

**AMENDMENT NO. 3
GROUND LEASE
BETWEEN THE CITY OF SAN LUIS OBISPO
AND THE SAN LUIS OBISPO COUNTY YMCA**

The Ground Lease, dated December 31, 1977, between the City of San Luis Obispo, a municipal corporation, hereinafter referred to as "City" and the San Luis Obispo County YMCA hereinafter referred to as "Lessee" is hereby amended as follows:

WITNESSETH:

WHEREAS, on December 31, 1977, the City and Lessee entered to a Ground Lease. Attached hereto as Attachment A is a copy of the Original Ground Lease; and

WHEREAS, the Original Ground Lease's Article XXII. Miscellaneous Provisions section 22.10 states that modification to the Ground Lease must be made in writing.

WHEREAS, on May 21, 1996, the City and Lessee entered into an Amendment No. 1 to the Ground Lease to amend Article VI Rent in the Original Ground Lease. Attached hereto as Attachment B is a copy of the Amendment No. 1; and

WHEREAS, on December 1, 2000, the City and Lessee entered into an Amendment No. 2 to the Ground Lease to amend Article II - Term of Lease and Extension of Lease Term, Article III - Use and Occupancy and Article V - Rates in the Original Ground Lease. Attached hereto as Attachment C is a copy of the Amendment No. 2; and

WHEREAS, the City and Lessee now seek to further modify Article II - Term of Lease and Extension of Lease Term, Article III - Use and Occupancy, Article IV - Operating Schedule and Article XIII - Insurance in the Original Ground Lease; and

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. Article II – Term of Lease and Extension of Lease Term is hereby amended to read as follows:

ARTICLE II. TERM OF LEASE AND EXTENSIONS OF LEASE TERM

2.02 The TERM "commencement date" as used in this Lease means March 1, 1978. On December 1, 2000, City and Lessee executed Amendment No. 2 to the Ground Lease agreeing to extend the TERM of this to February 28, 2033. The City and Lessee now agree to extend the TERM of this Lease for an additional seventeen (17) calendar years beyond the amended TERM. Accordingly, the TERM shall expire at midnight on February 28, 2050, unless sooner terminated in accordance with the provisions of this Lease.

2. Article III – Use and Occupancy is hereby amended to read as follows:

ARTICLE III. USE AND OCCUPANCY

3.01 During the TERM of this Lease, Lessee shall, at Lessee's sole expense, construct, occupy and operate on the LEASED LAND a public facility which will include, but is not limited to fitness studios, gym space, fitness equipment, locker room and restroom facilities for women, men and families, staff offices, a child watch area and other programs and activities that further the interests of the Lessee. Furthermore, Lessee may use the facilities for programs related to health and fitness, child watch, youth-senior programs, family programs, and staff development/training. Lessee shall have the right to provide facilities if desired for a snack bar and alcoholic beverages for on-premises, event consumption only. The plans and specifications for all the above-mentioned facilities must be submitted for approval as required in the usual permit procedures of the City before construction may begin.

3. Article IV – Operating Schedule is hereby amended to read as follows:

ARTICLE IV. OPERATING SCHEDULE

4.03 Lessee's facilities may be opened to the public from 5:00 A.M. - 10:00 P.M on weekdays and 7:00 A.M. - 9:00 P.M. Saturdays and Sundays. Lessee will maintain a schedule of weekly class offerings and child watch. Lessee may adjust and expand its opening and closing times as Lessee's needs requires, in Lessee's sole discretion.

4. Article XIII – Insurance is hereby amended to read as follows:

ARTICLE XIII. INSURANCE

13.01 If the Leased Premises or any other part of the Leased Premises is damaged by fire or other casualty resulting from any act or negligence of Lessee or any of Lessee 's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Lessee shall be responsible for the costs of repair not covered by insurance.

Without limiting Lessee's indemnification of City, and prior to commencement of Ground Lease, Lessee shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below in a form satisfactory to Agency.

- a. General liability insurance. Lessee shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. If alcohol is sold during the permitted activity, coverage must include full liquor liability. Agency, its officers, officials, agents, and employees shall be included as additional insureds on the policy.
- b. Property insurance. Upon commencement of construction of Lessee improvements and betterments, or installation of equipment, with approval of City, Lessee shall obtain and maintain insurance on Lessee's buildings, improvements, and betterments. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy.
- c. Proof of insurance. Lessee shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's risk manager prior to commencement of performance. Current certification of insurance shall be kept on file with City during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- d. Duration of coverage. Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Lessee, his agents, representatives, employees, or subconsultants.
- e. Primary/noncontributing. Coverages provided by Lessee shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

- f. Agency's rights of enforcement. In the event any policy of insurance required under this Ground Lease does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by Lessee or City will withhold amounts sufficient to pay premium from Lessee payments. In the alternative, City may cancel this Agreement.
- g. Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
- h. Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Lessee or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Lessee hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants.
- i. Enforcement of contract provisions (non estoppel). Lessee acknowledges and agrees that any actual or alleged failure on the part of the City to inform Lessee of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.
- j. Requirements not limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Lessee maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Lessee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- k. Notice of cancellation. If any required insurance coverage is subject to cancellation due to nonrenewal or nonpayment, the Lessee will contact the City in writing to coordinate and secure continuous coverage.
- l. Additional insured status. General liability policies shall provide, or be endorsed to provide, that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall include endorsement covering liabilities arising out of the Lessee 's "operations" in the leased space. This provision shall also apply to any excess/umbrella liability policies.
- m. Prohibition of undisclosed coverage limitations. None of the coverages required herein will comply with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
- n. Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Lessee insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

- o. Pass through clause. Lessee agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Lessee, provide the same minimum insurance coverage and endorsements required of Lessee. Lessee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Lessee agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.
- p. Agency's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Lessee ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Lessee, the City and Lessee may renegotiate Lessee's compensation.
- q. Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.
- r. Timely notice of claims. Lessee shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Lessee's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.
- s. Additional insurance. Lessee shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection. Lessee's personal property, fixtures, equipment, inventory and vehicles are not insured by City against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the 29th day of November, 2021.

CITY OF SAN LUIS OBISPO
A Municipal Corporation

DocuSigned by:

A5990BABC9CA464...
Mayor Erica A. Stewart

LESSEE:

DocuSigned by:

E6F325AE0D014EC...
By: Monica Grant
Its: Chief Executive Officer

ATTEST:

DocuSigned by:

B98BADBF9C78436...
Teresa Purrington, City Clerk

DocuSigned by:

1225CB4AD9EE4FB...
By: Cheryl Cuming
Its: Board Secretary

APPROVED AS TO FORM:

DocuSigned by:

3390462751BC452...
J. Christine Dietrick, City Attorney

for

AMENDMENT NO. 2

GROUND LEASE
BETWEEN THE CITY OF SAN LUIS OBISPO
AND THE SAN LUIS OBISPO COUNTY YMCA

The Ground Lease, dated December 31, 1977, between the CITY OF SAN LUIS OBISPO, a municipal corporation, hereinafter referred to as "CITY" and the SAN LUIS OBISPO COUNTY YMCA hereinafter referred to as "TENANT" is hereby amended as follows:

ARTICLE II. TERM OF LEASE AND EXTENSIONS OF LEASE TERM

2.02 The term "commencement date" as used in this Lease means March 1, 1978. CITY and TENANT agree to extend the TERM of this Lease for an additional five (5) calendar years beyond the original term set forth in Section 2.01, above. Accordingly, the TERM shall expire at midnight on February 28, 2033, unless sooner terminated in accordance with the provisions of this Lease.

ARTICLE III. USE AND OCCUPANCY.

3.01 During the TERM of this Lease, TENANT shall, at TENANT'S sole expense, construct, occupy and operate on the LEASED LAND a public which will include four-walled racquetball/handball courts, men's and women's locker facilities, and other fitness facilities. TENANT may use the facilities for programs related to health and fitness, child care, youth, family and community development. TENANT shall have the right to provide facilities for a snack bar and alcoholic beverages for on-premises consumption only. The plans and specifications for all the above-mentioned facilities must be submitted for approval as required in the usual permit procedures of the CITY OF SAN LUIS OBISPO before construction may begin.

