

NONEXCLUSIVE USE AND OCCUPANCY PERMIT

This nonexclusive use and occupancy permit ("Permit") is executed by and between THE CITY OF SAN DIEGO ("City") and RANCHO BERNARDO RECREATIONAL COUNCIL ("Permittee"), a nonprofit organization promoting youth soccer, to be effective January 1, 2013, upon execution of the Permit by the parties and approval of the City Attorney.

Recitals

WHEREAS, City desires to provide facilities to its citizens and noncommercial local societies, clubs, and organizations engaged in civic, social, educational, cultural, recreational or philanthropic work or activities; and

WHEREAS, Permittee is an organization that engages in the promotion and sponsorship of recreational activities that generate revenues from voluntary contributions, special events, membership dues, fees and charges, and fundraising projects.

NOW, THEREFORE, it is mutually agreed by and between the City and Permittee as follows:

1. **City Approval.** City and Permittee agree that "City approval" or "City-approved" as referenced in this Permit shall mean the written approval of the Director of City's Real Estate Assets Department, unless otherwise stated.
2. **Premises.** City grants to Permittee this Permit for the nonexclusive use and occupancy of City-owned property consisting of a soccer field, bleachers and storage shed on approximately 4.06 acres of the City property located at 16100 Lofty Trail Drive, in the Rancho Bernardo community of the City of San Diego, County of San Diego, State of California as shown on Exhibit "A" hereof, which is hereinafter called "Premises."
3. **Term.** The term of this Permit shall be for one (1) year beginning on January 1, 2013, and expiring on December 31, 2013. However, this Permit may be terminated at any time by either party by giving the other party thirty (30) days written notice of intent to terminate. Permittee expressly waives any claims for expense or loss which Permittee might incur as result of City's early termination of this Permit.
4. **Holdover.** Any holding over by Permittee after the expiration or earlier termination of this Permit shall not be considered a renewal or extension of this Permit. The occupancy of the Premises after the expiration or earlier termination of this Permit constitutes a month-to-month Permit, and all other terms and conditions of this Permit shall continue in full force and effect.

5. Processing Fee. Permittee shall pay the City a processing fee of seven hundred twenty-seven dollars (\$727.00) prior to commencement of this Permit.
6. Purpose. Permittee shall operate and maintain the Premises for youth soccer in accordance with Permittee's league franchise(s), and shall operate and maintain the Premises for public use in accordance with this Permit's "Section 8. Public Use", and all concessions in accordance with this Permit's "Section 7. Concession Rights". Permittee shall not use the Premises for any other use whatsoever without obtaining prior written City approval.
7. Concession Rights. Permittee shall have the right to operate a concession stand during soccer games. Permittee shall also have the right to operate a concession stand during other events if previously approved by City in each instance. Permittee may sell confections, soft drinks, gum, and other food products which are prepared and served in accordance with San Diego County Health Department regulations. All profits earned by Permittee from operating the concession stand must be used for the operation, maintenance, and improvement of the Premises.
8. Public Use. Whenever Permittee is not using the Premises, Permittee shall allow other youth soccer organizations to use the Premises, with prior written City approval in each instance.
9. Subletting and Maintenance Fees. Permittee shall not assign this Permit, or any interest in this Permit, and shall not sublet the Premises, or any part of the Premises or any right or privilege appurtenant to the Premises, or allow any other person, except employees, agents, and guests of Permittee, to use or occupy the Premises or any part of the Premises, without the prior written approval of City in each instance. Permittee may collect a reasonable maintenance fee from other City-approved groups for use of the Premises, in accordance with a City-approved fee schedule. All maintenance fees collected by Permittee from any permitted user must be used for the operation, maintenance, and improvement of the Premises.
10. Bylaws. Membership in Permittee's organization shall be open to anyone meeting the requirements of Permittee's rules and bylaws. All restrictions, rules, bylaws, and fees, if any, and changes to the bylaws proposed by Permittee's organization shall require prior written approval of the City. A current copy of Permittee's bylaws shall be submitted to City and shall be kept on file in the office of City's Real Estate Assets Department.
11. Nondiscrimination. Permittee shall not discriminate or permit discrimination against any person or class of persons by reason of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in any manner in the operation or use of the Premises.
12. Inspection of Records. Permittee shall make all records and accounts available to City for inspection at all reasonable times so that City can determine Permittee's compliance with the Permit. Said records and accounts shall be complete and accurate showing all income and

receipts from Permittee's and other approved parties' use of the Premises. Permittee's failure to keep and maintain records and make the records available for inspection by City is a breach of this Permit and is cause for termination of this Permit. Permittee shall maintain all such records and accounts for a minimum period of five (5) years after the termination of this Permit.

