

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.

DOCUMENT NO. RR-310619
FILED JUL 25 2016
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

- 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)

San Diego, California 92101

- 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

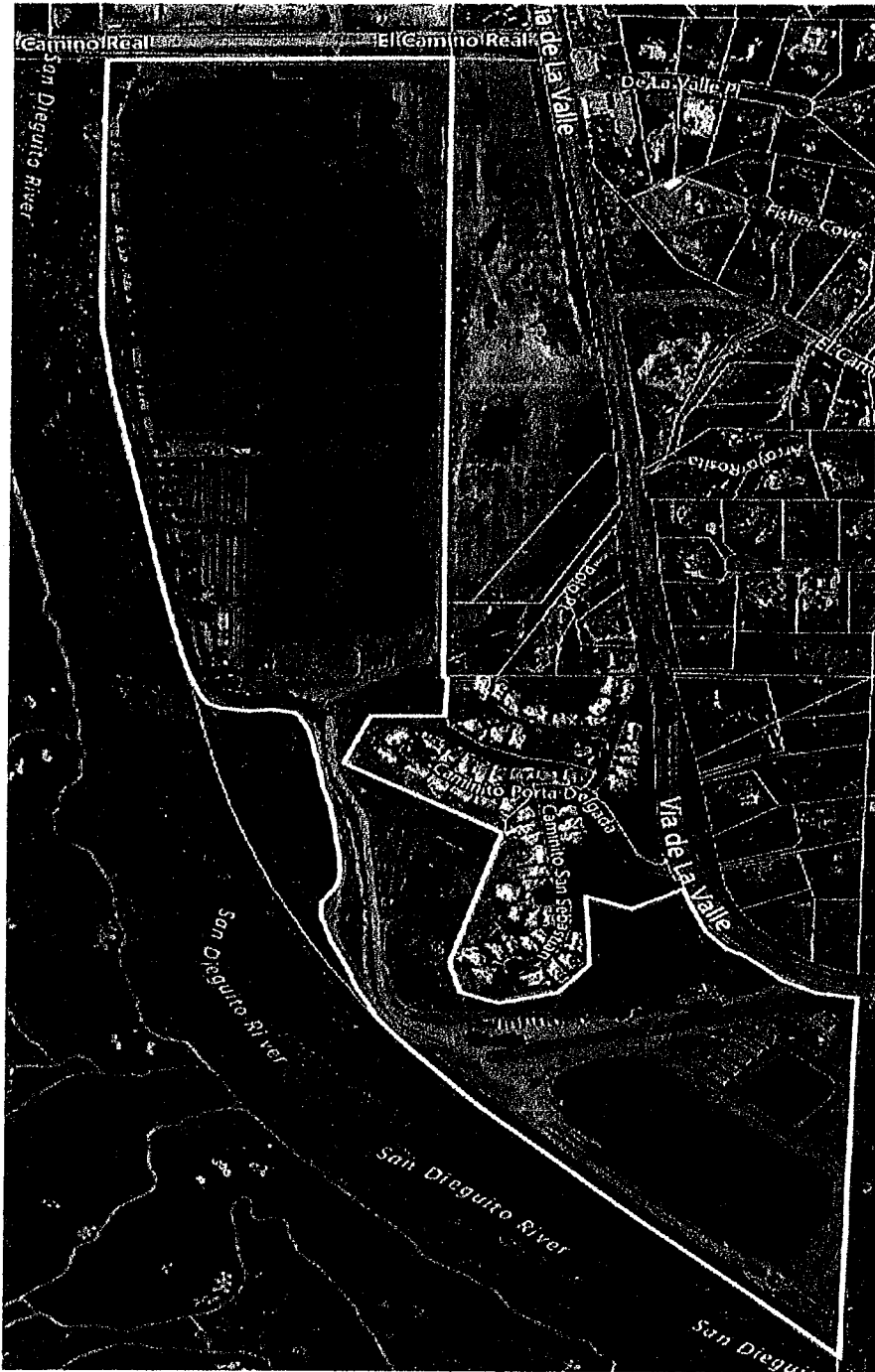
Approved as to form:

JAN I. GOLDSMITH, CITY ATTORNEY

By: Hilda R. Hernandez
Name: Hilda R. Hernandez
Title: Deputy City Attorney
Date: 8/19/16

- 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
Spain Moore's lots
and golf course lot
in Fair View
Country Club
Unit No. 1

CITY CLERK
 202 "C" ST.
 SAN DIEGO CA
 92101

MAIL TAX STATEMENTS TO

NO FEE

1878

882964

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

Corporation Grant Deed

486-073-01

TO 1981 CA 118-145 THIS FORM FURNISHED BY TIGOR TITLE INSURERS

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 areas. City of _____, and
 FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, WATT 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, all 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 thereto duly authorized.
 Dated: September 19, 1983
 WATT INDUSTRIES/SAN DIEGO, INC.
 By: [Signature] Vice President
 By: [Signature] Assistant Secretary

STATE OF CALIFORNIA }
 COUNTY OF San Diego } ss.
 On September 19, 1983 before me, the undersigned, a Notary Public in and for said State, personally appeared Stephen C. Games, 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 therein named, and acknowledged to me that such Corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

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

Title Order No. _____ Escrow or Loan 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. 198666, adopted by the Council
of the City of San Diego on December 13, 1969, and the
same consents to recording thereof by its duly
authorized officer.