3.04 There shall be no discrimination against or segregation of any person or group of persons on account of race, religion, sex, sexual orientation, national origin, age, physical, mental or economic status in the construction, operation, lease, sublease, use, occupancy, tenure or enjoyment of the LEASED LAND or the improvements thereon, or any part thereof, and TENANT, or any discrimination or segregation with reference to the construction of the improvements, or the selection, location, number, use or occupancy of employees, contractors, subcontractors, laborers or materialmen, tenants, lessees, subtenants, sublessees, invitees or vendees of the LEASED LAND or the improvements thereon, or any part thereof.

TENANT shall not restrict access or use of the LEASED LAND or the improvements thereon, or any portion thereof, on the basis of race, religion, sex, sexual orientation, national origin, age, physical, mental or economic status of any person.

ARTICLE V. RATES.

5.02 All rates and charges to patrons served on or from the leased premises shall be reasonable and consistent with the quality of the services and facilities offered.

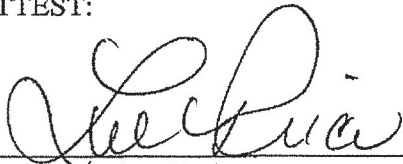
5.03 TENANT shall have sole authority to establish the rate structure for court play so long as any rate charged is reasonable. TENANT shall have sole authority to establish rate and price structures for its other facilities and services.

5.04 TENANT may charge a reasonable initiation, membership or similar fee for the use of TENANT'S facilities.

All other terms and conditions of the Ground Lease remain the same.

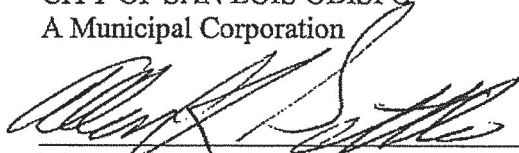
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the 15th day of December, 2000.

ATTEST:



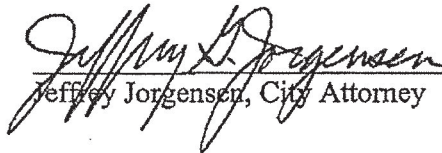
Lee Price, City Clerk

CITY OF SAN LUIS OBISPO
A Municipal Corporation



Mayor Allen Settle

APPROVED AS TO FORM:



Jeffrey Jorgensen, City Attorney

LESSEE:



Karen Aydelott, YMCA

AMENDMENT NO. 1

GROUND LEASE
BETWEEN THE CITY OF SAN LUIS OBISPO
AND THE SAN LUIS OBISPO COUNTY YMCA
FOR A PORTION OF JOHNSON PARK

The AGREEMENT, dated December 31, 1977, between the CITY OF SAN LUIS OBISPO, a municipal corporation, hereinafter referred to as "City" and the SAN LUIS OBISPO COUNTY YMCA hereinafter referred to as "LESSEE" is hereby amended as follows:

ARTICLE VI. RENT.

6.01 Basic Minimum Annual Rent. TENANT shall pay the City the sum of \$1.00 per year for this ground lease.

(ARTICLE VI SECTIONS 6.02 THROUGH 6.06 HAVE BEEN DELETED.)

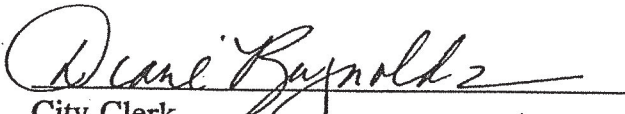
All other terms and conditions of the AGREEMENT remain the same.

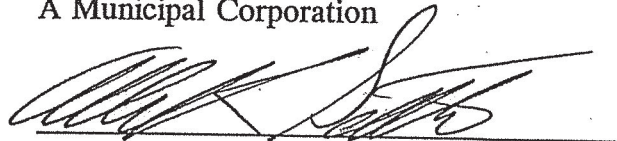
Both CITY and LESSEE do covenant that each individual executing this addendum on behalf of each party is a person duly authorized and empowered to execute Agreements for such party.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the 21 day of May, 1996.

ATTEST:

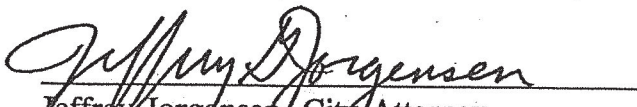
CITY OF SAN LUIS OBISPO
A Municipal Corporation

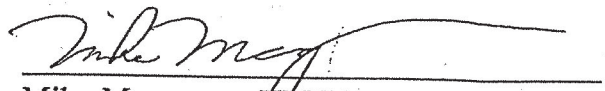

City Clerk,
by Diane Reynolds, City Clerk Secretary


Allen Settle, Mayor

APPROVED AS TO FORM:

LESSEE:


Jeffrey Jorgensen, City Attorney


Mike Mogensen, YMCA

GROUND LEASE

CITY OF SAN LUIS OBISPO

AND

WILLIAM F. BURKE

DENNIS KUTTLER

RICHARD H. BEGUELIN

THIS GROUND LEASE HAS BEEN PREPARED SOLELY FOR THE CITY AND STAFF OF SAN LUIS OBISPO, CALIFORNIA. THE INFORMATION CONTAINED HEREIN IS PROPRIETARY AND THE REPRODUCTION OR DISTRIBUTION OF ANY OF THE LEASE ARTICLES AND/OR SUBSECTIONS, IN WHOLE OR IN PART, OR THE DIVULGENCE OF ANY OF ITS CONTENTS PRIOR TO FINALIZATION AND EXECUTION OF SAID GROUND LEASE WITHOUT THE PRIOR CONSENT OF WILLIAM F. BURKE, DENNIS KUTTLER AND RICHARD H. BEGUELIN IS PROHIBITED.

THE DATE OF THIS GROUND LEASE IS December 31, 1977.

I N D E X

	<u>Page</u>
ARTICLE I. LEASED PREMISES	1
ARTICLE II. TERM OF LEASE AND EXTENSIONS OF LEASE TERM	1
ARTICLE III. USE AND OCCUPANCY	2
ARTICLE IV. OPERATING SCHEDULE	3
ARTICLE V. RATES	3
ARTICLE VI. RENT	4
ARTICLE VII. UTILITIES AND TAXES	5
ARTICLE VIII. CONSTRUCTION BY TENANT AND CITY	6
ARTICLE IX. LIABILITY, TENANT'S RIGHT TO MORTGAGE LEASEHOLD	8
ARTICLE X. REPAIRS AND RESTORATION	8
ARTICLE XI. MECHANICS LIENS	10
ARTICLE XII. CONDEMNATION	11
ARTICLE XIII. INSURANCE	13
ARTICLE XIV. ASSIGNMENTS AND SUBLETTING	17
ARTICLE XV. DEFAULT AND REMEDIES	19
ARTICLE XVI. SURRENDER AND REMOVAL	20
ARTICLE XVII. CITY'S PROTECTIVE PROVISION	20
ARTICLE XVIII. RIGHT OF FIRST REFUSAL TO PURCHASE LEASED LAND	21
ARTICLE XIX. WARRANTY OF TITLE	21
ARTICLE XX. QUIET ENJOYMENT	21
ARTICLE XXI. HOLD HARMLESS	21
ARTICLE XXII. MISCELLANEOUS PROVISIONS	22

GROUND LEASE

This Ground Lease is made and entered into by and between the CITY OF SAN LUIS OBISPO, a chartered city of the State of California, hereinafter referred to as "CITY", and WILLIAM F. BURKE, DENNIS KUTTLER and RICHARD H. BEGUELIN, referred to as "TENANT".

ARTICLE I. LEASED PREMISES.

1.01 CITY leases to TENANT, and TENANT hires from CITY, for the term stated and at the rental and upon the conditions contained in this Lease, approximately 12,000 square feet of unimproved real property located in an area commonly known as Johnson's Playground, near Southwood Drive, described in Exhibit "A", attached hereto and made a part of this Lease. Said real property is hereinafter referred to as "LEASED LAND".

