

REVISED AND RESTATED CONCESSION AGREEMENT BETWEEN
THE CITY OF PALOS VERDES ESTATES
AND THE PALOS VERDES BEACH
AND ATHLETIC FOUNDATION

This revised and restated concession agreement (“this Agreement”) is entered into as of the 9th day of September, 2008, by and between the City of Palos Verdes Estates, a municipal corporation (the “City”) and the Palos Verdes Beach and Athletic Foundation, a California nonprofit mutual benefit corporation (the “Foundation”). The City and the Foundation are sometimes referred to herein as the “Party” or “Parties”.

RECITALS

A. The City currently owns certain property in Palos Verdes Estates located at 389 Paseo Del Mar, also known as Roessler Pool, and depicted on the map attached hereto as Exhibit “A,” together with the buildings and improvements thereon (collectively, the “Premises”).

B. The Foundation has been operating the Palos Verdes Beach and Athletic Club at the Premises, as well as operating and maintaining the Premises for the benefit of the public, pursuant to a concession agreement between the City and Foundation effective July 1, 2006, which will expire on June 30, 2016 (the “Existing Agreement”).

C. The Parties desire to enter into a revised and restated concession agreement for the operation of the Premises, in accord with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, the Parties covenant, promise and agree as follows.

1. Definitions. For purposes of this Agreement, the following terms shall have the following definitions:

a. “Capital Improvements” are defined as:

(i) items costing more than Five Hundred Dollars (\$500) each and which have a useful life of at least two (2) years (*e.g.*, computers, furniture and fixtures); and/or

(ii) items which cost more than Two Thousand Dollars (\$2,000) in the aggregate and contribute to the aesthetics or longevity of the Premises (*e.g.*, re-roofing, renovation of plumbing, major landscaping projects).

b. City. “The City” means the City of Palos Verdes Estates acting by and through its City Council. All references to approval by the “City” shall be construed to mean “approval by the City Council of the City of Palos Verdes Estates” unless otherwise specified herein.

c. Club. “The Club” means the club operated by the Foundation on the Premises, which shall be subject to the requirements of this Agreement.

d. Club Improvement Fund. “Club Improvement Fund” shall mean a specially designated, segregated administrative account maintained by the Foundation which shall contain all member initiation fees for the Palos Verdes Beach and Athletic Club and any investment income (including but not limited to interest and/or dividends) derived therefrom.

e. Foundation. “The Foundation” means the Palos Verdes Beach and Athletic Foundation, a nonprofit mutual benefit corporation organized under the laws of the State of California.

f. Gross Receipts. “Gross Receipts” shall mean all member’s dues, fees, guest fees, rentals, merchandise sales, food and beverage sales, or any other receipts received by the Foundation from its operation of the Premises.

g. Non-Resident/Non-Owners. “Non-Resident/Non-Owners” are those persons who are neither bona fide residents of the City nor owners of real property in the City.

h. Premises. “Premises” shall mean the land described on Exhibit A of this agreement, together with all buildings, structures, equipment, furniture, fixtures, and property of any kind or nature located thereon.

i. Resident/Owners. “Resident/Owners” are those persons who are either bona fide residents of the City or owners of real property located in the City, or who both reside in the City and own real property in the City.

2. Concession Grant. The City grants a concession to the Foundation for the limited purpose of maintaining and operating the Premises, subject to any encumbrances, restrictions, reservations, easements, rights or rights-of-way of record, and the terms and conditions contained herein. The Foundation does hereby declare it has inspected the Premises, and, relying solely upon such inspection and not upon any statements or representations of the City or of its officers, agents or representatives, accepts the Premises in the condition they now exist.

3. Term of Agreement. This Agreement shall be effective as of the effective date of the Existing Agreement and shall expire on June 30, 2016, unless the Foundation shall, at some earlier date, default in its obligations under this Agreement. The Foundation shall be in default if it fails to remedy any breach or default of its obligations under this Agreement, for which City has given Foundation written notice delineating the breach or default, within sixty days (60) after the mailing by the City of such notice.