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

AFTER RECORDING, MAIL TO CITY CLERK

R- 259343

1880

EXHIBIT "B" 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 19, 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 desiltation 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:

(i) 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 1286.4 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 Grantee 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 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 *Arnie Shores*
ASSISTANT TO THE City Manager

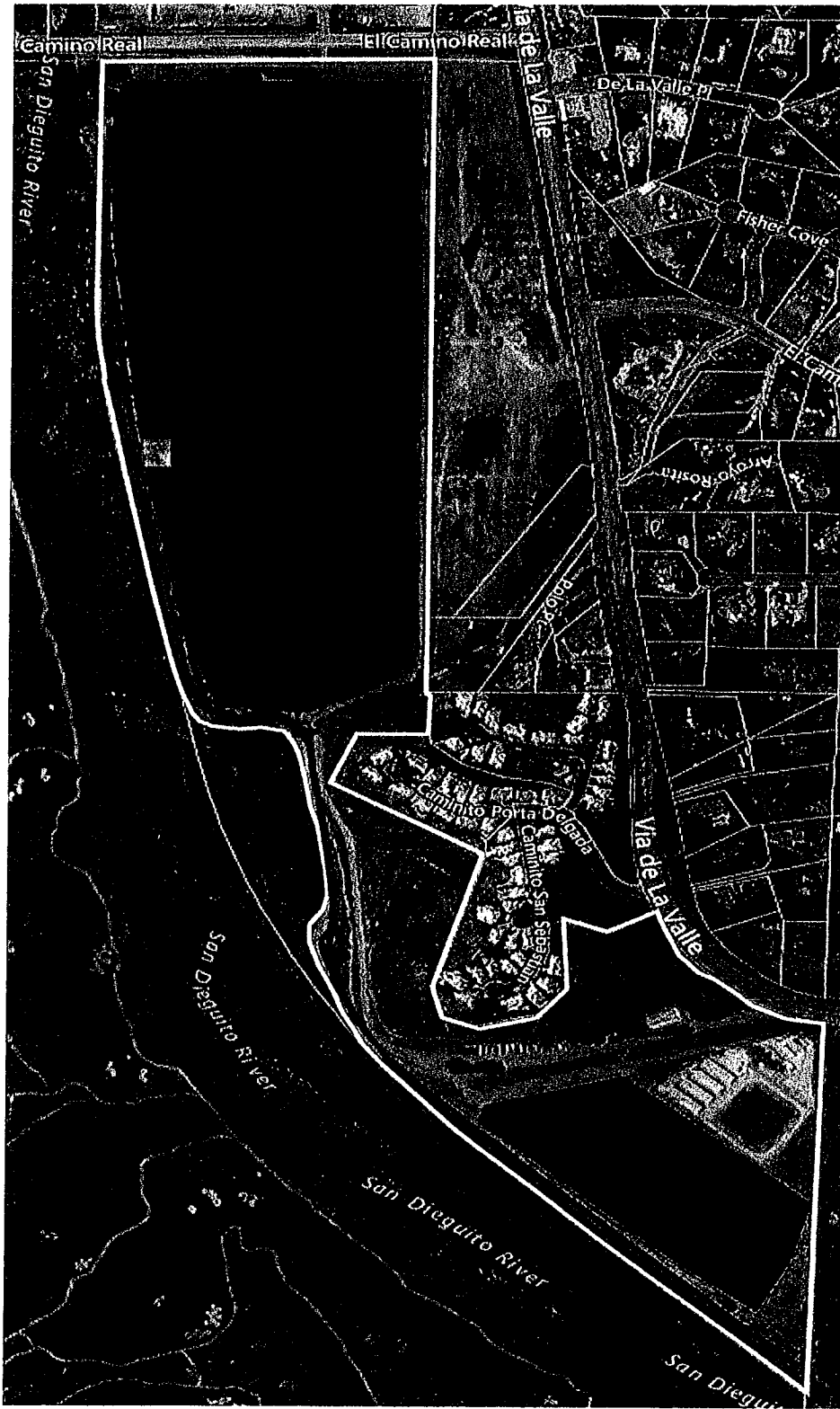
APPROVED as to form and legality this 27 day of September, 1983,

JOHN W. WITT, City Attorney

By *W. Studding*
Deputy

R- 259343

Exhibit C: Site Map



Premises Boundary Line Public Trail Lessee Use Area Passive Use Area

EXHIBIT C: SITE DEVELOPMENT PERMIT NO. 618626

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON SEP 13, 2011
DOCUMENT NUMBER 2011-0473204
Ernest J. Dranenburg, 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 601

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 601

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 23431709

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.

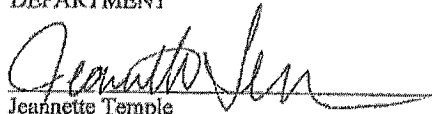
INFORMATION ONLY:

- 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


Jeannette 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.**

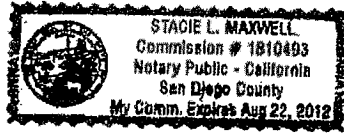
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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]
Signature of Notary Public

Place Notary Seal Above

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: _____

©2007 National Notary Association 1 • 8350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91312-2402 • www.NationalNotary.org Form #69C7 Revisions: Call Toll-Free 1-800-876-6827

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
Sherr Lightner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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.

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

(Seal)

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)

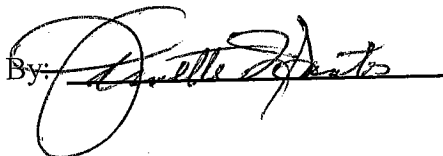
By: Jeannette I. Santos, Deputy

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:  Jeannette I. Santos, 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

Approved: 8/3/16
(date)


KEVIN L. FAULCONER, Mayor

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	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage AUG 02 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**