ARTICLE II. TERM OF LEASE AND EXTENSIONS OF LEASE TERM.

2.01 The term of this Lease hereinafter referred to as "TERM", shall be for a period of fifty (50) calendar years, commencing on the date a building permit is granted and issued permitting the construction of the improvements described in ARTICLE III, and expiring, unless sooner terminated, at midnight on the last day of the fiftieth year.

2.02 The term "commencement date" as used in this Lease shall be construed to mean the date that TENANT or its contractor obtains all building permits from the City of San Luis Obispo in connection with the TENANT's construction of certain improvements on the LEASED LAND as described in Section 3.01 or March 1, 1978, whichever is earlier; provided, however, that TENANT shall have the right to terminate this Lease without further obligation prior to the commencement date by delivering written notification of such termination to the office of the City Manager of CITY.

2.03 The herein Lease shall terminate without further notice upon the expiration of the TERM specified, and any holding over by TENANT after the expiration of said TERM shall not constitute a renewal hereof or give TENANT any rights hereunder in or to the LEASED LAND or to any improvements constructed by TENANT on the LEASED LAND.

ARTICLE III. USE AND OCCUPANCY.

3.01 During the TERM of this Lease, TENANT shall, at TENANT's sole expense, construct, occupy and operate on the LEASED LAND an indoor public racquetball/handball facility which will include nine four-walled racquetball/handball courts, a pro shop selling sporting goods and supplies, men's and women's locker facilities, one or more saunas, a jacuzzi and a partially glass-walled observation court. TENANT shall have the right to provide facilities for a snack bar and alcoholic beverages for on-premises consumption only. The plans and specifications for all the above-mentioned facilities must be submitted for approval as required in the usual permit procedures of the CITY OF SAN LUIS OBISPO before construction may begin.

3.02A During the TERM, the LEASED LAND and all improvements constructed and maintained thereon shall be used by TENANT for the use specified and for no other use or purpose without prior written approval of CITY. TENANT shall not use, or permit any other person to use the premises or any part thereof for any other use, or in any manner, or for any purpose tending to injure the reputation thereof or for any improper or offensive use, or to constitute a nuisance; and TENANT shall at all times during said TERM conform to, and cause all persons using or occupying any part of said premises, to comply with all public laws, ordinances, and regulations now or thereafter applicable thereto and to all operations thereon.

3.02B During the first twenty-six (26) years of the term of this lease, CITY hereby agrees not to utilize the services of any city department to organize, conduct or promote racquetball/handball services or facilities in an indoor area or location other than in conjunction with TENANT's BUILDING PROJECT without the mutual consent of CITY and TENANT, unless CITY determines after hearing evidence on the issue, that additional facilities will have no substantial impact on the ongoing viability of TENANT's facility. This provision shall not, however, prevent the CITY from processing any application for the construction of a private racquetball/handball facility in the CITY's role as an approving agency, nor prevent the CITY from leasing or selling CITY property to a private entity for the purpose of establishing a racquetball/handball facility.

3.03A TENANT covenants and agrees to indemnify and save CITY harmless from any penalties, damages, or charges imposed for any violation of any and all laws, ordinances, and regulations applicable to the use and occupancy of the LEASED LAND or any improvements thereon, whether occasioned by ignorance, inadvertence, neglect, omission, or willful act of TENANT or any person upon the LEASED LAND or on any improvements thereon, by license or invitation of TENANT or holding or occupying the same or any part thereof under or by right of TENANT.

3.03B If the imposition of any such law, ordinance or regulation shall be deemed by TENANT to be improper, illegal, excessive, or unreasonable TENANT may, at its sole cost and expense, dispute and contest the same in any manner provided by law. TENANT, upon commencing such contest, shall furnish to CITY a document guaranteeing that CITY and the CITY's interest in the LEASED LAND shall be saved harmless from any penalty, damage, charge or claim resulting from said contest.

ARTICLE IV. OPERATING SCHEDULE.

4.01 Beginning on the date TENANT's building is first opened for use, all of the facilities and services specified in ARTICLE III, paragraph 3.01 herein, shall be provided.

4.02 TENANT shall operate the facility and LEASED LAND in a manner compatible with safe, comfortable, sanitary, efficient, and pleasant public use.

4.03 TENANT's facilities may be opened to the public from 6:00 A.M. to 11:00 P.M. on weekdays and 7:00 A.M. to 9:00 P.M. on Saturdays and Sundays. Reservations may be made twenty-four (24) hours in advance, or in the event the court or courts are not reserved or occupied, on a first-come-first-served basis.

ARTICLE V. RATES.

5.01 TENANT shall at all times maintain and post a schedule of the prices charged for court usage supplied to the public on or from the leased premises whether the same are supplied by TENANT or by sublessees, assignees, concessionaires, permittees, or licensees and shall make said schedule available to CITY upon CITY's written request.

5.02 All rates and charges to patrons served on or from the leased premises shall be reasonable and consistent with the quality of the services and facilities offered.

The maximum allowable per person time rate for court use that may be charged by TENANT shall not exceed the average maximum per person time rate for court use, rounded up to the nearest one-quarter dollar, of not less than three comparable racquetball/handball facilities, available to the general public, which facilities shall be mutually designated and agreed to by CITY and TENANT. The average maximum rate that may be charged by TENANT shall be determined in this manner, and each subsequent change in said maximum rate, which rate shall be reviewed annually, shall be determined in the same manner with the comparable facilities to be chosen anew by the parties for each such review.

In the event the parties cannot at any time agree on the designation of not less than three comparable facilities, then each party shall choose one neutral third person to act as an arbitrator in the matter; the two neutral third persons so chosen shall meet and pick a third neutral person, and the three persons thus chosen shall designate not less than three comparable facilities.

5.03 TENANT shall have sole authority to establish the rate structure for court play, so long as any rate charged for court use does not exceed the maximum rate determined under the provisions of paragraph 5.02. TENANT shall have sole authority to establish rate and price structures for its other facilities and services.

5.04 TENANT may not have and may not charge an initiation, membership or similar fee for the use of TENANT's facilities. TENANT may, however, offer a recreation package allowing high frequency patrons of TENANT's facilities to purchase court time at a lower rate. TENANT and the CITY OF SAN LUIS OBISPO may also schedule league play and tournament programs, classes, clinics and other similar activities. Provided, however, at all times three racquetball/handball courts will be available for general public use not related to the tournament, class or league play.

ARTICLE VI. RENT.

6.01 Basic Minimum Annual Rent. TENANT, during the first seven years of the lease term, shall pay to CITY as rental for the use and occupancy of the LEASED LAND and improvements adjacent thereto which are furnished either in whole or in part by the CITY and/or maintained by the CITY, a fixed minimum annual rent of \$2,400.00; provided, however, that for the first two (2) years of the TERM, TENANT shall pay a fixed annual rent of \$1.00 per year. The fixed minimum annual rent shall be paid to CITY in advance in twelve equal monthly installments on or before the fifteenth day of each full month during the terms of this lease; provided, however, that the fixed minimum annual rent for the first two (2) years shall be paid within fifteen days after commencement of the lease TERM.

6.02 Adjustment of Fixed Minimum Annual Rent. At the beginning of the eighth year and of each five-year period thereafter, the fixed minimum annual rent shall be adjusted for the next ensuing five-year period to an amount equal to seventy-five (75%) percent of the average of the total of all yearly rent paid during the previous five-year period; provided, however, in no event shall

such adjusted fixed minimum annual rent ever be less than the fixed minimum annual rent for the third year of the lease TERM.

6.03 Annual Percentage Rent. In addition to the fixed minimum annual rent, TENANT shall pay to CITY at the time and in the manner hereinafter specified, an annual percentage rental in an amount equal to two (2%) percent of the amount of TENANT's gross annual receipts for court rentals less the amount of the fixed annual minimum rent. Should the sum obtained by taking two (2%) percent of TENANT's gross annual receipts for court rentals in any year be the same or less than the fixed annual rent, then, in that year, no annual percentage rental shall be due from TENANT to CITY. TENANT shall not pay any annual percentage rental to CITY for the first two years of the TERM.