4. Option to Extend Agreement. The Foundation shall have the option to extend the term of this Agreement once for a ten-year (10-year) period. To exercise said option, the Foundation shall give written notice thereof to the City of its intent to exercise such option at least six (6) months, but not more than eight (8) months, prior to the initial expiration of this Agreement. Upon receipt of such notice, the City shall investigate the performance of Foundation under this

Agreement, and if the City, in its sole discretion, determines the Foundation has kept and performed the promises, covenants, conditions and agreements on its part pursuant to this Agreement, the expiration date of this Agreement shall be extended to June 30, 2026.

5. Property and Inventory. Any property of any nature purchased or placed in or upon the Premises by the Foundation and used in any way in connection with the operation of the Premises pursuant to this Agreement shall immediately become the property of the City, and may not be removed by the Foundation without the prior written consent of the City, except for the purpose of repair or replacement of said property. The provisions of this section shall not apply to any inventory brought onto the Premises for the express purpose of resale.

6. Budget; City Approval of Fees, Dues and Charges

a. By May 15th of each year, the Foundation shall prepare and deliver to the City for review a comprehensive budget for the Foundation's next fiscal year. Said budget shall indicate estimated income by source, expenditures by major category of expense, and any and all requests for Capital Improvements to be funded from the Club Improvement Fund. The format of said document and the method of presentation shall be subject to approval by the City Council.

b. No fee or charge of any kind including, without limitation, initiation fees and members dues relating to the Club and fees or charges for the use of the pool or other facilities at the Premises, whether by the public or Club members, may be collected or imposed by the Foundation unless and until the City has approved said fee or charge either within the approved annual budget or as a separate item. The provisions of this Subsection B shall not apply to food and/or merchandise authorized by this Agreement to be sold by the Foundation.

c. No Capital Improvements shall be made by the Foundation unless said Improvements are approved by the City, either within the approved annual budget or as a separate item.

7. Concession Fee. By the last day of each month, the Foundation shall pay to the City ten percent (10%) of the Foundation's Gross Receipts received in the immediately preceding month (e.g. the concession fee for Gross Receipts received in March is due April 30th).

8. Books and Records.

a. The Foundation shall keep full, complete and accurate books of account and records in accordance with generally accepted accounting principles which will reflect all business and monetary transactions of the Foundation. At the time of periodically scheduled City Council liaison meetings, the Foundation shall provide to the City the current balance sheet and interim operating statement for the prior quarter. Such books and records shall at all reasonable times be open to inspection by the City.

b. If any Club member fails to pay his or her dues, the Foundation shall give such member written notice of such default, and if such member fails to pay all sums due within thirty (30) days of such written notice of default, the Foundation shall terminate the membership of such member.

9. Audit. On an annual basis, the Foundation shall submit to the City a full and complete audit report prepared by the City's current auditor. The cost of the audit shall be split evenly between the City and the Foundation. The Foundation shall maintain, preserve and protect any and all records requested by its auditor or by the City in the form requested and in the manner dictated.

10. Operations. The Foundation shall operate and maintain the Premises, and every part thereof, in compliance with the conditions, restrictions and reservations by which the City holds title to the Premises, and in compliance with the rules and regulations, and any amendments thereto, promulgated by the City. To this end, the City Council shall appoint from its members a Beach and Athletic Club Liaison Committee which will meet periodically with a liaison committee to be designated by the Foundation from members of its Board of Directors.

11. Maintenance. The Foundation shall at all times maintain the Premises, including but not limited to the pool and all mechanical equipment relating thereto, in a condition satisfactory to the City. The Foundation shall keep the Premises free and clear from any mechanics' liens.

12. Capital Improvements. Unless otherwise agreed in advance by the City, the Foundation shall be solely responsible for all costs of installation and construction of any Capital Improvement(s). The Foundation shall pay the City the cost for inspection of construction of Capital Improvements, but the City agrees to waive any fees otherwise due from the Foundation for any application for any conditional use permit, variance, or other discretionary approval processed through the City. The City shall not be responsible for oversight or construction of Capital Improvements.

13. Club Improvement Fund. The entire initiation fee paid to the Foundation by new Club members shall be held and maintained by the Foundation in the Club Improvement Fund. Monies in the Club Improvement Fund may be utilized by the Foundation only for Capital Improvements approved by the City pursuant to the provisions of this Agreement. No expenditures shall be made from the Club Improvement Fund unless such expenditures are approved in advance and in writing by the City.

