any such owner, covenants, and agrees that it, he, she or they:

(a) Shall keep and preserve the Affected Land as Open Space in a natural condition as near as possible, or may permit it to be utilized for any or all of the following purposes and no others:

(i) All agricultural uses relating to the growing, harvesting, processing or selling of field or grain crops, fruit and vegetables;

(ii) Passive non-commercial recreational uses (e.g., picnicking, walking, hiking, and similar activities), and reasonable support facilities, including any restrooms and parking facilities as may be reasonably required, for such uses;

(iii) Active non-commercial recreational uses not involving large assemblages of people or automobiles, nor involving the use of motor-driven machines or vehicles (e.g., equestrian activities, jogging, frisbee, and similar activities).

(b) Shall, notwithstanding any other provision hereof, prevent any of the following purposes, uses and activities from being conducted upon the Affected Land:

(i) Apiaries;

(ii) Aviaries;

(iii) Parking lots which are designated and intended to serve facilities located on the Affected Land other than as specifically allowed above;

(iv) Single-family dwellings;

(v) Churches, schools or day care facilities;

(vi) Public utility substations;

(vii) Raising, killing or dressing of livestock, poultry, fowl, rabbits or any other animal;

(viii) Airways, taxiways and pads of heliports and helistops;

(ix) Establishments or enterprises involving large assemblages of people or automobiles, including, but not limited to, recreational facilities publicly or privately operated;

(x) Fairgrounds;

(xi) Natural resources development and utilization, including, but not limited to, extracting, processing, storing, selling and distributing sand, gravel, rock, clay, decomposed granite and soil, and the manufacturing, producing, processing, storing, selling and distributing of asphaltic concrete, Portland Cement concrete, concrete products and clay products;

(xii) Racetracks;

(xiii) Travel trailer parks together with incidental facilities for the convenience of occupants;

(xiv) Dams and reservoirs;

(xv) Ground water replenishment works, including, but not limited to, diversion dams, percolation beds, spreading grounds and injection wells; provided, however, that desalination facilities are expressly permitted to be built and maintained upon the Affected Land;

(xvi) Accessory buildings, other than as may be specifically allowed hereinabove, and uses customarily incidental to any of the above uses, including, but not limited to:

(A) The boarding and lodging of farm or other employees;

(B) Construction and maintenance of living quarters for farm or other employees with or without their immediate families;

(C) Lighted signs, commercial signs or unlighted signs, single-faced or double-faced exceeding 12 square feet in area for each face;

(xvii) Any other use similar in character to the uses, including accessory uses, enumerated in this section and inconsistent with the purpose and intent of this deed restriction.

5. (a) Grantee or its successors shall permit no use of the Affected Land in violation of the provisions hereof. In the event any use is contemplated which is not specifically permitted by the terms of this document, such use shall not be allowed without Grantee having first obtained Grantor's (or Grantor's successors') written consent thereto. Grantor or its successors shall not unreasonably withhold such consent. If Grantor or its successors disapprove a contemplated use, such disapproval shall be in writing and shall specify, with reasonable particularity, the reason(s) for such disapproval. If Grantor or its successors fail either to so approve or disapprove such contemplated use within thirty (30) days after the same have been submitted to Grantor or its successors, it shall be conclusively presumed that Grantor or its successors have approved such use. Such submission shall be deemed effective if Grantee submits its written request for consent to Grantor, or its corporate successors, and any homeowners associations in the Benefited Land area and posts signs describing such proposed use in at least twenty (20) locations reasonably calculated to give adequate notice of such proposed use to all of Grantor's successors.

(b) Grantor and Grantee agree that in the event of a dispute between them or their successors with respect to whether Grantor or its successors have unreasonably withheld their approval of a contemplated use submitted in accordance with the foregoing, they shall submit any such dispute to arbitration in accordance with the following provisions:

(1) Within fifteen (15) days after the written demand by either of the parties for arbitration, each of the

parties shall choose an arbitrator and give the other written notice of such choice, or in case of the failure of either party so to do, the other party shall have the right to appoint an arbitrator to represent the defaulting party. The two arbitrators thus appointed (in either manner) shall select and appoint in writing a third arbitrator and give written notice thereof to Grantor and Grantee or their successors, or if within ten (10) days after the appointment of said second arbitrator, the two arbitrators shall fail to appoint a third, then either party shall have the right to make application to the Superior Court of San Diego County to appoint such third arbitrator.

(ii) The three arbitrators so appointed (in either manner) shall promptly fix a convenient time and place for hearing the matter to be arbitrated and shall give written notice thereof to each party at least ten (10) days prior to the date so fixed. The hearing date shall be set for not more than sixty (60) days from the date of the demand for arbitration unless it is necessary to apply to the Superior Court for appointment of a third arbitrator. In such latter event, the hearing date shall be set for not more than thirty (30) days after the date such third arbitrator is so appointed. The arbitrators shall, within ten (10) business days after the hearing, render their decision with respect to whether Grantor or its successors have unreasonably withheld their approval of a contemplated use submitted to them.