6.04 TENANT's gross annual receipts for court rentals shall include all receipts for court use received by TENANT, but shall not include any sales or entertainment tax imposed by the State or City and separately stated and separately collected by TENANT from patron.

6.05 The annual percentage rental due hereunder shall be paid by TENANT to CITY within thirty (30) days following each annual anniversary date of the commencement of the lease TERM.

6.06 TENANT shall keep true and complete records and accounts of all receipts for court rentals and shall give CITY access, during reasonable hours, to such records and accounts.

ARTICLE VII. UTILITIES AND TAXES.

7.01 TENANT shall pay for all water, gas, heat, light, power, telephone service, rubbish removal, janitorial service, and all other utility services of any kind and nature whatsoever supplied to and used on the LEASED LAND by TENANT.

7.02 TENANT shall pay and discharge all taxes, general and special assessments, and other charges of every description which during the term of the Lease shall be levied on or assessed against the LEASED LAND and all interest therein including TENANT's leasehold interest and all improvements and other property thereon, whether belonging to CITY or TENANT, or as to which either of them may become liable.

7.03 Subject to TENANT's right to pay taxes in installments, as provided, below, all payments to be made by TENANT pursuant to this Article shall be made not later than ten (10) days before any fine penalty, interest, or cost may be added thereto for nonpayment.

TENANT shall furnish the CITY, within five (5) days after the date of payment, as provided in this Article, with official receipts or photocopies thereof, evidencing that the tax has been paid.

7.04 If by any law any such tax is payable or may at the option of the taxpayer be paid in installments, TENANT may pay the tax, together with any accrued interest on the unpaid balance of the tax, in installments as they become due.

7.05 TENANT shall have the right to contest the amount or validity of any such assessment by appropriate legal proceedings, but this right shall not be deemed or construed in any way as relieving or modifying TENANT's duty and obligation to pay any such imposition at the time and in the manner as in this Article provided. CITY may, upon request, join in any such proceeding if TENANT determines that it shall be necessary or convenient for CITY to do so in order for TENANT to prosecute properly such proceedings, but CITY shall not be subject to any liability for the payment of any costs or expenses in connection with any such proceeding brought by TENANT. CITY shall not be required to join in any such proceeding if in the opinion of the City Council after advice of the City Attorney, it would be improper or inappropriate for it to do so. TENANT hereby covenants to indemnify and save CITY harmless from any such costs and expenses of any such proceeding. TENANT upon commencing such contest, shall deliver to CITY a good and sufficient surety bond guaranteeing payment of any taxes, penalties and interest thereon, found due as a result of such contest.

7.06 During the TERM, TENANT shall pay, prior to delinquency, all taxes assessed against and levied upon fixtures, furnishings, equipment and all other personal property of TENANT contained in, on, or about the LEASED LAND. TENANT shall protect and hold harmless CITY and the LEASED LAND and all improvements in, on or about the same from all liability for any and all such taxes, assessments, and charges, together with any interest, penalty, or other sums thereon imposed, and from any sale or other proceeding to enforce payment thereof.

ARTICLE VII. CONSTRUCTION BY TENANT AND CITY.

8.01 Improvements to be Constructed by TENANT. Tenant shall, at TENANT's sole cost, construct the improvements identified in paragraph 3.01, hereinafter referred to as the "BUILDING PROJECT", on the LEASED LAND. Improvements to be constructed by TENANT shall include not more than approximately 12,000 square feet of building

floor. TENANT shall, at TENANT's sole cost and expense, pay for parking and paving improvements for thirty-two (32) parking spaces, including curbs, striping, lighting and entry and exit walkways to the BUILDING PROJECT, all soil tests necessary in conjunction with the BUILDING PROJECT on the LEASED LAND, construction permit fees for the BUILDING PROJECT, preparation of the building pad and facilities necessary to supply water, sewerage, gas, electricity, telephone and other utility hook-ups to the BUILDING PROJECT, except as provided for in paragraph 8.02. TENANT and the patrons of the TENANT's facility shall have the right to exclusive use of sixteen (16) parking spaces.

8.02 Improvements to be Constructed by CITY. CITY shall, at CITY's sole cost, provide the following improvements, costs and expenses in conjunction with TENANT's BUILDING PROJECT:

(1) All necessary curbs, gutters, sidewalks, driveway approaches and paveouts along Southwood Drive; all necessary landscaping and irrigation facilities in the parking area, along Southwood Drive, and on the exterior portions of the LEASED LAND; all necessary connection fees, if any, for water and sewer service to TENANT's facility.

(2) All engineering, survey and design work necessary for the construction of the parking area, including, but not limited to, working drawings and plans to be utilized by TENANT in the construction of the parking area as set forth in paragraph 8.01. An easement or other ingress and egress routes onto the LEASED LAND and a policy of title insurance showing title vested in the CITY subject to matters of record.

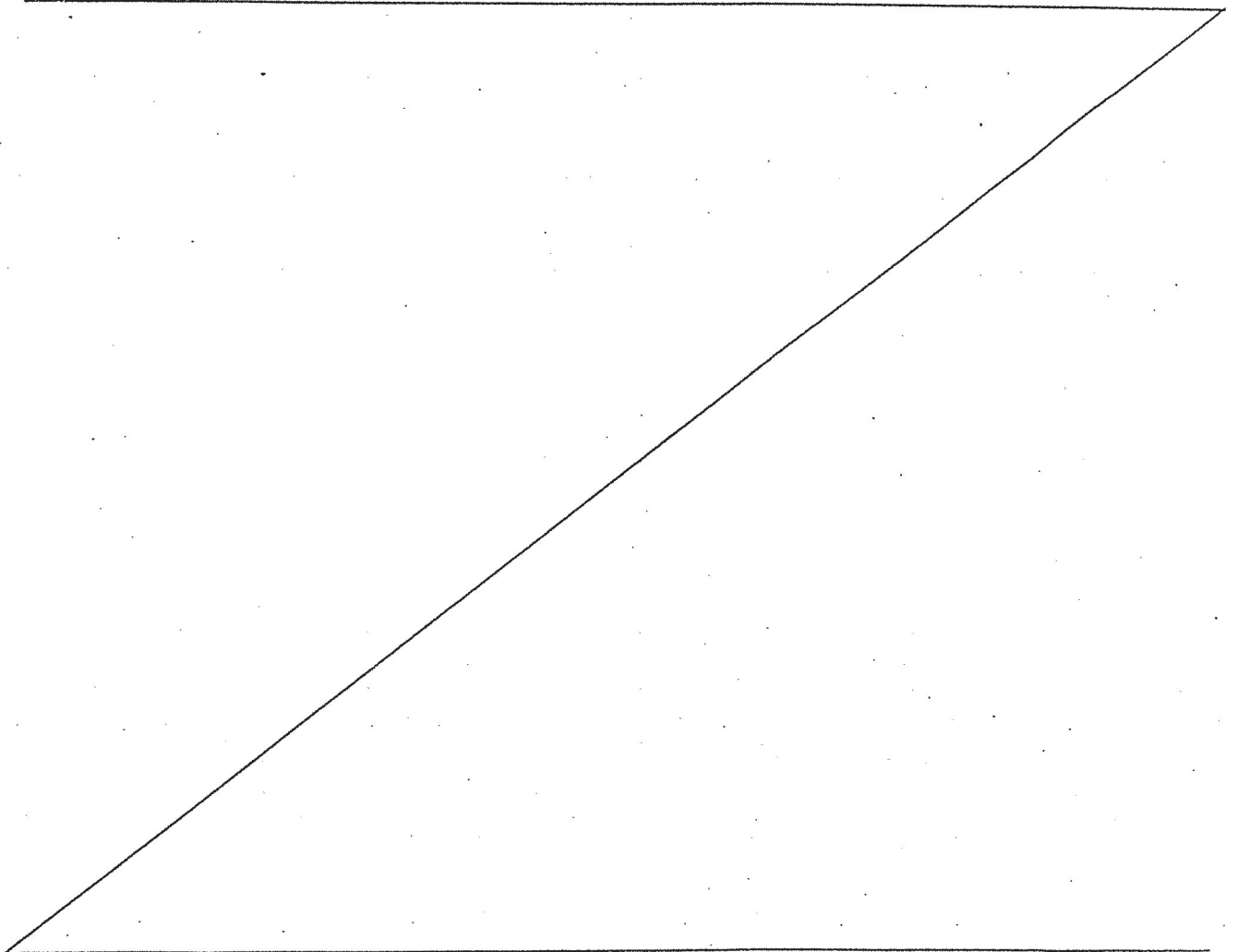
8.03 TENANT, at TENANT's own expense, and throughout the term of this lease, shall maintain, replace or repair promptly in good and workmanlike manner, and using adequate materials, the parking area, ingress and egress routes, landscaping and irrigation facilities on the exterior portions of the LEASED LAND, and the improvements constructed by TENANT.