14. Membership

a. All Club membership, whether an initial offering or resale, shall first be offered to Resident/Owners of Palos Verdes Estates. Furthermore, notwithstanding any other provision of this Agreement, in no event shall the number of Non-resident/Non-Owner members exceed one hundred forty (140) without the prior approval of the City Council. The Foundation shall be responsible to determine if an individual is a "Resident/Owner" or a "Non-Resident/Non-Owner," provided, however, that the City may require the Foundation to implement specific criteria and/or procedures for such determination.

b. The Foundation agrees to terminate the membership of any individual who ceases to be a Resident/Owner and further agrees that each Resident/Owner accepted for membership shall be explicitly advised that his or her membership will terminate upon such person ceasing to be a Resident/Owner in the City of Palos Verdes Estates. Such person may apply for membership as a Non-Resident/Non-Owner if openings for such membership are then available.

c. In no event shall the membership of the Club exceed six hundred and ten (610) families unless prior approval for an increase in membership is received from the City. The City Council may, in its sole discretion, determine to limit the total number of memberships to five hundred sixty (560), in which case, no memberships resigned or terminated may be sold again by the Foundation until the total number of memberships fall below five hundred sixty (560).

d. Resident/Owners have absolute priority for membership in the Club and, except as set forth herein, no Non Resident/Non Owner shall be admitted to membership if a Resident/Owner is waiting for membership, even if the Resident/Owner is waiting for a resalable membership.

e. In the event membership in the Club falls below four hundred twenty (420) for a period of ninety (90) days, the Foundation and the City will meet and confer upon mutually agreeable methods or approaches to increase the total membership of the Club.

f. Membership in the Club shall not be deemed to create any legal or equity interest whatsoever in the Premises or any part thereof. Nonresaleable memberships are not transferable and, other than family memberships, are terminated when a member ceases to be a resident or property owner, or dies. Effective October 24, 2008, Resaleable Memberships shall not exceed sixty-five percent (65%) of total Club memberships; provided, that the five percent (5%) of the Resaleable Memberships made available pursuant to the September 9, 2008, City Council approval may only be sold to residents, unless otherwise approved by the City Council. Resaleable memberships are transferable in accordance with the rules and regulations approved by the City Council, which may be approved through City Council approval of the Club's by-laws.

g. The City has previously required different monthly membership dues for resident and non-resident members, and may, in its sole discretion, continue such differentiation.

15. Membership Wait List. At the time of periodically scheduled City Council liaison meetings, the Foundation shall provide to the City its waiting lists (Resident/Owner and Non-Resident/Non-Owner). The lists shall include the date upon which the person entered the wait list and their numerical position on the list.

16. Usage of Premises. The Premises are City property both dedicated to park and recreational purposes and subject to deed restrictions relating to their use by City residents and persons who own real property within the City. The Premises may not be conducted as a private club or solely for the benefit of members of the Foundation.

17. Approval of By-Laws. The Foundation will not amend or modify its By-Laws without the City's prior approval, which will not be unreasonably withheld.

18. Payment of Utility Charges. The Foundation will pay when due all charges for water, gas, electricity, telephone, or other utility charges furnished to the Foundation or used upon the Premises.

19. Insurance

a. The Foundation shall maintain insurance in an amount and of characteristics as follows:

(1) Commercial General Liability Insurance using Insurance Service Office "Commercial General Liability" policy form CG 00 01 07 98. Defense costs must be paid in addition to limits. There shall be no cross-liability exclusion for claims or suits by one insured against another. Limits are to be determined by the City, but in no event shall be less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate. The City and its officers, agents and employees shall be included as additional insureds in such policies, using standard ISO endorsement No. CG 2010 with an edition prior to 1992.

(2) Workers' Compensation using standard ISO endorsement No. CG 2011 January 1995 edition, providing statutory benefits as required by law with employer's liability limits no less than One Million Dollars (\$1,000,000) per accident or disease.