(iii) The decision or award of the majority of the arbitrators shall be final and nonappealable except that upon the satisfaction of the conditions set forth in Section 1286.6 of the California Code of Civil Procedure, the decision or award of the majority of the arbitrators may be vacated upon the grounds set forth in Section 1286.2 of said Code of Civil Procedure. Further, any decision or award of the majority of the arbitrators may, upon satisfaction of the conditions set forth in Section 1286.8 of the Code of Civil Procedure, be corrected in accordance with the provisions of Section 1286.6 of said Code of Civil Procedure.

(iv) If two of the three arbitrators first appointed as aforesaid shall fail to reach an agreement in the determination of the matter in question, the same shall be decided by three new arbitrators, who shall be appointed and shall proceed in the same manner and within the same time frame, as hereinabove set forth, and said process shall be repeated until a decision is finally reached by two of the three arbitrators selected.

(v) Each party shall pay the costs and fees of the arbitrator chosen by such party and shall pay one-half of such costs and fees of the third arbitrator.

(c) Neither Grantor nor its successors shall be liable in damages to anyone on whose behalf a contemplated use is submitted for approval. Every person who submits a contemplated use for approval, either directly or through Grantee, agrees that he, she or it will not bring any action or suit against Grantor or its successors to recover any such damages.

6. Notwithstanding any other provision hereof, for a period of ten (10) years following the date of execution of this Grant

Deed, Grantor, or its successors, shall have the right to acquire easements from Grantee, at no cost, for utilities and public right of way required by governmental agencies, including Grantee, to serve the Benefited Land.

7. Notwithstanding any other provision hereof, Grantee shall have the right to establish underground utility easements upon the Affected Land provided said easements do not adversely affect or interfere with Open Space or Golf Course activities conducted on the Country Club portion of the deeded property.

8. Notwithstanding any other provision hereof, Grantor reserves the right to relocate all or a portion of Via de la Valle upon the Affected Land upon the request of Grantee's City Engineer.

9. Notwithstanding any other provision hereof, Grantor reserves a water utility easement in gross, in, over, under and across the Affected Land and the Benefited Land, to serve the Country Club, for the purpose of importing water from public or private sources to benefit the Country Club. However, in exercising its rights under this provision, Grantor will not unreasonably interfere with Grantee's use of, nor the open space nature of, the Affected Land.

10. Notwithstanding any other provision hereof, Grantor shall be permitted to build and maintain upon the Affected Land no more than five (5) signs promoting and advertising Olympic Games and/or Grantor's real property development upon the Benefited Land and the Country Club portion of the deeded property. The locations, style and design of such signs shall be at Grantor's sole discretion, subject to applicable City ordinances, as shall the period of time during which such signs, or any of them, shall remain erected. In no event, however, shall any such signs remain erected after ten (10) years from the date of execution of this Grant Deed.

11. Monetary damages for the breach of the covenants contained herein are declared to be inadequate and Grantor or its successors may be enjoined by any court of competent jurisdiction from commencing or proceeding with the construction of any improvements to, or permitting any use upon, the Affected Land which are in violation of the covenants set forth herein, or, if an improvement is constructed, may be ordered by any court of competent jurisdiction to remove such improvements.

12. Each successive owner, during its, his, her or their ownership, of any portion of the Affected Land, and each person having any interest in the Affected Land derived through any such owner, shall be bound hereby for the benefit of the Benefited Land. Each successive owner, during its, his, her or their ownership, of any portion of the Benefited Land, and each person having any interest in the Benefited Land derived through the Grantor, shall be benefited by the covenants contained herein, it being intended that the burden and benefit of the covenants shall run with the land.

13. Any violation of the covenants herein contained shall be deemed to be a continuing violation hereof and no delay in the delivery of any notice of any violation hereof or in the enforcement of any rights or the seeking of any remedies provided hereunder shall constitute, or be deemed to constitute, a waiver of

the right to give such notice, enforce such right or seek such remedy at any time after the occurrence of such violation.

14. Except in the event of arbitration in accordance with Paragraph 5 above, if any owner(s) of the Affected Land or the Benefited land commences litigation for the judicial interpretation, enforcement or rescission hereof, the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorney's fees and other costs incurred.

15. The covenants herein contained are for the benefit of the Benefited Land and have been made with the intent of satisfying the requirements of Section 1468 of the California Civil Code.

16. In the event any term, covenant, condition, provision or agreement herein contained is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect the validity of any other term, covenant, condition, provision or agreement herein contained.