8.04 Approvals and Permits Allowing Construction Required. TENANT, at its sole cost and expense, shall apply for and obtain all necessary construction permits and approvals required by City, State or Federal departments and agencies in order to construct the BUILDING PROJECT. TENANT shall, in the actual construction of said BUILDING

PROJECT, comply with all such governmental requirements pertaining thereto. CITY and TENANT shall share equally the costs and expenses, if any, of an Environmental Impact Report (EIR) required for the BUILDING PROJECT.

8.05(a) Construction of the BUILDING PROJECT shall continue expeditiously, and shall be completed and the BUILDING PROJECT ready for occupancy and use within one year after obtaining all building permits therefor.

8.05(b) Such time for completion shall be extended for so long as TENANT shall be prevented from completing the BUILDING PROJECT by interference or delays beyond the reasonable control of TENANT.



8.05(c) After obtaining all necessary permits, and prior to the start of construction, TENANT shall execute and cause to be implemented the Deposit Agreement which is identified as Exhibit "B" and attached hereto and made a part hereof. The purpose of the Deposit Agreement shall be to insure faithful and full performance by TENANT of all of the terms, conditions, covenants and agreements set forth in this Article.

8.05(d) All improvements constructed on the LEASED LAND by TENANT shall be owned by TENANT until expiration or sooner termination of this Lease, at which time they shall become the sole property of the CITY.

ARTICLE IX. LIABILITY, TENANT'S RIGHT TO MORTGAGE LEASEHOLD.

9.01 TENANT shall have the right at any time and from time to time to subject the leasehold estate or any or all improvements to one or more mortgages as security for a loan or loans or other obligations of TENANT provided that:

A. The mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions and restrictions stated in this Lease and to all rights and interests of CITY.

B. TENANT shall give CITY prior notice of any such mortgage, and shall accompany the notice with a true copy of the note and mortgage.

C. TENANT shall provide in any mortgage that if TENANT defaults under the term of any leasehold mortgage, CITY shall have the right to purchase TENANT's obligation under said mortgage without the payment of any prepayment penalty or other penalties. Should CITY purchase TENANT's obligations in accordance with this paragraph, CITY shall then become the owner of the BUILDING PROJECT and all TENANT's interest therein and the herein Lease shall be terminated.

ARTICLE X. REPAIRS AND RESTORATION.

10.01(a) CITY shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the LEASED LAND, or any part thereof, during the term of this Lease, except as provided in paragraph 8.02.

10.01(b) At all times during the term, TENANT shall, at its own costs and expense, keep and maintain said LEASED LAND and all facilities appurtenant thereto in good order and repair and safe condition, and the whole of the LEASED LAND and improvements in a clean, sanitary, orderly and attractive condition. TENANT shall make any and all additions to or alterations or repairs in and about the LEASED LAND and the improvements which may be required by and shall otherwise observe and comply with all governmental laws, ordinances, and regulations now or hereafter applicable to the LEASED LAND; and TENANT shall indemnify and save harmless CITY against all actions, claims, and damages by reason of TENANT's failure to comply with and perform the provisions of this Section.

10.02(a) If during the term hereof any building or improvement erected by TENANT on the LEASED LAND, or any part thereof, shall be damaged or destroyed by fire or other casualty, TENANT shall, at its cost and expense, repair or restore the same according to the original plans thereof or to such modified plans as shall be previously approved in writing by the City Council and TENANT shall pay rent on said LEASED LAND on a pro rata basis for such portion of TENANT's building project as may be used by TENANT for and during the term the said BUILDING PROJECT was rendered unusable by reason of any of the causes hereinabove specified and until such time as the same are placed in a usable condition by TENANT as hereinafter described.

10.02(b) Such work of repair or restoration shall be commenced within ninety (90) days after the damage or loss occurs and shall be completed with due diligence but not longer than one (1) year after such work is commenced, and such work shall be otherwise done in accordance with the requirements of Article VIII.

10.02(c) All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration, and if such insurance proceeds shall be insufficient for such purpose, TENANT shall make up the deficiency out of its own funds.

10.02(d) Should TENANT fail or refuse to make the repairs or restoration as hereinabove provided, or if the authorized encumbrancer of TENANT, if any, after thirty (30) days' written notice by CITY shall fail or refuse to undertake and complete such work on behalf of TENANT, then in either of such events such failure or refusal shall constitute a default under the covenants and conditions hereof and all insurance proceeds so collected shall forthwith be paid over to and retained by CITY on its own account and CITY may, but shall not be required to, use and apply the same for and to repair or restoration

of the LEASED LAND and any improvements thereon and CITY may also contemporaneously, at its option, terminate this Lease.

10.03(a) Notwithstanding anything to the contrary contained in Section 10.02, if during the last five (5) years of the term any building erected on the LEASED LAND shall be damaged by fire or other casualty and if the cost of repairing or restoring the same shall exceed the insurance proceeds payable for such damage, then TENANT shall have the option, to be exercised within thirty (30) days after such event, (1) to repair or restore the building, (2) subject to the prior written consent of the authorized encumbrancer, if any, to terminate this Lease by written notice to CITY.

10.03(b) Such option to terminate shall be conditioned as follows:

1. TENANT shall, at its expense, within ninety (90) days after the damage occurs, tear down and remove all parts of the building and other improvements then remaining and the debris resulting from such fire or other casualty and otherwise clean-up and restore the LEASED LAND, as far as practicable, to its original condition, free and clear of liens; and

2. Within ten (10) days after the completion of the clean-up and restoration TENANT shall surrender to CITY possession of the LEASED LAND, cleaned up and restored, and shall pay to CITY TENANT's share of all unpaid taxes and assessments that then shall have become a lien upon the premises; and

3. Thereupon but not before, said Lease shall terminate.

10.03(c) The insurance proceeds collected and paid for such damage, to the extent available for such purposes, shall be applied to the cost of such clean-up and restoration, and the unexpended balance, if any, shall be retained, until the statutory period of filing liens after the completion of the work of clean-up and restoration has expired and no liens have been filed or remain unsatisfied, and until TENANT has furnished to CITY a certificate of a title insurance company doing business in San Luis Obispo County, California, certifying that no liens have been filed or remain unsatisfied of record against the LEASED LAND; whereupon TENANT shall release to CITY all of TENANT's interest in any such unexpended insurance proceeds (as damages).

ARTICLE XI. MECHANICS LIENS.

11.01 TENANT shall not suffer or permit to be enforced

against the LEASED LAND, or any part thereof, any mechanics, materialmen, contractors, or subcontractors liens arising from or any claim growing out of the work of such construction, repair, restoration, replacement, or improvement, or any other claim or demand howsoever the same may arise, but TENANT shall pay or cause to be paid all of such liens, claims, or demands before any action is brought to enforce the same against the LEASED LAND; and TENANT agrees to indemnify and hold CITY and said LEASED LAND free and harmless from all liability for any and all such liens, claims, and demands, together with reasonable attorneys' fees and all costs and expenses in connection therewith.

