



THE CITY OF SAN DIEGO

CANYONSIDE STABLES, LLC

Percentage Lease

65 North Main Street

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DOCUMENT NO. PL- 285858

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**CITY OF SAN DIEGO
PERCENTAGE LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Agreement") is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and CANYONSIDE STABLES, LLC, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, consisting of approximately fifteen (15) acres, including the Mohnike Adobe House, a hay barn, and miscellaneous other storage structures, as further described in Exhibit "A" included as part of this Agreement at Section 10.1. The area located in the southwest corner of the leasehold designated in Exhibit "A" as the Ranger Area is not included in the leasehold, but may be available for event overflow parking, with prior CITY approval. Said real property is hereinafter called the "Premises" or "Leased Premises." It is further agreed that the leasehold has not been surveyed; however CITY and LESSEE agree to the approximate acreage and boundaries as set forth in Exhibit "A."
- 1.2 Uses. It is expressly agreed that the Premises, a historical, equestrian property, is leased to LESSEE solely and exclusively for the purposes of operating and maintaining an equestrian center. The primary services to be offered are horse boarding, riding lessons, riding training classes, and guided trail rides. Incidental uses may include picnics, barbecues, hay rides, educational programs and activities, machine vending of beverages and snacks, and show ring activities. All primary services and incidental uses are to serve riding stable patrons and the general public in accordance with the General Development Plan referenced in Sections 6.13 and included as part of this Agreement at Section 10.2, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purposes whatsoever. The consumption and sale of alcohol is expressly forbidden except for special events in the picnic area only and with prior approval of the City Manager. Requests shall be made no less than forty-eight (48) hours in advance and requests shall be assumed approved unless notified otherwise within twenty-four (24) hours. A Point of Contact must be available during every event. LESSEE shall not permit intoxicated individuals to enter or remain on the Premises at any time. It is in the sole discretion of CITY to determine whether an event constitutes a special event.

As part of the consideration for this Agreement, LESSEE or its sublessee shall conduct a guided trail ride operation on the Premises. Guided trail rides shall be available to the public during regular business hours as approved by the CITY except when the Park is closed or during inclement weather. If a sublessee discontinues trail ride operations, LESSEE shall either assume the operation or

shall diligently pursue a new sublessee. In no event shall there be no guided trail ride operation for a period of more than six (6) months.

LESSEE shall have the further right, in connection with operations and maintenance of the equestrian center and incidental facilities, to utilize, on a nonexclusive basis, riding trails in CITY's portion of the Los Penasquitos Canyon Preserve [Park], as described in Exhibit "B" included as part of this Agreement at Section 10.3. LESSEE, as a condition for the use of the riding trails, shall observe Rules and Regulations for Trail Rides set forth in Exhibit "B" and included as part of this Agreement at Section 10.4.

The Rules and Regulations for Trail Rides may be amended by mutual written consent of LESSEE and City Manager as necessary to ensure the continued safe operation of trail rides.

LESSEE is not required to clear the riding trails of debris and other materials caused by acts of God, including but not limited to floods or fires. The riding trails shall be open to the general public for equestrian and other non-motor vehicular use.

LESSEE's right to use the riding trails may be immediately limited or suspended by CITY at any time when, in the opinion of the City Manager, the use of the riding trails becomes excessive, detrimental or hazardous to the environment or other public uses of the Park. CITY shall have the right, upon ten (10) days written notice to LESSEE, to suspend LESSEE's use of the riding trails when, in the opinion of the City Manager, such use and operation would cause environmental damage, safety concerns or unduly interfere with the use of the Park for a major public event. What constitutes a "major public event" is in the sole discretion of the City Manager. Such suspensions shall be for such periods of time as are deemed necessary by the City Manager, and shall be without liability of CITY to LESSEE for damages of any kind suffered by LESSEE as a result thereof.

The use of the Premises for any unauthorized purpose, or any unapproved sublease operation shall constitute a substantial default and subject this Agreement to termination at the sole option of CITY.

LESSEE covenants and agrees to use the Premises throughout the term of this Agreement for the above-specified purposes and to diligently pursue the purposes throughout the term of this Agreement. Failure to continuously use the Premises for said purposes and approved uses, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

- 1.3 Related Council Actions. By the granting of this Agreement, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes but is

not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Leased Premises.

- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the term, or if during the Agreement term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, then and in either of such events, this Agreement shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but the rent in effect at the time will be reduced by fifteen dollars (\$15) per day for any period during which LESSEE is precluded from using the Mohnike Adobe House or the barn. If CITY, in its sole discretion determines that the Mohnike Adobe House and barn are permanently not available for use by LESSEE, CITY may terminate this Agreement upon ninety (90) days notice from CITY.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Leased Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the Premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE's use of the Premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Leased Premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of the Agreement, LESSEE shall provide full time, on site, competent management of the Leased Premises to the satisfaction of the City Manager. To the extent that the Mohnike Adobe House is available for use by LESSEE, the Mohnike Adobe House shall be used by LESSEE for after hours on-site management of the Leased Premises. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of an equestrian center and all related activities in a fiscally responsible manner. If LESSEE fails to meet this requirement at any time, CITY will provide written notification to LESSEE detailing the lapse of

management. If LESSEE fails to correct the stated shortcomings within thirty (30) days, or the stated lapses consistently recur, LESSEE shall be considered in default of this Agreement, CITY, in its sole discretion, may terminate this Agreement.

- 1.7 CITY Use. The Premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, the Premises shall be left in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use.
- 1.8 Political Activities. The Leased Premises shall be used exclusively for the purposes specified in Section 1.2, Uses, of this Agreement. The Premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.9 Public Use. The general public shall not be wholly or permanently excluded from any portion of the Premises. LESSEE may develop reasonable restrictions for use of the facility provided they are consistent with the rights of the general public and are designed to allow LESSEE to use the Premises for the purposes specified in Section 1.2, Uses, of this Agreement.

LESSEE shall, at all times during the Agreement term, maintain a CITY-approved sign identifying the property as CITY-owned and available for public use consistent with the terms of this Agreement. The sign shall be provided by CITY and installed by LESSEE at a location agreeable to CITY.

- 1.10 Parking. LESSEE shall maintain sufficient on-site parking, as shown on the General Development Plan set forth in Section 10.2, to adequately serve the needs of the facility patrons and any special events or shows held at the facility.

SECTION 2: TERM

- 2.1 Commencement. The term of this Agreement shall be five (5) years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this Agreement shall mean the 12-month period commencing on the first day of the calendar month following the execution of this Agreement by the City Manager.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this Agreement. The occupancy of the Premises after the expiration or termination of this Agreement constitutes a month-to-month tenancy, and all other terms and conditions of this Agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.

- 2.3 Quitclaim and Surrender of LESSEE's Interest. On execution of this Agreement, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises. CITY may record such deed only on the expiration or earlier termination of this Agreement. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor. If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice of reciting LESSEE's failure to comply with this provision, and the notice shall be conclusive evidence of the termination of this Agreement.

At the expiration or earlier termination of this Agreement, LESSEE shall surrender the Premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof and in a decent, safe, and sanitary condition, excepting for normal wear and tear, and consistent with Section 6.11, Ownership of Improvements and Personal Property of this Agreement. In the case of termination of this Agreement by CITY prior to the end of the specified Agreement term, any liens and encumbrances must be approved in writing by the City Manager.

- 2.4 Right to Extend. At CITY's sole option and provided that LESSEE is not in default of this Agreement, LESSEE may request that CITY extend this Agreement twice for an additional term of five (5) years each, subject to all original agreements, considerations, covenants, and conditions, except that the rent shall be adjusted per Section 3.2b. To exercise this right, LESSEE must give CITY six (6) months written notice before the date on which this Agreement expires. CITY will advise LESSEE within sixty (60) days of receipt of notice as to whether CITY agrees to extend the Agreement.

SECTION 3: RENT

- 3.1 Time and Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California, 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California.

The place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- 3.2 Rent. As set forth below, each month LESSEE shall pay the greater of the following two amounts: one-twelfth of the annual Minimum Rent or the total Percentage Rent. During the period of the lease, the CITY may provide rent credits,

subject to CITY approval, equal to fifty percent (50%) of actual expenditures by the LESSEE for the capital improvement projects detailed in Section 10.2. Maximum credit allowable for any month is One Thousand Dollars (\$1,000). Additional credits may be carried over subsequent months.