(3) Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are to be determined by the City, but in no event shall be less than One Million Dollars (\$1,000,000) per accident. If the Foundation owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described in paragraph (1) above. If the Foundation's employees will use

personal automobiles in any way in connection with this Agreement, the Foundation shall provide evidence of personal auto liability coverage for each such person in the amounts set forth in this paragraph.

(4) Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverage. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum Twenty-five Thousand Dollars (\$25,000) self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City for injury to employees of the Foundation.

b. Proof of compliance with the insurance requirements set forth in this section, consisting of certificates of insurance evidencing all of the coverage required and an additional insured endorsement to the Foundation’s general liability policy, shall be provided by the Foundation to the City on an annual basis. The Foundation shall provide certified copies of insurance policies to the City at the inception of this Agreement and at any time there is a change in insurer or a substantial change in the terms of coverage.

c. The provisions of this Section 19 establish minimum insurance requirements to satisfy the needs of the City and are not intended to foreclose the Foundation from acquiring such additional amounts or types of insurance as it deems advisable. Should the Foundation maintain additional insurance, the Foundation agrees to place into the Club Improvement Fund any and all monies received from its insurance carrier which represent repayments for furniture, fixtures, or real property damaged due to fire, earthquake, or any other insured event. Such monies may thereafter be

spent in accordance with the provisions of Section 28 of this Agreement, provided, however, that the City may reimburse itself from such monies for any monies expended by the City for its direct costs in defending itself or the Foundation or for costs associated with obtaining reimbursements from the Foundation's insurance carrier.

20. Indemnification

a. Except as otherwise set forth in Subsection b., below, the Foundation agrees to indemnify, defend and hold harmless the City and its officers, agents and employees ("Indemnified Parties") from and against any liabilities, damages, expenses (including reasonable attorneys' fees and expenses), liens, and claims of any nature whatsoever (collectively, "Liabilities") which may be asserted against the Indemnified Parties or any of them by reason of this Agreement or the activities of the Foundation, or any of its officers, agents, or employees, in carrying out this Agreement, or by reason of any activity of the Foundation, of any of its officers, agents, employees, or invitees, or of any other persons, in or upon the Premises or any part thereof, including, without limitation, any loss, damage or injury arising from or as a result of the death of any person, or any accident, injury, loss, or damage whatsoever caused to any person or to any personal property belonging to the City, the Foundation, or any other person.

b. The Foundation shall not be responsible for indemnifying and holding harmless as required by subparagraph a., above, for any Liabilities which result from the sole negligence or willful misconduct of the City or its officers, agents or employees.

c. The provision by the Foundation of insurance pursuant to Section 19 of this Agreement shall not relieve the Foundation of the on obligations set forth in this Section 20.

d. Notwithstanding any provision of this Agreement to the contrary, the obligations in this Section 20 shall survive the termination of this Agreement.

21. Mutual Waiver of Rights. The City and the Foundation each waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss or damage to such waiving party or its property or the property of others under its control, to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damage.

22. Non-Assignability. The Foundation shall not assign or hypothecate this Agreement or any interest created hereby, nor any rights or privileges herein, nor shall it enter into any agreement allowing the operation by another person of the concession granted herein on the Premises nor any portion thereof without the prior written consent of the City, and any attempt so to do shall be void and confer no rights on any third party and shall be cause for termination of this Agreement by the City at its option. This provision against assignment and hypothecation shall be deemed to be a continuing covenant and apply not only to the Foundation, but to any and all assignees and mortgagees of the Premises and to any who may in any manner acquire any interest therein.

23. Waiver not Continuing. No waiver of any breach, default or term hereof shall constitute a waiver of any other breach, default or term hereof, whether of the same of any other covenant or condition.

24. Relationship Between the Parties. The relationship between the Parties hereto is solely that of owner and concessionaire. Nothing in this Agreement shall be construed as effecting or constituting a partnership, joint venture or other association between the Parties, nor as creating a leasehold interest of any kind in the Premises. The Parties declare that it is not their intention in any respect to form a partnership, joint venture or other association between themselves. The Foundation shall have no right to obligate the City in any manner or way whatsoever, nor shall the Foundation be deemed a tenant of City's for any purpose.