11.02 If TENANT shall in good faith contest the validity of such lien, claim, or demand, then TENANT shall, at its expense, defend itself and CITY against the same and shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against CITY or the LEASED LAND, upon the condition that if CITY shall require, TENANT shall furnish to CITY a surety bond satisfactory to CITY in an amount equal to such contested liens, claim, or demand, including attorneys' fees and interest, indemnifying CITY against liability for the same, and holding the LEASED LAND free from the effect of such lien or claim or if CITY shall request, TENANT shall procure and record a bond freeing the LEASED LAND from the effect of such lien or claim or action thereon.

11.03 If TENANT fails to discharge such lien or furnish a bond against the foreclosure thereof, CITY may, but is not obligated to, discharge the same or take such other action as CITY deems necessary to prevent a judgment of foreclosure upon said lien from being executed against TENANT's property, and all costs and expense, including reasonable attorneys' fees incurred by CITY, shall be repaid by TENANT within thirty (30) days after demand, and if unpaid may be treated by CITY as a rental payment which is in default for more than thirty (30) days.

11.04 Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of CITY, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any improvement, alteration, or repair of or to the LEASED LAND, any buildings or improvements thereof, including the BUILDING PROJECT, or any part thereof. CITY shall have the right at all reasonable times to post and keep posted on the LEASED LAND such notices of nonresponsibility as CITY may deem necessary for the protection of CITY and the fee of the LEASED LAND from mechanics and materialmen liens.

ARTICLE XII. CONDEMNATION.

12.01 In the event the LEASED LAND or any part thereof shall

be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, the interest of CITY and TENANT in the award or consideration for such transfer, and the effect of the taking or transfer upon this Lease, shall be as provided by this Article.

12.02 In the event the entire LEASED LAND is taken or so transferred, this Lease and all of the right, title, and interest thereunder shall cease on the date title to such land, so taken or transferred, vests in the condemning authority.

12.03 In the event of the taking or transfer of only a part of the LEASED LAND, leaving the remainder of the premises in such location, or in such form, share, or reduced size as to be not effectively and practicably usable in the opinion of TENANT for the purpose of operation thereon of TENANT's business, this Lease and all right, title and interest hereunder shall cease on the date title to the land, or the portion thereof so taken or transferred, vests in the condemning authority.

12.04 In the event of such taking or transfer of only a part of the LEASED LAND leaving the remainder of the premises in such location and in such form, shape, or size as to be used effectively and practicably, in the opinion of TENANT, for the operation thereon of TENANT's business, this Lease shall terminate and end as to the portion of the premises so taken or transferred as of the date title to such portion vests in the condemning authority but shall continue in full force and effect as to the portion of the LEASED LAND not so taken or transferred. From and after such date the rental required to be paid by TENANT to CITY shall be reduced in the proportion to which the area so taken or transferred bears to the total area of the LEASED LAND.

12.05 A voluntary conveyance by CITY to a public utility, agency or authority under threat of a taking under the power of eminent domain in lieu of formal proceedings shall be deemed a taking within the meaning of this Article.

12.06 Upon operation of Article XII, Sections .02, .03, .04 and .05, all sums shall be deposited promptly with a depository agreed to by CITY and TENANT as escrow agent and shall be distributed and disbursed in the following order of priority:

First, all personal property and possessory interest taxes constituting a lien on the LEASED LAND or BUILDING PROJECT.

Second, the balance due under any note and leasehold

mortgage on the LEASED LAND.

Third, to TENANT any award that may be made for the taking for injury to TENANT's improvements.

Fourth, to TENANT any award on account of any costs or loss that TENANT may sustain in the removal and relocation of TENANT's chattels and trade fixtures.

Fifth, to TENANT any portion of the award to TENANT for anticipated or lost profits or damages because of detriment to TENANT's business or any special damages of TENANT, if no portion of the damages contained in this subparagraph Fifth are included in the total award for taking the fee title, TENANT shall have the absolute right to prosecute TENANT's own claim for damages as permitted by law and to receive and keep all proceeds free from any claim of CITY; and

Sixth, to TENANT the market value of any option to buy and of any option to renew or extend the term contained in the Lease.

Seventh, to TENANT for expenses or disbursements reasonably paid or incurred by or on behalf of CITY for or in connection with the condemnation proceedings.

Eighth, to TENANT any expenses or disbursements reasonably paid or incurred by or on behalf of TENANT for or in connection with the condemnation proceedings.

Ninth, to CITY the balance of the award.

ARTICLE XIII. INSURANCE.

13.01 During the term of this Lease, TENANT shall maintain, keep in force and pay all premiums required to maintain and keep in force the following insurance:

A. Public Liability and Property Damage. Limits of not less than Five Hundred Thousand Dollars (\$500,000.00) for personal injuries including accidental death for any one occurrence, and property damage in an amount not less than One Hundred Thousand Dollars (\$100,000.00) for any one occurrence. The property damage insurance shall cover damage or destruction of any property, other than that which is owned, leased or in the care, custody or control of TENANT with the limit applying to any one accident, disaster or claim.

B. Fire and Extended Coverage. All improvements located on or appurtenant to the leased premises shall be kept insured against loss or damage by fire and such other risks as are now or hereafter included in extended coverage endorsements in common use for commercial structures, including vandalism and malicious mischief. The amount of such insurance shall be sufficient to prevent either CITY or TENANT from becoming a co-insurer under the provisions of the policies, but in no event shall the amount be less than ninety percent (90%) of the then actual replacement cost excluding costs of replacing excavations and foundations but without deduction or depreciation (herein called "full insurable value"). If any dispute arises whether the amount of insurance complies with the above which cannot be resolved by agreement between CITY and TENANT, CITY may, not more often than once every twelve months, request the carrier of the insurance then in force to determine the full insurable value as defined in this provision, and the resulting determination shall be conclusive between the parties for the purpose of this Lease. CITY shall cooperate fully with TENANT to obtain the largest possible recovery, and all policies of fire and extended coverage insurance required by this Article shall provide that the proceeds shall be paid to Insurance Trustee (hereinafter defined), the proceeds of which shall be deemed to be held in trust by the recipient for the uses and purposes prescribed by this Lease.

1. Insurance Trustee. Prior to the commencement of the term of this Lease, TENANT shall designate the Insurance Trustee, which designation shall be subject to approval by CITY. Insurance Trustee may be any California or federally chartered bank, or trust company, preferably with an office or branch located within twenty miles of the leased premises.

2. Powers and Duties of Insurance Trustee. All proceeds payable pursuant to the provision of any policy or policies of fire insurance or extended coverage shall be expressly made payable in the case of loss or damage to, and shall be assigned and delivered to, the Insurance Trustee for CITY and TENANT for the following purposes with the following powers and duties, provided, however, that if the proceeds do not exceed the sum of \$5,000.00, such proceeds shall be adjusted by and paid to TENANT and shall be applied by TENANT for the repair, restoration, or reconstruction of any improvement damaged or destroyed by the casualty giving rise to the insurance claim:

- (a) All proceeds received by the Insurance Trustee from any insurance policy or fire insurance policy or extended coverage policy shall first

first be used, subject to any other conditions contained in this Lease, by such Insurance Trustee as a fund for the restoration and repair of any and all building, improvements and equipment located on the leased premises which have become destroyed or damaged. Such proceeds in such event shall be used and applied by the Insurance Trustee in satisfaction and discharge of the cost of restoration of the damaged or destroyed building, improvements and equipment.