- a. Minimum Rent for First Three Years. The annual minimum rent established for the first three (3) years following the effective date of this Agreement is Fifteen Thousand Dollars (\$15,000), which is One Thousand Two Hundred Fifty Dollars (\$1,250) on a monthly installment basis.
- b. Minimum Rent After the Third Year. Effective at the beginning of the first day of the fourth Lease year of this Agreement and at the beginning of each two and one-half year period thereafter during the term, the annual minimum rent shall be eighty percent (80%) of the annual average of actual rents paid or accrued during the two (2) years preceding the adjustment date. Said annual minimum rent shall then be divided by twelve (12) to establish the new monthly minimum rent. It is recognized that such adjustments shall be calculated by CITY upon completion of payments due for the preceding rental period in order to determine the amount of the adjustment to be effective on the dates stated herein. Until such calculations are completed, LESSEE shall continue paying monthly rent at the prior rate. Any additional rents determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to CITY within thirty (30) days following written notice. IN NO EVENT SHALL ANY SUCH MINIMUM RENT ADJUSTMENT RESULT IN A DECREASE IN THE MINIMUM RENT REQUIREMENT IN EFFECT IMMEDIATELY PRIOR TO THE ADJUSTMENT DATE.
- c. Percentage Rents. Percentage rents will be calculated on a calendar month basis and will consist of the following percentages of the gross income resulting from the use of the Premises:

Percentages

Ten Percent (10%)

Ten Percent (10%)

Business Activities

Gross income from boarding

Per person, from trail rides, not to be less than 10% monthly boarding fee for trail ride horses

Ten Percent (10%)

Per student from lessons, instruction and training, not to be less than 10% monthly boarding fee for horses used for lessons, instruction and training

Twenty-five Percent (25%)

Commissions or any other compensation paid to LESSEE or sublessees for the right to install or operate coin-operated vending, game, or service machines or devices on the Premises, including telephones, or 10% of the gross income from any such coin-operated machines or devices owned, rented, or leased by LESSEE or sublessees for use on the Premises, whichever is greater

Ten Percent (10%)

Gross income generated on premises from all other authorized activities

- d. Rent for Other Uses. The City Manager, in his or her sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.2, Uses, of this Agreement as may be approved in writing by the City Manager prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the Premises without prior approval by the City Manager shall be subject to the requirements of Section 3.7, Unauthorized Use Charge, of this Agreement.
- e. Horses used primarily for trail rides and instruction are exempt from the ten percent (10%) boarding fee.

3.3 Payment Procedure. On or before the last day of the calendar month following the calendar month in which the gross income subject to rents was earned, LESSEE shall provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

- a. One-twelfth of the annual minimum rent.
- b. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the Premises must be included when a reported category shows gross income to be from more than one business operation.

- c. The percentage rent due CITY, computed and totaled.
- d. The accumulated total of all rents previously paid for the current Lease year.
- e. Payment in the greater of the two following amounts:

One-twelfth of the annual minimum rent or the total percentage rent due CITY computed as described in this section.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by CITY as required by this Agreement and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.
- (2) Physical occupancy date.
- (3) Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

3.4 Gross Income. "Gross income" or "gross receipts", as used in this Agreement, shall include all income resulting from occupancy of the Leased Premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the Premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said Premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this Agreement.

3.5 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine LESSEE's compliance with this Agreement. These records and accounts shall be made available by LESSEE at the Leased Premises and shall be complete and accurate showing all income and receipts from LESSEE's use of the Premises. LESSEE's failure to keep and maintain such records and make them available for inspection by CITY is a breach of this Agreement and cause for termination.

LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

- a. Records. LESSEE shall, at all times during the Agreement term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- b. Financial Statements. Within sixty (60) days after the end of each Lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the Premises. Said statement shall be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE.
- c. Right to Inspect. All LESSEE's books of account, records, and supporting documentation, as described under Section 3.5a. above, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the Leased Premises. CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires, and licensees operating on and in connection with the Premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this Agreement.

At CITY's request, LESSEE shall promptly provide, at LESSEE's expense, any necessary data to enable CITY to fully comply with all requirements of the

state or federal government for Agreement information or reports concerning the Premises. Such data will include, if required, a detailed breakdown of LESSEE's receipts and expenses.

- d. Audit Cost. The full cost of CITY's audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY's cost of audit(s):

- (1) The audit(s) reveal an underpayment of more than five percent (5%) or more than Ten Thousand Dollars (\$10,000), whichever is less, between the rent due as reported and paid by LESSEE pursuant to this Agreement and rent due as determined by the audit(s); or
- (2) LESSEE has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this section of this Agreement.