25. Surrender of Premises.

a. The Foundations acknowledges that its right to occupy the Premises is for the sole purpose of carrying out its obligations and rights as a concessionaire under this Agreement. Upon the expiration or termination of this Agreement, the Foundation shall immediately and peaceably surrender and deliver up to the City or its designated agent the Premises, together with any property or inventory thereon, in good condition.

b. If the Foundation fails to perform any of the covenants, conditions, provisions or agreements herein contained, or if the Foundation for any reason be dissolved, or if a voluntary or involuntary petition for bankruptcy or insolvency is filed by or against the Foundation, then in that event the City may recover and resume possession of the Premises, by force or otherwise, without being liable therefor.

c. In the event the Foundation holds the Premises, or any part thereof, for any one day after the happening of any of the events described above in this Section, it shall be deemed an unlawful detainer of said Premises, and the Foundation shall be subject to eviction and removal with or without process of law.

26. Attorneys Fees. If either Party brings any action or proceeding to enforce, protect, or establish any right or remedy under this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees.

27. Continuing Covenants. Each and every term, condition, covenant and obligation hereof shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the Parties and all persons holding under or through them or any of them. All the Foundation's covenants hereunder, including those against assignment and subletting, are continuing and binding without exception on all who take or acquire any interest hereunder. Without limiting or

qualifying any of the foregoing provisions, every person taking any interest hereunder, by, through or under the Foundation shall by virtue of taking or acceptance of such interest and without further act be deemed to have become bound hereunder not only by privity of estate, but of contract, and to have assumed and agreed to perform all of the covenants and obligations of the Foundation hereunder to the same extent as though such assignee had personally executed this Agreement.

28. Destruction by Fire, Earthquake, or Act of God. In the event that the structures on the Premises or any of them are destroyed to the extent that, in the opinion of the City, rebuilding or repair is not practical, then the City may within one hundred eighty (180) days after such event terminate this Agreement by providing notice thereof to the Foundation. In the event of such termination, all furniture, fixtures, deposits, inventory, accumulated funds in the Club Improvement Fund, and any and all other money, equipment and property of the Foundation, including, without limitation, proceeds received from any insurance policies held by the Foundation, shall immediately become the property of the City. Any necessary or appropriate payments shall thenceforth be made by, and at the sole option of, the City. If the City does not terminate this Agreement within the time specified, then it shall assign to the Foundation the proceeds of any insurance which the City holds on the Premises, and the Foundation shall rebuild and reconstruct the Premises and resume operations therein as expeditiously as possible.

29. Notice. Notice shall be given by personal delivery or by depositing the notice in the U.S. Mail, postage prepaid, addressed as follows:

If to the Foundation:

Palos Verdes Beach and Athletic Foundation
Attention: Manager
389 Paseo Del Mar
Palos Verdes Estates, California 90274

If to the City:

The City of Palos Verdes Estates
Attention: City Manager
340 Palos Verdes Drive West
Palos Verdes Estates, California 90274

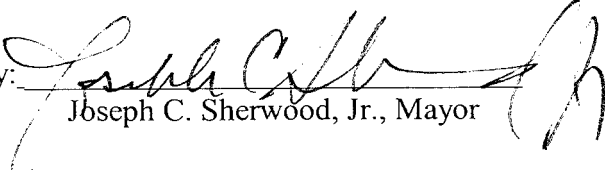
Notice shall be deemed given on the day of receipt, if personally served, or on the fifth (5th) day following deposit in the mail, if served by mail.

This Agreement is executed at Palos Verdes Estates, California, on the dates hereafter set forth.

[SIGNATURES ON THE FOLLOWING PAGE]

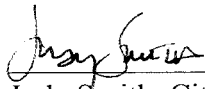
CITY OF PALOS VERDES ESTATES,
a Municipal Corporation

Date: September 9, 2008

By: 
Joseph C. Sherwood, Jr., Mayor

ATTEST:

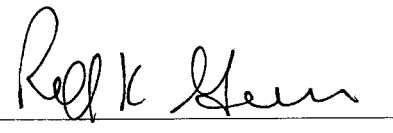
APPROVED AS TO FORM:


Judy Smith, City Clerk


Joseph W. Pannone, City Attorney

PALOS VERDES BEACH & ATHLETIC
FOUNDATION, a California Nonprofit Mutual
Benefit Corporation