17. So long as WATT INDUSTRIES/SAN DIEGO, INC., a California corporation, its successors or assigns, or any partnership of which WATT INDUSTRIES/SAN DIEGO, INC. is a partner, owns any portion of the Benefited Land, and THE CITY OF SAN DIEGO, a municipal corporation, owns any portion of the Affected Land, the provisions contained within this Exhibit "B" to this Grant Deed may be terminated or amended by an instrument in writing executed by both and recorded in the Office of the County Recorder of San Diego County, California, without the need for approval by any other owner of any portion of the Benefited Land or the Affected Land. The term "successors or assigns" as used in this Paragraph only, shall mean the named corporation or any person or entity hereafter acquiring all of the then existing assets of the same by purchase, liquidation, merger or reorganization.

GRANTEE hereby accepts the above covenants, conditions and restrictions to this Grant Deed. These covenants, conditions and restrictions shall terminate and be of no further force or effect at 11:59 p.m. on December 31, 2044.

THE CITY OF SAN DIEGO

By Jane Jones

ASSISTANT TO THE City Manager

APPROVED as to form and legality this 27 day of September, 1983.

JOHN W. WITT, City Attorney

By John W. Witt

Deputy

-6-

R - 259343

Exhibit C: Site Map

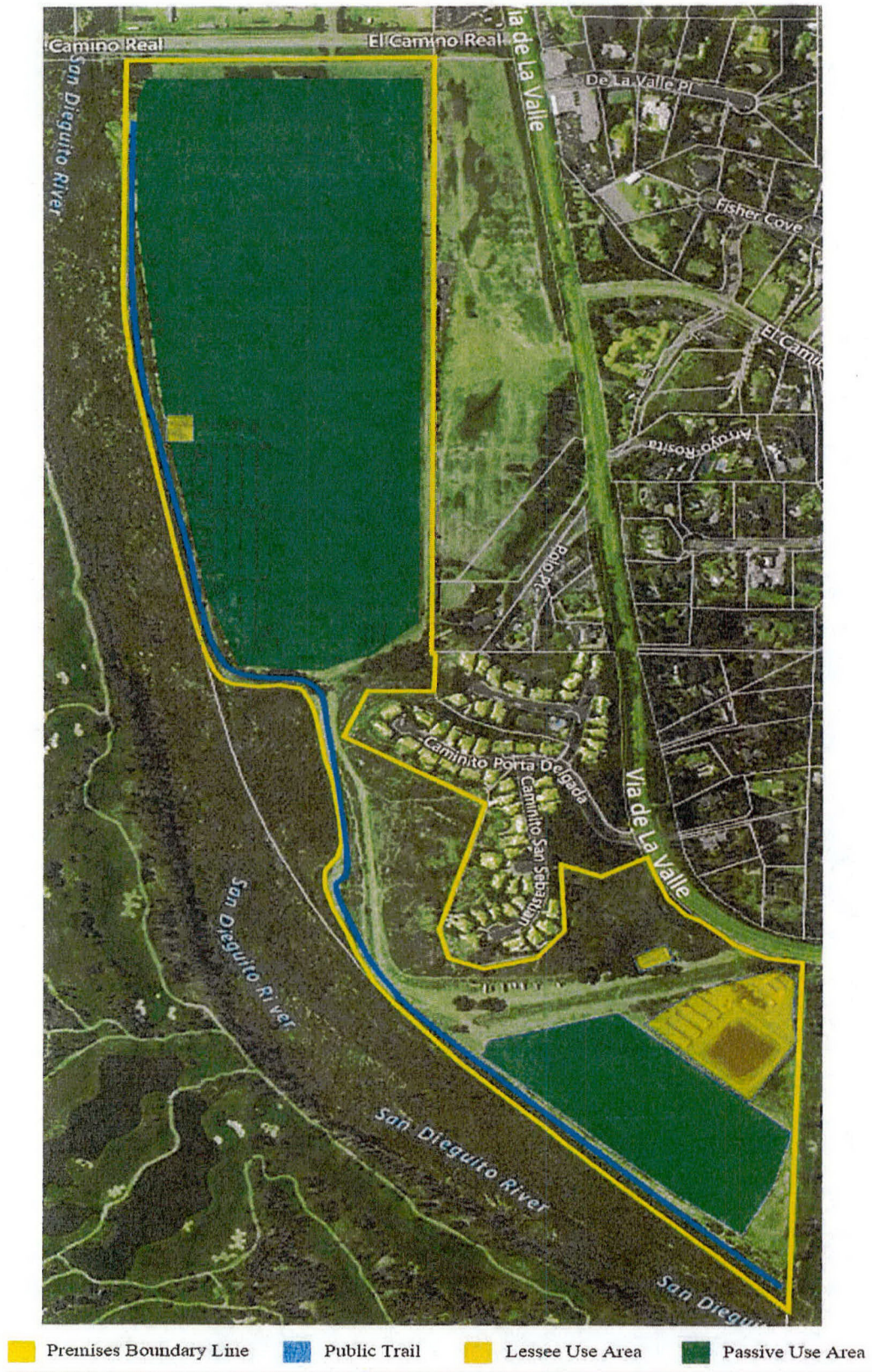


EXHIBIT C: SITE DEVELOPMENT PERMIT NO. 618626

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON SEP 13, 2011
DOCUMENT NUMBER 2011-0473204
Ernest J. Dronenburg, Jr., COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 1:33 PM