LESSEE shall pay any deficiency determined by the audit(s) plus interest on such amount as defined in Section 3.6, Delinquent Rent and Audit Fees, of this Agreement, within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this Agreement will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- e. Default. LESSEE's failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Agreement, a breach of this Agreement and cause for termination.

- 3.6 Delinquent Rent and Audit Fees. If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) (being a total of ten percent (10%)), which is hereby mutually agreed by the parties hereto to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Twenty-five Dollars (\$25).

In the event a CITY audit(s), if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) per year on the amount by which said rent was underpaid, in addition to the unpaid rents as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as previously described herein. In the event a CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written

notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE's late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver by CITY of LESSEE's default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Agreement.

- 3.7 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this Agreement. This payment is subject to the due date provided in this Agreement for rental payments and the provision for delinquent rent. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the Leased Premises.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this Agreement, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this Agreement shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this Agreement or any interest therein and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part thereof, without the prior written consent of the City Manager in each instance. Consent is in the sole discretion of the City Manager. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this Agreement. This Agreement shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this Agreement by LESSEE or by any members of Canyonside Stables, LLC.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions,

and provisions of this Agreement which are applicable to the rights acquired. City Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that LESSEE pay additional consideration to CITY, as set forth in Section 4.3, Additional Consideration to CITY, of this Agreement, commencing on the effective date of such proposed sublease of the majority portion of the leasehold or assignment, and may further require that this Agreement or the requested sublease otherwise be revised to comply with the standard CITY Agreement requirements that are then current. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this Agreement or leasehold as a sublessee or assignee.

- 4.3 Additional Consideration to CITY. LESSEE acknowledges that CITY expends considerable sums for maintenance of areas adjacent to the Leased Premises. LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent areas. Therefore, LESSEE and CITY agree that in the event of an assignment, in the event of a subletting of the majority portion of the leasehold, or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed pursuant to the General Development Plan as set forth in Section 10.2 of this Agreement or leasehold, LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the Agreement, two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY's consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE's principal owner or chief executive officer (if LESSEE is other than an individual);

- b. Such other assignment for which the City Manager determines that the legal and equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of LESSEE without any other change in the equity in beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

4.4 Encumbrance. Subject to prior written consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this Agreement, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the Leased Premises in accordance with Section 6.13, Development Plan, of this Agreement. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the Premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the Premises. Provided, however, after the Premises are fully developed in accordance with said Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE's equity so long as LESSEE pays additional consideration to CITY as set forth in Section 4.3, Additional Consideration to CITY, of this Agreement, and further that LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the Agreement to provide then-current rents and provisions.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this Agreement with all the rights, privileges, and duties granted and imposed in this Agreement.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this Agreement to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this Agreement and shall not be deemed to amend or alter any of the terms, covenants, or conditions of this Agreement. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity

which will have a financial interest in this Agreement. The City Manager's approval will not be unreasonably withheld.

4.5 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this Agreement to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this Agreement and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or to possession thereof; and CITY may enter and take possession of the Premises. Provided, however, in the event that any default described in Section 4.5a.(1), hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this Agreement pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure to completion with reasonable diligence.

- b. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Agreement. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if

curable, is cured by such mortgagee or beneficiary, then this Agreement shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Agreement with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the Agreement and abandoned the property, this Agreement shall continue in effect for so long as CITY does not terminate this Agreement, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Agreement. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY's acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.6 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire Premises are taken, this Agreement shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the Premises is unsuitable for the Agreement operation, this Agreement shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

- c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the Premises is suitable for continued Agreement operation, this Agreement shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.
 - d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - e. Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Agreement.
 - f. No Inverse Condemnation. The exercise of any CITY right under this Agreement shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.
- 4.7 Control by Specified Individuals or Entities. Canyonside Stables, LLC named herein as LESSEE is owned and controlled by Randy Hamud and Tracey McCormick as Initial Members, and Barbie Jacobson and Don Scott as Members. Pursuant to The Operating Agreement For Canyonside Stables, LLC, (attached to this Agreement in Section 10.5) all Members are Managing Members. Individually and collectively, they are authorized to actively administer and supervise the business enterprise operated on the Premises. Any proposed future addition to Managing Members must have prior City Manager approval. The Company shall at all times have at least two Members. Pursuant to CITY Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this Agreement. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community. The termination, voluntary or involuntary dissolution of the LLC may, at the option of CITY, be considered a default of the terms of this Agreement, subject to Section 4.5, Default and Remedies, herein.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold CITY, its agents, officers, 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 LESSEE's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the Lease Premises or the work and operations to be performed under this Agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its agents, officers, or employees.