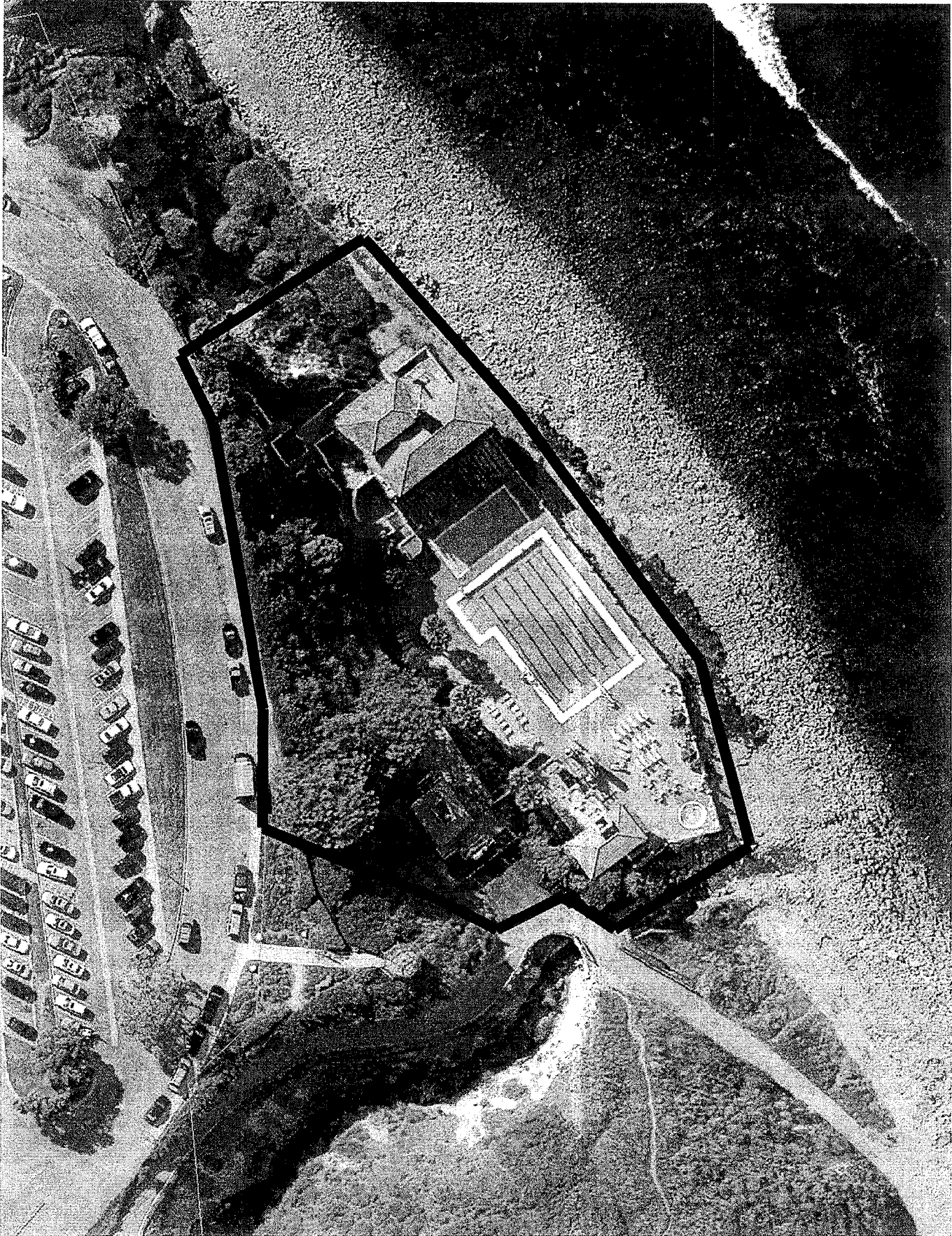
Date: 9/11/08

By: 
Its: _____

Date: _____

By: _____
Its: _____

EXHIBIT A
DESCRIPTION OF THE PREMISES



Address: 389 Paseo Del Mar
Legal Description: Portion Lot "F"
Tract 10624