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

INTERNAL ORDER NUMBER: 23431709

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**SITE DEVELOPMENT PERMIT NO. 618626
RANCHO SANTA FE POLO CLUB - PROJECT NO. 169091 (MMRP)
PLANNING COMMISSION**

This Site Development Permit No. 618626 is granted by the Planning Commission of the City of San Diego to the City of San Diego, a Municipal Corporation, Owner, and Rancho Santa Fe Polo Club, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0504. The approximately 80-acre site is located at 14555 El Camino Real in the AR-1-1, AR-1-2 and OF-1-1 zones within the Fairbanks Ranch Specific Plan area. The project site is legally described as: Lot 1, Block Number 1, Fairbanks Country Club Subdivision, Map No. 10730

Subject to the terms and conditions set forth in this Permit, permission is granted to the Owner and Permittee to restore an existing public trail to be utilized by pedestrians and equestrians, restore wetland habitat impacted by unauthorized grading activity, and the creation of a new equestrian track for the existing Polo Field use within the AR-1-1, AR-1-2 and OF-1-1 zones, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated July 14, 2011, on file in the Development Services Department.

The project shall include:

- a. A grading permit for the restoration of wetland habitat and recompaction of a 12-foot wide public trail adjacent to the San Dieguito River;
- b. Creation and maintenance of a private exercise track for equestrians within Field No. 4 of the polo fields;
- c. Landscaping (planting, irrigation and landscape related improvements);
- d. Off-street parking; and

- e. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act (CEQA) and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Permittee and any successor(s) in interest.
4. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
5. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 (ESA) and any amendments thereto (16 U.S.C. § 1531 et seq.).
6. The Permittee shall secure all necessary construction permits. The Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
7. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

8. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

9. The Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Permittee.

10. This Permit may be developed in phases. Each phase shall be constructed prior to sale or lease to individual owners or tenants to ensure that all development is consistent with the conditions and exhibits approved for each respective phase per the approved Exhibit "A".

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

11. Mitigation requirements in the Mitigation, Monitoring, and Reporting Program (MMRP) shall apply to this Permit. These MMRP conditions are hereby incorporated into this Permit by reference.

12. The mitigation measures specified in the MMRP and outlined in Mitigated Negative Declaration No. 169091, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

13. The Permittee shall comply with the MMRP as specified in Mitigated Negative Declaration No. 169091, to the satisfaction of the Development Services Department and the City Engineer. Prior to

issuance of any construction permit; all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures described in the MMRP shall be implemented for the following issue areas: Biology and Archeology (Cultural Resources).

ENGINEERING REQUIREMENTS:

14. Prior to the issuance of any construction permit, the Permittee shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.
15. This project has been identified as being within the floodway of a Special Flood Hazard Area (San Dieguito River panel 1326F and 1327F Zone A). No increases to base-flood elevations are allowed. Prior to the issuance of the grading permit, a Registered Professional Engineer shall submit a hydraulic analysis showing the proposed grading to restore the flood elevations to the original level satisfactory to the City Engineer.
16. Prior to the issuance of any construction permits, the Permittee shall incorporate and show the type and location of all post-construction Best Management Practices (BMP's) on the final construction drawings, in accordance with the approved Water Quality Technical Report, satisfactory to the City Engineer.
17. Prior to the issuance of any construction permits, the Permittee shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.
18. Prior to the issuance of any construction permits, the Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications, satisfactory to the City Engineer.
19. Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 99-08 DWQ and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CAS0108758), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent (NOI) shall be filed with the SWRCB.
20. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99 08 DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in SWRCB Order No. 99 08 DWQ.

LANDSCAPE REQUIREMENTS:

21. Prior to issuance of any engineering permits for grading, construction documents for the revegetation and hydroseeding of all disturbed land shall be submitted in accordance with the Landscape Standards and to the satisfaction of the Development Services Department. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit 'A' on file in the Office of the Development Services Department.
22. The Applicant shall be responsible for the establishment maintenance of all landscape improvements shown on the approved plans, consistent with the Landscape Standards and Exhibit 'A' San Diego Polo Club Trail Restoration Biological Technical Report, dated March, 2011.
23. Long-term Maintenance of restoration/enhancement areas shall be the responsibility of the Permittee for the life of the Permit.
24. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department Mitigation Monitoring Coordination staff within 30 days of damage.