13. Utilities. City will provide, without charge, a reasonable amount of water to the Premises. City will be the sole judge as to what constitutes a "reasonable amount" of water. Unless otherwise provided by City, at City's option, all other utilities and services required by Permittee shall be provided by Permittee at Permittee's sole cost and expense.

14. Maintenance. Permittee shall, at its sole cost and expense, maintain the Premises in a safe, neat, clean, and sanitary condition acceptable to the Mayor, or his designated representative, throughout the term of the Permit.

15. Improvements.

15.1 Permittee shall not make or cause any improvements, changes, or alterations to be made to the Premises, without prior written City approval. In the event that Permittee makes or causes to be made any City-approved improvements, repairs, or alterations on the Premises, Permittee shall file a bond with the City that provides for the payment in full of the claims of all persons performing labor upon or furnishing materials to be used on the Premises, in the amount of the estimated cost of the improvement, alteration, or repair as determined by the City. The bond shall be acknowledged by the Permittee as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. Permittee shall hold City free and harmless, and indemnify, City against all claims for labor and materials in connection with City-approved improvements, repairs or alterations to the Premises, and the cost of defending against such claims, including reasonable attorney's fees.

15.2 Under no circumstances shall Permittee or Permittee's agents place a temporary or permanent structure of any kind on the Premises, including but not limited to cargo containers, trailers, storage sheds, recreational vehicles, etc., without the prior written authorization of the City's Water Department, and Real Estate Assets Department and obtaining any required City, County or other jurisdiction permits. Violation of this condition of the Permit may require the Permittee to immediately remove any temporary structures at Permittee's sole expense.

16. Indemnity. Permittee shall protect, defend, indemnify, and hold City, its elected officials, officers, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Permittee's officers, employees, agents, contractor's, invitees and guests, which arise out of or are in any manner directly or indirectly connected with this Permit or

Permittee's Operations, and all expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that Permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or sole willful misconduct of City, its elected officials, officers, representatives, agents and employees. City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Permittee shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

17. **Insurance.** Upon execution and delivery of this Permit, Permittee shall deliver to City a current Certificate of Insurance for: (a) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars (\$4,000,000); and (b) Workers' Compensation Insurance, as required by the laws of the State of California for all of Permittee's employees who are subject to this Permit, with Employers' Liability coverage with limits not less than One Million Dollars (\$1,000,000).

17.1 **Additional Insured.** Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as an additional insured on Permittee's Commercial General Liability Insurance policy(ies).

17.2 **Primary & Non-Contributory.** Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with City's Real Estate Assets Department.

17.3 **Qualified Insurer(s).** All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Rating Guide and which are acceptable to City. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI-list) and otherwise meet City requirements.

17.4 **Deductibles/Retentions.** All deductibles and self-insured retentions on any insurance policy are the sole responsibility of Permittee and must be disclosed and acceptable to City at the time evidence of insurance is provided.

17.5 **Continuity of Coverage.** All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on

commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, Permittee shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.

- 17.6 Modification. To assure protection from and against the kind and extent of risk existing on the Premises, City, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving Permittee thirty (30) days prior written notice. Permittee shall also obtain any additional insurance required by City for new improvements, changed circumstances, or City's reasonable re-evaluation of risk levels related to Permittee use of the Premises.
- 17.7 Accident Reports. Permittee shall report to City any accident causing property damage or injury to persons on Premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 17.8 Failure to Comply. Notwithstanding any other provision of this Permit to the contrary, if Permittee's failure or refusal to obtain or maintain insurance as required by this Permit, or failure to provide proof of insurance, shall be a default of this Permit.
- 17.9 All Risk Property Insurance. Permittee shall obtain and maintain, at its sole cost, All-Risk Property insurance on all insurable property on the Premises in an amount to cover 100 percent (100%) of the replacement cost. Permittee shall deliver to City a certificate of such insurance.
18. Compliance with Law. Permittee shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of City, county, state, and federal governments at Permittee's sole cost and expense. Permittee shall comply with any and all notices issued by the City under the authority of any law, statute, ordinance or regulation.
19. Property Removal. Permittee shall remove Permittee-owned equipment, appliances, and other items of personal property upon expiration or earlier termination of this Permit. Any such items which Permittee fails to remove shall be deemed abandoned and become City's property free of all claims and liens, or City may, at its option, remove such items at Permittee's sole cost and expense. If any removals of such Permittee-owned equipment, appliances or personal property result in damage to the Premises, Permittee or City shall repair all such damage at Permittee's sole cost and expense.