- (b) Such proceeds shall be paid out by the Insurance Trustee from time to time to persons furnishing labor or materials, or both, including architects fees and contractors compensation in the construction work on vouchers approved by a licensed architect or engineer employed by TENANT to superintend the work; provided, however, that if such Insurance Trustee shall in its reasonable discretion determine or conclude that such vouchers are being improperly approved by such architect or engineer, or if no such architect or engineer is appointed, then such Insurance Trustee shall have the right to appoint an architect or engineer chosen by the Insurance Trustee to supervise the construction work and to make payments on vouchers approved by such last-mentioned architect or engineer. The reasonable expenses or charges of such architect shall be paid by such Insurance Trustee out of the trust fund.
- (c) Any proceeds not disbursed by the Insurance Trustee, as provided above, and remaining in the hands of the Insurance Trustee after the completion of the restoration or repair work and the payment and discharge of the cost thereof, shall within thirty (30) days after written demand made by TENANT upon the Insurance Trustee and accompanied by reasonable proof of such completion and payment, be delivered by the Insurance Trustee to TENANT.
- (d) If the amount of the insurance proceeds is insufficient to pay the actual cost of reconstruction, repair, or rehabilitation, such deficiency will be borne and provided for by TENANT by

depositing same with the Insurance Trustee within one hundred twenty (120) days following the request by the Insurance Trustee to TENANT requesting a sum equal to the amount of such deficiency.

- (e) TENANT shall, at all times prior to a loss thereon, be entitled to cause the surrender of any policy or policies of fire insurance or extended coverage insurance and to receive the allowable rebate of unearned premiums thereon upon the condition, however, that TENANT first shall substitute a policy or policies in an equal amount or greater amount.
- (f) All actual costs and charges for the services of the Insurance Trustee shall be borne and paid equally by TENANT and CITY.
- (g) If the Insurance Trustee shall resign or for any reason be unwilling to act or continue to act, TENANT shall designate a substitute Insurance Trustee in the same manner and subject to the same conditions as provided for designation of the original Insurance Trustee.

3. Products Liability Coverage. Limits for personal injury including accidental death of not less than Three Hundred Thousand Dollars (\$300,000.00) for any one person and Five Hundred Thousand Dollars (\$500,000.00) for any one occurrence and property damage in an amount of not less than One Hundred Thousand Dollars (\$100,000.00).

13.02 TENANT may procure and maintain any insurance not required by this Lease, but all such insurance shall be subject to all other provisions of this Lease pertaining to insurance.

13.03 All insurance required by express provisions of this Lease shall be carried only with responsible insurance companies licensed to do business in the State of California. All such policies shall be non-assessable and shall contain language, to the extent obtainable, to the effect that:

A. Any loss shall be payable notwithstanding any act or negligence of CITY, its officers, agents and employees that may otherwise result in a forfeiture of the insurance;

B. The insurer waives the right of subrogation against CITY and against CITY officers, agents and employees;

C. The policies are primary and non-contributing with any insurance that may be carried by CITY; and

D. The policies cannot be cancelled or materially changed except after thirty days' prior written notice by the insurer to CITY.

13.04 All public liability, property damage, and product liability insurance policies required to be furnished by TENANT under the provisions of this Lease shall name the CITY as an additional insured thereunder.

13.05 Promptly upon receipt of them, TENANT shall furnish CITY with copies of all insurance policies. TENANT shall furnish CITY with binders representing all insurance required by this Lease prior to the commencement of the lease term.

ARTICLE XIV. ASSIGNMENTS AND SUBLETTING.

14.01(a) TENANT shall not assign this Lease, or any portion thereof, without the prior consent, given by resolution, of the City Council of CITY. The City Council may give its consent to or deny approval of, any proposed assignment by TENANT within ten (10) days from the day TENANT files a written request for such consent with the City Clerk or at the Council's next regular meeting following such filing, whichever is later. Should the City Council not act upon such written request within the 10-day period or at its next regular meeting, whichever is later, then the consent of the City Council to the proposed assignment shall be deemed to have been granted and TENANT shall have the right to assign the lease to the assignee named in TENANT's request in accordance with any terms stated in such request. CITY shall not unreasonably withhold CITY's consent of a lease assignment.

14.01(b) Notwithstanding paragraph 14.01(a), TENANT shall have the right to assign this entire Lease to a successor entity which shall be either a limited or general partnership or a corporation with William F. Burke, Dennis Kuttler and Richard H. Beguelin as either the general partners, or officers in the respective business entities. The limited or general partnership may have other general partners in addition to those persons herein specified.

14.02 Neither devolution by will or otherwise on death nor

transfer to a personal representative on incompetency, shall constitute an assignment under the provisions of paragraph 14.01.

14.03 The following are conditions precedent to the validity and effectiveness of any assignment:

A. TENANT's written request for consent to any proposed assignment shall contain appropriate documentation evidencing that the proposed assignee is qualified to undertake TENANT's obligations under this Lease.

B. The proposed assignee shall, in recordable form filed with the City Clerk, expressly assume all the covenants, conditions, terms, and obligations of this Lease.

C. After City Council consent has been given, TENANT and its assignee in a jointly executed written document shall notify the City Clerk that the assignment transaction has been completed. Such notification shall be made within ten (10) days of the effective date of the assignment.

14.04 On any assignment made in accordance with the provisions and conditions of this Lease, TENANT shall have no further obligation under this Lease and, as between CITY and TENANT, shall be considered to have assigned to assignee all claims against CITY arising under this Lease. Nothing herein contained shall be construed to release TENANT from any liability or obligation arising before the effective date of the assignment.

14.05 TENANT shall have the absolute right to sublet all or any part or parts of the LEASED LAND and the improvements, and to assign, encumber, extend or renew any sublease, provided the following provisions are complied with:

A. TENANT shall, promptly after execution of each sublease, notify CITY of the name and mailing address of the sublessee and shall, on demand, permit CITY to examine and copy the sublease.

B. TENANT shall not accept, directly or indirectly, more than twelve (12) months' prepaid rent from any sublessee.

C. Subleases shall be made expressly subject to this Lease and shall permit the sublessee to perform any act required of TENANT under this Lease. Subleases shall expressly require the sublessee to comply with all terms,

covenants, and conditions of this Lease on the sub-leased premises, except that all percentage rents and subrents shall be paid to TENANT.

ARTICLE XV. DEFAULT AND REMEDIES.

15.01 Should TENANT (A) fail to pay or cause to be paid any tax, assessment, insurance premium, lien, claim, charge, or demand herein provided to be paid or caused to be paid by TENANT at all times and in the manner herein provided; or (B) default in the payment of any installment of rent or any other sum when due and provided; or (C) fail to commence or to complete the construction, repair, restoration, or replacement of the building and other improvements in about the LEASED LAND within the times and in the manners herein provided; or (D) fail to commence and thereafter to continuously conduct its operations thereon within the time and in the manner herein provided; or (E) fail to use, maintain, and operate the LEASED LAND as herein required, or abandon the property; or (F) default in the performance of or breach of any other covenant, condition, or restriction of this Lease herein provided to be kept or performed by TENANT; and if such failure, or default, or breach shall continue uncured for a period of thirty (30) days from and after service upon TENANT of written notice by CITY, then and in any such event, CITY may, at its option, terminate this Lease by giving TENANT written notice and thereupon the rights of TENANT in and to the LEASED LAND and all improvements thereon shall cease and end, and CITY may, without further notice or demand or legal process, re-enter and take possession of said LEASED LAND and all improvements thereon and oust TENANT and all such persons shall quit and surrender possession of said LEASED LAND and all improvements thereon to CITY.

15.02 Any termination of this Lease as herein provided shall not relieve TENANT from the payment of any sum or sums that shall then be due and payable to CITY hereunder or any claim for damages then or theretofore accruing against TENANT hereunder, and any such termination shall not prevent CITY from enforcing the payment of any such sum or sums or claims for damages by any remedy provided for by law, or from recovering damages from TENANT for any default thereunder. All rights, options, and remedies of CITY contained in this Lease shall be construed to be held to be cumulative, and no one of them shall be exclusive of the other, and CITY shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver by CITY of any breach of any of the covenants, conditions or restrictions of this Lease shall be construed or held to be a waiver of any other succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

15.03 In addition to any of the above, the damages that CITY may recover under this Lease include 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 such rental loss for the same period that TENANT proves could be reasonably avoided.