PLANNING/DESIGN REQUIREMENTS:

25. No development shall occur within the 100-foot wetland buffer, as shown on Exhibit 'A', during the breeding season for the Clapper Rail, Least Bell's Vireo and Gnatcatcher, February 1st through September 15th. Development includes, but is not limited to, all grading, grubbing, revegetation, restoration, planting, and the construction of any structures including fencing.
26. Prior to the issuance of any construction permit, the applicant will notify Fish and Wildlife, Fish and Game, and the Army Corp of Engineers and any other appropriate State or Federal agency for any direct or indirect impacts to least bells vireo, light footed clapper rail, and/or impacts to wetland habitat identified adjacent to the Polo Fields. The City of San Diego cannot authorize the taking of least bells vireo or the light footed clapper rail nor convey third party beneficiary status for wetland impacts. Authorization for an incidental take permit can only be issued by the appropriate agencies. The applicant is required to obtain permits from the above agencies if the agencies determine the permits to be applicable. Once obtained, these permits are to be provided to MMC or the Development Services Department Permit Reviewer for verification of authorization prior to the issuance of any construction permit.
27. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.
28. All construction activities (including staging areas) and post-construction activities shall be restricted to the development area (ie within the "Limits of work") as shown on the approved Exhibit A ". The project biologist shall monitor during construction activities and observe the site during the

5-year restoration/monitoring period as required to ensure that construction and post-construction activities do not encroach into biological sensitive areas (wetlands).

29. The private oval exercise track within Field 4 will be constructed and utilized as a modified "L" shape as noted on Plan Sheet 7, for the duration of Surf Cup Soccer's tenancy.

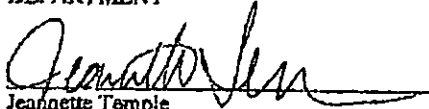
INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on July 14, 2011, and Resolution No. 4713-PC-2

Permit Type/PTS Approval No.: SDP No. 618626
Date of Approval: July 14, 2011

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT


Jeanette Temple
Development Project Manager

NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

City of San Diego
Owner

By 
James F. Barwick, Director
Real Estate Assets Department

Rancho Santa Fe Polo Club
Permittee

By 
Ron Bonaguidi, Rancho Santa Fe Polo Club

NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

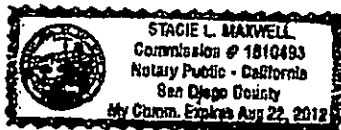
On Sept. 7, 2011

before me,

Stacie L. Maxwell, Notary Public

personally appeared

Jeannette Temple



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Signature]

Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Rancho Santa Fe Polo Club - PTS 149091

Document Date: _____ Number of Pages: _____

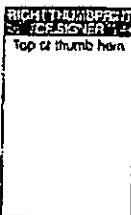
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney In Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

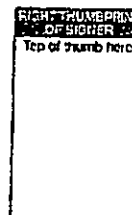
Signer is Representing: _____



Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney In Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____



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ORIGINAL

RESOLUTION NUMBER R- 310619

DATE OF FINAL PASSAGE AUG 03 2016

ITEM #150

SUB A

7/25/16

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE CITY OF SAN DIEGO
PERCENTAGE GROUND LEASE BETWEEN THE CITY OF
SAN DIEGO AND SURF CUP SPORTS, LLC TO LEASE THE
PROPERTY COMMONLY KNOWN AS THE POLO FIELDS.

WHEREAS, in 1983, Watt Industries/San Diego Inc. (Watt) conveyed by corporation
grant deed (Deed) 600 acres of land in the San Dieguito River Valley to the City of San Diego
with deed restrictions governing the use of the property, which expire December 31, 2044; and

WHEREAS, on April 1, 1986, the City entered into a twenty-six year lease agreement
(Polo Club Lease) with Fairbanks Polo Club, the predecessor to Rancho Santa Fe Polo Club
(Polo Club), for the lease of approximately 120 acres of the property (Polo Fields) conveyed to
the City by the Deed. The Polo Club Lease expired on March 31, 2012, and the Polo Club has
occupied the Polo Fields on a month-to-month, holdover basis since April, 2012; and

WHEREAS, since 1986, the Polo Fields have been used for polo matches, polo
instruction, charity fundraiser events, soccer tournaments, lacrosse tournaments, sporting games
for college recruitment, boarding of horses, youth soccer practice, weddings, private parties and
other recreational uses and the parking for all of these uses; and

WHEREAS, the Polo Fields consists of open sport fields, roads and a segment of the
public Coast to Crest Trail along the southern border of the Polo Fields; and

WHEREAS, in 2005, the City's Code Enforcement issued a Notice of Violation to the
Polo Club for grading on the portion of the Coast to Crest Trail which is part of the Polo Fields.
Site Development Permit No. 618626, Project No. 169091 (SDP) was issued by the Planning

Commission of the City to the City, as owner, and the Polo Club as lessee/permittee. The SDP was recorded September 13, 2011, in the San Diego County Recorder's Office as Document No. 2011-0473204. The SDP calls for the creation and maintenance of horse exercise track outside of the Coast to Crest Trail, allow access of a public trail for use by equestrians and pedestrians, restoration of the sensitive vegetation, and restoration of areas previously disturbed by trail maintenance outside of the limits of the re-aligned trail, all along the San Dieguito River. The SDP is a covenant running with the Polo Fields; and