20. Advertising. Permittee shall not place or cause to be placed upon the Premises any signs, billboards, banners, posters or any other media advertising products or services without prior written City approval.
21. Taxes. As further consideration for the execution of this Permit, Permittee shall pay and discharge before delinquency, all taxes and assessments which may be levied against the Premises by reason of any possessory interest of Permittee during the term.
22. Nonexclusive Occupancy. Permittee specifically acknowledges that Permittee's use of the Premises is nonexclusive and the granting of this Permit shall not result in proprietary rights in the Premises. City reserves the right to enter the Premises at any time during the Permit term in the event of an emergency or for good cause to inspect the Premises to ascertain its condition and to inspect the operations conducted on the Premises to ensure Permittee's compliance with this Permit.
23. Relocation. Permittee recognizes and understands that upon termination or earlier termination of this permit the City is not obligated to provide Permittee with any relocation payment nor shall City be obligated to provide any relocation services.
24. Notification. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to Permittee at:

District Manager
Rancho Bernardo Recreational Council
18448 West Bernardo Drive
San Diego, CA 92127

and, to City as follows:

City of San Diego
Director, Real Estate Assets Department
Civic Center Plaza Building
1200 Third Avenue, Suite 1700 – MS 51A
San Diego, CA 92101-4155

Any party entitled or required to receive notice under this Permit may by written notice designate a different address to which notices shall be sent.

25. Drug and Alcohol-Free Environment. It is the policy of the City of San Diego that all facilities provided under Permit shall be utilized and operated in a drug-free and alcohol-free environment. The Permittee shall make this fact known, both in writing and through oral communication, to facility participants periodically throughout the term of this Permit.

Permittee shall document such written or oral communications and provide copies to the City on an annual basis.

26. **Hazardous Substances.** Permittee shall not allow the installation or release of hazardous substances in, on, under, or from the Premises by Permittee, its officers, employees, invitees, guests, agents, or contractors ("Permittee Parties"). Permittee Parties shall not store, utilize, or sell any hazardous substance on the Premises without City's prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

26.1 **Remediation.** If any release of a hazardous substance occurs as a result of Permittee use, development or maintenance of the Premises ("Permittee's Operations"), Permittee shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.

26.2 **Indemnity.** Permittee shall protect, defend, indemnify, and hold City harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from Permittee's Operations, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

26.3 **Notice of Release.** If Permittee knows or has reasonable cause to believe that any hazardous substance has been released on or within the Premises, Permittee shall give written notice to City within twenty-four hours (24) after receipt of such knowledge or cause for belief. If Permittee knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, Permittee shall notify City by the most immediate means available and immediately upon receipt of such knowledge or belief and shall take all actions necessary to minimize the danger. Permittee shall notify City immediately of any notice of violation received or initiation of environmental actions or private lawsuits related to the Premises.

26.4 **Environmental Assessment.** Upon reasonable cause to believe that Permittee's use, development, or maintenance of the Premises ("Permittee's Operations"), resulted in a hazardous substance being released on or from the Premises, City may cause an environmental assessment of the Premises to be performed by a professional environmental consultant registered with the State of California as a Professional

Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at Permittee's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by Permittee's Operations and in what quantities. If any such hazardous substances exist in quantities greater than allowed by municipal, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. Permittee shall cause, or if Permittee fails to do so within a reasonable period of time, City may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and Permittee shall pay all costs and expenses therefore. If the environmental assessment conclusively establishes that Permittee's Operations did not result in a hazardous substance being released on or from the Premises, City shall reimburse Permittee for the cost of the assessment.