ARTICLE XVI. SURRENDER AND REMOVAL.

16.01 All improvements constructed on the leased premises, including the BUILDING PROJECT, by TENANT shall be owned by TENANT until expiration or sooner termination of this Lease at which time they shall become the sole property of the CITY.

ARTICLE XVII. CITY'S GENERAL PROTECTIVE PROVISION.

17.01 TENANT shall permit CITY or CITY's agent, representatives or employees to enter upon the LEASED LAND for the purpose of inspection, determining whether agreements in this Lease are being complied with, for purposes of maintaining, repairing or altering the LEASED LAND, or for the purpose of showing the LEASED LAND to prospective tenants, purchasers, mortgagees, or beneficiaries under trust deeds.

17.02 In the event TENANT shall fail to pay and discharge or cause to be paid and discharged, when due and payable, any tax, assessment, or other charge upon or in connection with the LEASED LAND, or any lien or claim for labor or material employed or used in, or any claim for damages arising out of, the construction, repair, restoration, replacement, maintenance, and use of the LEASED LAND and the improvements, or any judgment on any contested lien or claim or any insurance premium or expense in connection with the LEASED LAND and improvements, or any other claim, charge, or demand which TENANT has agreed to pay or cause to be paid under the covenants and conditions of this Lease, and if TENANT, after ten (10) days' written notice from CITY so to do, shall fail to pay and discharge the same, then CITY may, at its option, pay any such tax, assessment, insurance, expense, lien, claim, charge or demand, or settle or discharge any action therefor or judgment thereon, and all costs, expenses and other sums incurred or paid by CITY in connection with any of the foregoing shall be paid by TENANT to CITY upon demand. Failure to so pay upon such demand shall constitute a material breach of this Lease by TENANT enabling CITY, at its option, to terminate this Lease.

17.03 In the event CITY shall sell or transfer the LEASED LAND or any part thereof and as a part of such transaction shall assign

its interest as CITY in and to this Lease, then from and after the effective date of such sale, assignment, or transfer, CITY shall have no further liability under this Lease to TENANT except as to matters of liability which shall have accrued and are unsatisfied as of such date, it being intended that the covenants and obligations contained in this Lease on the part of CITY shall be binding upon CITY and its successors and assigns only during and in respect of their respective successive periods of ownership of the fee.

ARTICLE XVIII. RIGHT OF FIRST REFUSAL TO PURCHASE LEASED LAND.

18.01 If CITY shall at any time during the term of this Lease desire to sell the LEASED LAND, and CITY shall obtain a bona fide offer from a third party to purchase the LEASED LAND which is acceptable to CITY, then, in that event, the bona fide offer shall be submitted to TENANT upon the same terms and conditions and TENANT shall have thirty (30) days upon submission to purchase the LEASED LAND on the same terms and conditions as the bona fide offer. Notwithstanding anything herein to the contrary, the sale of the LEASED LAND to a third party will not affect the terms and conditions of this Lease, and it is expressly understood that any third party who purchases the LEASED LAND from CITY purchases same subject to the terms and conditions of this Lease.

18.02 This "first refusal" option is personal to TENANT and shall not be separated from this Lease and transferred by TENANT independently of the leasehold interest without the prior written consent of CITY.

ARTICLE XIX. WARRANTY OF TITLE.

19.01 CITY warrants that it has fee simple title to the LEASED LAND and that such premises shall be delivered to TENANT free and clear of all outstanding claims, obligations, mortgages, assessments, taxes, liens and encumbrances of any nature that prevent TENANT from developing and operating the business enterprise provided for in this Lease.

ARTICLE XX. QUIET ENJOYMENT.

20.01 TENANT, paying the rents herein reserved, and performing and observing the several covenants and conditions by it to be kept and performed, may peaceably hold and enjoy the LEASED LAND subject to the terms, covenants and conditions of this Lease during the term hereof.

ARTICLE XXI. HOLD HARMLESS.

21.01(a) TENANT shall defend, indemnify, and save CITY, its

officers and employees, harmless from and against all claims, suits, or proceedings arising from any act, omission, or any negligence of TENANT, or its contractors, licensees, agents, servants, or employees, sublessees, or assignees, or arising from any accident, injury, or damage whatsoever caused to any person or property occurring in or on the LEASED LAND or the improvements, including the BUILDING PROJECT situated thereon.

21.01(b) CITY shall give written notice to TENANT within ten (10) days after any suit shall have been served on CITY wherein it is alleged that operations or use by the TENANT or conditions on the LEASED LAND or the improvements therein, have created a liability of the CITY. CITY shall give written notice to TENANT within thirty (30) days after the filing of any written claim against CITY wherein it is alleged that operations or use by the TENANT or conditions on the LEASED LAND or any improvements therein have created a liability of the CITY.

If such notice is not given within said periods, CITY shall indemnify TENANT and hold it harmless from any damages or loss TENANT may suffer as a result of CITY's failure to give such notice. Such notice, however, shall not be required in those instances where TENANT shall also have otherwise received notice of such claim or suit.

ARTICLE XXII. MISCELLANEOUS PROVISIONS.

22.01 No failure by either CITY or TENANT to insist upon the strict performance by the other of any covenant, agreement, term or condition of this Lease, or, to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No waiver of any breach shall affect or alter this Lease but each and every covenant, condition, agreement, and term of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

22.02 Time is of the essence of this Lease, and of each provision.

22.03 Each and all of the covenants, conditions, and restrictions in this Lease shall inure to the benefit of and shall be binding upon the successors in interest of CITY, the authorized encumbrances, assignees, transferees, sublessees, licensees, and other successors in interest of TENANT.

22.04 This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agree-

ment, statement, or promise made any any party, or to any employee, officer, or agent of any party, which is not contained in this Lease shall be binding or valid.

22.05 If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

22.06 CITY is not a partner, principal, employee or agent of TENANT and is not in any manner in business with TENANT. Nothing contained in this Lease shall be deemed or may be construed by CITY or TENANT or by any third person to create the relationship of principal and agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between CITY and TENANT nor shall any act or acts of either CITY or TENANT be deemed to be any relationship between CITY and TENANT, other than the relationship of landlord and tenant.

22.07 All references to the term of this Lease shall include any extensions of such term.

22.08 LEASED LAND, land, leased premises and premises shall include the improvements to the LEASED LAND.

22.09 In the event either CITY or TENANT shall bring any action or proceeding for damages for an alleged breach of any provision of this Lease to recover rents, or to enforce, protect, or establish any right or remedy of either party, the prevailing party shall be entitled to recover as a part of such action or proceedings reasonable attorneys' fees and court costs whether or not said action proceeds to judgment.

22.10 This Lease is not subject to modification, except in writing.

22.11 All notices, rents and other sums payable by TENANT to CITY, demands and requests from TENANT to CITY shall be given to the City Clerk, San Luis Obispo, California, or at such other place as CITY may from time to time designate in writing. Service of any notice or demand required or permitted to be made hereunder shall be sufficient if delivered to CITY personally or personally to TENANT, or, if sent by United States mail, postage prepaid, to and actually delivered to CITY at the above address or elsewhere to CITY as CITY may from time to time designate in writing, or to TENANT addressed to

or elsewhere as TENANT may from time to time designate in writing.

22.12 Neither party shall record this Lease without the written consent of the other party; however, upon the request of either party, the other party shall join in the execution of a memorandum of "short form" of this Lease for the purpose of recordation. The memorandum or short form shall describe the parties, the leased premises, and the term of this Lease, and shall incorporate this Lease by reference.

THIS LEASE is executed by the parties on this 31st day of DECEMBER, 1977, at San Luis Obispo, California.

TENANT:

William F. Burke
WILLIAM F. BURKE

Dennis Kuttler
DENNIS KUTTLER

Richard H. Beguelin
RICHARD H. BEGUELIN

CITY OF SAN LUIS OBISPO

By: [Signature]
MAYOR

ATTEST:

[Signature]
CITY CLERK

APPROVED AS TO FORM:

Dave Mitchell
CITY ATTORNEY