WHEREAS, a Request for Proposals (RFP) was issued on July 13, 2015, requesting proposals to lease and operate the property to best serve the needs of the local and regional community, while providing activities, programs and operations in accordance with the Deed. The City received three proposals in response to the RFP. City staff determined two of the proposals were not responsive to the RFP and the proposal from Surf Cup Sports, LLC (Surf Cup) was the only responsive proposal; and

WHEREAS, City staff determined that the Surf Cup proposal was made in accordance with the evaluation criteria specified in the RFP, and is responsive, responsible and delivers the best overall value to the City, and based on the foregoing recommends that the City enter into a percentage ground lease for the use and occupancy of the Polo Fields with Surf Cup; and

WHEREAS, the proposed percentage ground lease to Surf Cup is for a twenty eight year term that will expire on December 31, 2044, which coincides with the expiration of the Deed restrictions. Independent of the ground percentage lease, Surf Cup will resolve the outstanding work pursuant to the SDP, which is to restore the Coast to Crest Trail portion of the Polo Fields, with an estimated cost of \$1,000,000; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor, or his designee, is authorized to execute the City of San Diego Percentage Ground Lease between the City of San Diego and Surf Cup Sports, LLC, which is on file in the Office of the City Clerk as Document No. RR- 310619.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Hilda R. Mendoza
Hilda R. Mendoza
Deputy City Attorney

HRM:meb
June 23, 2016
Or.Dept:READ
Doc. No.: 1311911

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 25 2016.

ELIZABETH S. MALAND
City Clerk

By [Signature]

Deputy City Clerk

Approved: 8/3/16
(date)

[Signature]
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUL 25 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☐	☒	☐	☐
Lorie Zapf	☒	☐	☐	☐
Todd Gloria	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Marti Emerald	☒	☐	☐	☐

Date of final passage AUG 03 2016

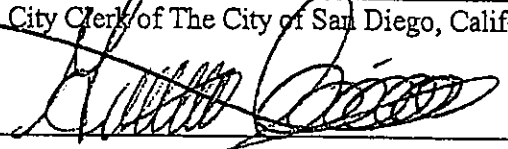
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

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

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 310619

Passed by the Council of The City of San Diego on July 25, 2016, by the following vote:

YEAS: ZAPF, GLORIA, COLE, KERSEY, CATE, SHERMAN ALVAREZ,
EMERALD.
NAYS: LIGHTNER.
NOT PRESENT: NONE.
RECUSED: NONE.

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Jeannette I. Santos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-310619, approved on August 3, 2016. The date of final passage
is August 3, 2016.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: , Deputy

RESOLUTION NUMBER R- 310654

DATE OF FINAL PASSAGE AUG 03 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING RESOLUTION NO. R-310619, WHICH AUTHORIZED THE CITY OF SAN DIEGO PERCENTAGE GROUND LEASE BETWEEN THE CITY OF SAN DIEGO AND SURF CUP SPORTS, LLC, FOR THE LEASE OF THE PROPERTY COMMONLY KNOWN AS THE POLO FIELDS, SO THAT RESOLUTION NO. R-310619 WILL INCLUDE A STATEMENT OF MARKET VALUE OF THE SUBJECT REAL ESTATE.

WHEREAS, on July 25, 2016, the City Council adopted Resolution No. R-310619, which authorized the City of San Diego Percentage Ground Lease between the City of San Diego and Surf Cup Sports, LLC, for the lease of the property commonly known as the Polo Fields; and

WHEREAS, San Diego Municipal Code section 22.0901 requires resolutions authorizing leases of City-owned property to contain a statement of market value of the subject real estate; and

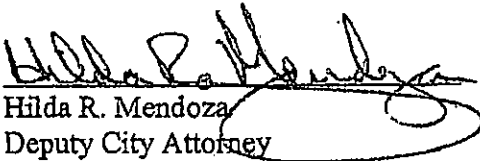
WHEREAS, as a result of an inadvertent error, Resolution No. R-310619 lacked a statement of market value of the subject real estate; and

WHEREAS, on May 16, 2016, an independent fee appraiser provided the City an update to the original Appraisal Report dated May 15, 2015, with a market value of the subject real estate of \$6,400,000, and the updated Appraisal Report was referred to at the public hearing on July 25, 2016; and

WHEREAS, the City Council desires to amend Resolution No. R-310619 to include a statement of market value of the subject real estate; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that Resolution No. R-310619 is amended to include the following statement as the final "WHEREAS" clause of that resolution: "WHEREAS, as appraised by an independent fee appraiser, the market value of the real estate is \$6,400,000."