27. Survival. All obligations and liabilities of Permittee that accrue prior to the expiration or earlier termination of this Permit shall survive the expiration or earlier termination of this Permit.
28. Disabled Access Compliance. Permittee shall comply with the California Fair Employment and Housing Act, the Federal Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and any other applicable local, state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. Permittee shall not exclude any qualified individual with a disability on the basis of that disability from the benefits of, services, programs or activities of Permittee or discriminate against any qualified individual with a disability.
29. Music. Permittee shall only perform music for which the City has obtained a "non-dramatic" (defined below) performance license from ASCAP or any other musical industry licensing entity ("Licensing Entity"). For a list of approved ASCAP music and artists, Permittee may contact ASCAP, One Lincoln Plaza, New York, NY 10023, Attn: Repertory Dept.-Clearance Section or online at www.ascap.com. City shall notify Permittee in writing of any other approved Licensing Entity and any additional Permittee requirements ("Additional Requirements") imposed upon Permittee by City by virtue of its licensing agreement with Licensing Entity. Failure to comply with this Section 30 shall be deemed a material breach of this Permit. In the event that Permittee does not agree to be bound by the Additional Requirements, this Permit shall be terminated by City. For the purposes of this Permit, a "non-dramatic" performance includes live performances and recorded performances (CD, tapes, radio and television over loud speakers). Permittee shall not perform music with any "dramatic" performances. For purposes of this Permit, "dramatic" performances shall include, but not limited to, the following: (a) performance of a "dramatico-musical work" (defined below) in its entirety; (b) performance of one or more musical compositions from a "dramatico-musical work" (defined below) accompanied by dialogue, pantomime, dance,

stage action, or visual representation of the work from which the music is taken; (c) performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action or visual presentation; and (d) performance of a concert version of a "dramatico-musical work" (as hereinafter defined). The term "dramatico-musical work" as used in this Permit, shall include, but not be limited to, a musical comedy, opera, and play with music, revue or ballet. Permittee shall not perform music from a coin operated phonorecord (or CD) player commonly known as a "juke-box."

It shall be Permittee's sole responsibility to ensure it only performs music for which the City has obtained a valid music license. Should Permittee desire to perform music for which City does not have a license, Permittee shall obtain its own license from the appropriate Licensing Entity before Permittee performs the desired music. Permittee shall ensure that (1) the City is named in the license; (2) each City premise/location where Permittee intends to perform the music is identified in the license; and (3) Permittee has provided City with a fully executed copy of the license at least ten days prior to the performance of the music.

30. **Best Management Practices.** The City and Permittee are committed to the implementation of programs to manage activities on the Premises in a manner which aids in the protection of San Diego's precious water resources. Permittee shall comply with the Best Management Practices ("BMP") including the Stormwater Pollution Preventing Plan ("SPPP") approved by the City Stormwater Management Program. Permittee shall submit for review and approval by the Mayor or designee, within ninety (90) days of the effective date of this Permit, BMP, and SPPP that will control erosion and reduce the amount of pollutants and other sediments discharged from Premises. The BMP and SPPP will be reviewed periodically by City. Upon written notice from the Mayor requesting an update, Permittee shall submit updated BMP and SPPP for Mayor review and approval within ninety (90) days of receipt of notice. Permittee shall implement any necessary changes to the BMP and SPPP as a result of any review by City to ensure compliance with any changes in laws or regulations.

When BMP and SPPP have been developed and implemented by Permittee, it is crucial that the practices be enforced and maintained. It is Permittee's responsibility to inform employees, contractors, subcontractors, agents and vendors of the BMP and SPPP.

IN WITNESS WHEREOF, this Permit is executed by the City of San Diego, acting by and through its Mayor, or his designee, and by the Permittee, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 1/7/13

By [Signature]
Name James F. Barwick, CCIM
Title Director, Real Estate Assets

PERMITTEE:

Date 12/21/12

By [Signature]
Nick Anastasopoulos
President

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This activity is categorically Exempt from CEQA pursuant to State CEQA Guidelines, Sections 15301 (Existing Facilities-Right of Entry). Approved by Environmental Analysis Section, Development Services Department

Date 12/24/12

By [Signature]
Name Debra J. Bevier
Title Senior Planner

Approved as to form and legality
this 9th day of Jan, 20 13

JANI GOLDSMITH, City Attorney

By [Signature]
Debra J. Bevier
Deputy City Attorney

EXHIBIT A

Rancho Bernardo Soccer Field



Permit area indicated in **RED**