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Hilda R. Mendoza
Deputy City Attorney

HRM:als
07/28/2016
Or.Dept:READ
Doc. No.: 1328963

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of AUG 02 2016

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

KEVIN L. FAULCONER, Mayor

Approved: 8/3/16
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on AUG 02 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☐	☒	☐	☐
Lorie Zapf	☐	☐	☒	☐
Todd Gloria	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Marti Emerald	☒	☐	☐	☐

Date of final passage AUG 03 2016

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

(Seal)

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

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

By Mary Hernandez, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- **310654**

**EXHIBIT B
TO
CONSENT TO LICENSE AGREEMENT
(Surf Cup Sports, LLC: Soccer Women's Team Co, LLC)**

ACKNOWLEDGMENT OF RECEIPT OF CONSENT TO LICENSE AGREEMENT

(Surf Cup Sports, LLC: Soccer Women's Team Co, LLC)

Soccer Women's Team Co, LLC, a California limited liability company ("**Licensee**"), makes the following acknowledgments, representations, and warranties for the benefit of The City of San Diego, a California municipal corporation ("**Master Landlord**"), as "**Lessor**" under that certain Percentage Ground Lease filed in the Office of the San Diego City Clerk on July 25, 2016, as Document No. RR-310619 ("**Master Lease**"), relating to that certain City-owned real property described in Exhibit "A" attached to the Master Lease ("**Master Premises**"), originally entered into with Surf Cup Sports, LLC, a California limited liability company, as the "**Lessee**":

1. Licensee acknowledges entering into that certain License Agreement, with Lessee, dated February 1, 2022 ("**License Agreement**"), for Lessee to license to Licensee that certain portion of the Master Premises, including installation of a modular Temporary Training Facility consisting of approximately 5,000 to 7,000 rentable square feet and two adjacent full-sized soccer fields, located at 14555 El Camino Real, identified as the "**Licensed Premises**" in the License Agreement, for use as a soccer training facility, together with uses which are ancillary and incidental thereto including but not limited to office and storage uses, locker rooms, showers, changing rooms and restroom and for no other purpose or use.

2. Licensee acknowledges receipt of a copy of that certain Consent to License Agreement (Surf Cup Sports, LLC: Soccer Women's Team Co, LLC), dated March 15, 2023, between Master Landlord and Lessee relating to the License Agreement ("**Consent**").

3. Licensee further acknowledges receipt of a copy of the Master Lease, including all exhibits, prior to entering into the License Agreement, and acknowledges that the License Agreement and Licensee's use of the License Premises is subordinate and subject to the Master Lease and the Corporation Grant Deed dated as of September 19, 1983 and recorded in the San Diego County Recorder's Office on October 24, 1983 granting the fee interest in the Master Premises to the City attached to the Master Lease as Exhibit B.

4. Licensee further acknowledges, represents, and warrants that a true and correct copy of the License Agreement is attached as Exhibit "A" to the Consent.

SOCCER WOMEN'S TEAM CO, LLC,
a California limited liability company

Date: 3/28/2023

DocuSigned by:
Bryan Larsen
108BE84D687D4C4...

CONSENT TO LICENSE AGREEMENT

(Surf Cup Sports, LLC)

THIS CONSENT TO LICENSE AGREEMENT ("**Consent**") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**City**"), and SURF CUP SPORTS, LLC, a California limited liability company ("**Lessee**"), to be effective upon the respective authorized representatives of City and Lessee all signing this Consent and the form of this Consent being approved by the San Diego City Attorney. This Consent is made and entered into in reference to the following recited facts:

RECITALS

- A. City and Surf Cup Sports, LLC, entered into that certain Percentage Ground Lease filed in the Office of the San Diego City Clerk on July 25, 2016, as Document No. RR-310619 ("**Master Lease**"), relating to that certain City-owned real property described in Exhibit "A" attached to the Master Lease ("**Premises**").
- B. Lessee now desires to enter into a License Agreement for a portion of the Premises, including installation of a modular Temporary Training Facility consisting of between 5,000 and 7,000 rentable square feet located at 14555 El Camino Real and two adjacent full-sized soccer fields ("**Licensed Premises**"), to Soccer Women's Team Co, LLC, a California limited liability company ("**Licensee**"), for use as a soccer training facility, together with uses which are ancillary and incidental thereto including but not limited to office and storage uses, locker rooms, showers, changing rooms and restrooms and for no other purpose or use. A true and correct copy of the License Agreement between Lessee and Sublessee (subject to this Consent being effective) is attached to this Consent as Exhibit "A" ("**License Agreement**").
- C. Master Lease Section 4.2 requires Lessee to obtain City's consent prior to entering into any subletting or licensing of the Premises.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, City and Lessee agree as follows:

1. City Consent to License Agreement. Subject to the terms and conditions of this Consent and the Master Lease, City consents to Lessee licensing to Licensee the Licensed Premises. All terms and conditions of the Master Lease shall control and supersede all inconsistent or contrary provisions in the License Agreement.

2. Licensee Assumption of Lessee's Obligations. City's consent to the License Agreement is conditioned upon Licensee's written agreement to assume and perform all obligations of Lessee under the Master Lease applicable to the Licensed Premises. Licensee's failure to perform one or more of these assumed obligations, or to comply with one or more of the applicable use restrictions, shall be a material default and breach under the Master Lease (subject to any and all applicable cure periods and required notices under the Master Lease) and may subject the Master Lease to termination by City.

3. Licensee's Acknowledgment of this Consent. This Consent is conditioned on City's receipt of an "Acknowledgement of Receipt of Consent to License Agreement" in substantially the form of Exhibit "B" attached to this Consent signed by the authorized representative(s) of Licensee.

4. No Effect on Master Lease. Notwithstanding any provision of this Consent to the contrary, this Consent does not release, discharge, or modify any obligation of Lessee under the Master Lease.

5. Subsequent Subletting or Licensing. This Consent does not constitute City's consent to any subsequent assignment, sublease, or license under the Master Lease or relating to the Master Premises and does not relieve Lessee or any person claiming under or through Lessee, including Licensee, of the obligation to obtain City's consent to any future assignment, sublease, or license pursuant to the Master Lease.

6. Processing Fees. Lessee agrees to pay City all applicable processing and/or administrative fee(s) charged by City for processing this Consent.

7. Brokerage Commissions or Finder's Fees. Lessee acknowledges and agrees that City will not be liable for any brokerage commission or finder's fee in connection with the consummation of the License Agreement. Lessee agrees to protect, defend, indemnify, and hold City harmless from any brokerage commission or finder's fee in connection with the consummation of the License Agreement or this Consent, and from any cost or expense (including attorney fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee. The provisions of this Section 7 shall survive the expiration or earlier termination of the Master Lease, the License Agreement, or this Consent.

8. Consideration Under License Agreement: Lessee represents and warrants to City that a true, correct, and complete copy of the License Agreement and Side Letter to the License Agreement is attached to this Consent as Exhibit "A." Lessee further represents and warrants to City that there are no additional payments of rent or any other consideration of any type that have been paid or provided or are payable or to be provided by Licensee or any other person to Lessee under the License Agreement and Side Letter to the License Agreement or in connection with the Licensed Premises.

9. Subordination. The License Agreement is subject to and subordinate to the terms, covenants and conditions of the Master Lease. The License Agreement may only be in effect while the Master Lease is in effect. Nothing in this Consent modifies the expiration date of the Master Lease or License Agreement. Lessee represents and warrants to City that Lessee provided Licensee a true, correct, and complete copy of the Master Lease, including all exhibits, before Licensee entered into the License Agreement.

9.1 Indemnification. Lessee agrees that its duty to indemnify, defend and hold harmless the City pursuant to Section 7.1 of the Master Lease, includes without limitation, all claims asserted or liability established for damages or injuries to any persons or property, including Lessee's or Licensee's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this Consent, approval of this Consent, Licensee's use of the Master Premises, or Lessee's or Licensee's acts or omissions in the performance of their obligations under the Master Lease or the License Agreement, and all expenses of investigation and defending against the same including without limitation attorney fees and costs.

10. Lessee Estoppels. Lessee certifies the following to City as of the date of this Consent:

10.1 Lessee has not assigned its interest in the Master Lease or otherwise transferred its interest in the Master Lease;

10.2 City does not owe Lessee any money or other performance under the Master Lease;

10.3 City is not in default under the Master Lease;

10.4 The Master Lease is in full force and effect, there have been no amendments, modifications, changes, or additions to the Master Lease since its execution; and

10.5 Lessee is not in default or breach under the Master Lease and no event has occurred that would constitute a default or breach under the Master Lease by Lessee, without regard for any requirement to give notice and/or for the passage of time.

11. No Fee Title Encumbrance. Nothing in this Consent or any document referenced in this Consent is intended to create or authorize the creation of any transfer, lien, or encumbrance affecting the fee title to the Master Premises.

[Remainder of page intentionally blank. Signatures appear on the following page.]

**SIGNATURE PAGE
TO
CONSENT TO LICENSE AGREEMENT
(Surf Cup Sports, LLC: Soccer Women's Team Co, LLC)**

IN WITNESS WHEREOF, this Consent is made and entered into by and through the signatures of the respective authorized representative(s) of City and Lessee, as set forth below:

THE CITY OF SAN DIEGO,
a California municipal corporation

Date: Mar 14, 2023

By: 
Penny Maus (Mar 14, 2023 11:31 PDT)
Penny Maus, Director
Department of Real Estate and Airport
Management

Approved as to form on Mar 15, 2023.

MARA W. ELLIOTT
City Attorney

By: 
Kevin Reisch (Mar 15, 2023 16:28 PDT)
Kevin Reisch
Sr. Chief Deputy City Attorney

SURF CUP SPORTS, LLC,
a California limited liability company

Date: 1/5/2023

DocuSigned by:
By: 
ROB HASKELL
Name: _____
Title: Managing Member