5.2 Insurance.

LESSEE shall at its sole expense keep in full force and effect, at all times during its use of the Leased Premises, all applicable commercial general liability insurance to cover personal injury, bodily injury and property damage, providing at a minimum coverage to a combined single limit of Three Million Dollars (\$3,000,000) per occurrence, subject to an annual aggregate of Three Million Dollars (\$3,000,000) for general liability, completed operations and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable. All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by CITY. Each policy required under this Section shall expressly provide, and an endorsement shall be submitted to CITY, that:

- a. CITY and its respective elected officials, officers, employers, agents, and representatives shall be named as additional insureds. CITY's Additional Insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to CITY.
- b. The policies must be primary and non-contributing to any insurance that may be carried by CITY, as reflected in an endorsement which shall be submitted to CITY.
- c. The policies cannot be cancelled, non renewed or materially changed except after thirty (30) calendar days prior written notice by LESSEE to CITY by certified mail, as reflected in an endorsement which shall be submitted to CITY, except for non-payment of premium, in which case ten days notice must be provided.
- d. LESSEE shall provide CITY's Real Estate Assets Department with all Certificates of Insurance accompanied with all endorsements prior to CITY's execution of this Agreement.

5.3 Modification of Insurance Requirements. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term of this Agreement by

giving LESSEE sixty (60) days prior written notice. CITY's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.

- 5.4 Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

In addition and regardless of whether CITY chooses to obtain the required insurance coverage, if LESSEE fails or refuses to take out or maintain insurance as required in this Agreement or fails to provide the proof of insurance, CITY has the right, in its sole discretion, to declare this Agreement in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.5 Accident Reports. LESSEE shall report to CITY any accident causing more than One Thousand Dollars (\$1,000) worth of property damage or causing serious injury to persons on the Premises that require professional medical attention. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information. Accidents are to be reported to Park Rangers within twenty-four (24) hours of incident. Reports can be made in person to the Rangers or via phone at 858-538-8066 or fax at 858-536-8334. LESSEE will be notified of any changes to these numbers.

- 5.6 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Leased Premises within twenty-four (24) hours of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, horse manure, and rubbish in a manner satisfactory to CITY. If the Leased Premises are damaged by any cause which puts the Premises into a condition which in the opinion of CITY is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at CITY's option, LESSEE agrees to clear and remove from the Leased Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either

purpose the insurance proceeds as set forth in Section 5.2, Insurance, of this Agreement.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days of any damage, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that the Premises are untenantable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this Agreement, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this Agreement. LESSEE further acknowledges that the Premises are in the condition called for by this Agreement, that CITY has performed all work with respect to the Premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the Premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Agreement imposed on CITY.
- 6.3 Maintenance. Except as hereinafter provided, LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the Premises throughout the term. LESSEE will perform all such repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws. LESSEE understands that the Mohnike Adobe House and the hay barn existing on

the site, may now or in the future, be classified as "historic structures." LESSEE agrees that it shall only be responsible for the maintenance and protection of the Mohnike Adobe House and hay barn to the extent reasonably feasible to keep these portions of the Premises maintained in a decent, safe, and sanitary condition satisfactory to CITY excepting therefrom any work on either of the structures that would be considered restoration work. CITY may, but shall not in any way be responsible for or obligated to do any major improvements or restoration work to either of the structures. Should the structures be determined to be uninhabitable for any reason, CITY shall have no obligation or responsibility to provide LESSEE or the inhabitants, if any, with any type of replacement housing or structures, and may require that the structures remain unoccupied without any type of compensation to the inhabitants therein, if any. All applicable codes and standards of CITY, state, and federal agencies shall be observed in all maintenance, repairs, and replacements on the Premises.

- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without prior written approval by City Manager. Such prior written approval shall include review of complete plans as set forth in Section 6.5. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this Agreement to maintain the Premises in a decent, safe, healthy, and sanitary condition. CITY shall not be obligated by this Agreement to make or assume any expense for any improvements or alterations.
- 6.5 Plans, Specifications, and Performance Schedule. LESSEE shall provide complete plans, specifications, and a performance schedule for design and construction of any improvements.
- a. City Approval. Design, plans, and specifications shall be subject to CITY approval, which approval shall not be unreasonably withheld. Promptly following receipt of the plans and specifications, CITY shall notify LESSEE in writing of any objections it may have to the documents. The objections having been addressed in the construction documents to the satisfaction of CITY, CITY shall thereafter diligently and expeditiously process the documents for approval. In case of disagreement on acceptability of the construction documents, the City Manager shall have final approval.
 - b. Design or Construction Changes. LESSEE shall obtain the prior written approval of CITY to any material changes to the design or construction of the Project from that previously approved by CITY.
- 6.6 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Leased Premises. All utilities must be installed underground.

- 6.7 Construction Bond. Whenever there is any construction to be performed on the Premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or, at CITY's option, it may be placed in an escrow or other trust approved by CITY.
- 6.8 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including reasonable attorney's fees.
- If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:
- a. take all actions necessary to record a valid release of lien, or
 - b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 6.9 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the Leased Premises, including any licenses or permits. LESSEE recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.
- 6.10 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the Premises, LESSEE agrees to remove the item at its expense within twenty-four (24) hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE's cost. All existing signs must be approved in writing by the City Manager.

6.11 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the Premises now existing or constructed on the Premises by LESSEE shall at the expiration or termination of this Agreement be deemed to be part of the Premises and shall become, at CITY's option, CITY's property free of all liens and claims, except as otherwise provided in this Agreement.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE's sole cost on or before Agreement expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this Agreement: Any items which LESSEE fails to remove will be considered abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE's expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE agrees to repair all such damage at its sole expense.
- e. Any necessary removal by either CITY or LESSEE which takes place after the expiration or termination of this Agreement shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to the expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of the Premises upon expiration or termination of this Agreement, then CITY shall have the first right to acquire or purchase that personal property.

- 6.12 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this Agreement. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

- 6.13 Development Plan. LESSEE agrees to develop the Leased Premises in accordance with the General Development Plan approved by the City Manager, filed in the Office of the City Clerk, and included as part of this Agreement in Section 10.2. The City Manager or his designee shall have the authority to authorize changes to the Plan provided that the basic concept may not be modified without City Council approval. A document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this Agreement to termination by CITY. The City Manager, in his sole discretion, may approve an extension to the date specified for completion in the Development Plan of up to one (1) year without further City Council approval. All construction plans shall be approved in writing by City Manager prior to the commencement of the construction, such approval shall not be unreasonably withheld.
- 6.14 Failure to Meet Development Schedule. Subject to any extensions authorized under Section 6.13, Development Plan, should LESSEE fail to complete construction in accordance with the schedule of development of the General Development Plan of this Agreement, it is specifically agreed by LESSEE and CITY that a breach of contract will have occurred. In the event that construction of any phase in the Development Plan is not completed by date specified for completion of that phase CITY may, at its option, terminate this Agreement. The City Manager, in his sole discretion, may approve an extension to the development schedule of up to one (1) year without further City Council approval.
- 6.15 Hazardous/Toxic Waste. LESSEE shall not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or around the Premises. 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, leeching, 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'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 herein.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's operations on the Premises, 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.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on, around, or beneath the Premises, LESSEE shall give written notice to the City Manager within twenty-four (24) hours of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. In addition, LESSEE and LESSEE's sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this Agreement, LESSEE, at CITY's sole option, shall cause an environmental assessment of the Premises to be completed 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 the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the Premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these 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. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment to be performed such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.16 Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the Premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the Leased Premises, as required by Health and Safety Code Section 25915. LESSEE agrees to defend, indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Leased Premises.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by certified mail, return receipt requested, addressed as follows:

To CITY:

City Manager
Attention Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

To LESSEE:

Canyonside Stables
12115 Black Mountain Road
San Diego, CA 92129

Notice shall be effective on the date of personal service or two days following postmark by certified mail.

- b. Any party entitled or required to receive notice under this Agreement may designate a different address to which notices shall be sent. Any such designation shall be in accordance with this Section 7.1a.

7.2 CITY Approval. The approval or consent of CITY, wherever required in this Agreement, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

7.3 Compliance with Law. LESSEE 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 LESSEE's sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, ethnicity, religion, gender, sexual orientation, medical status, national origin, age, marital status, or disability in LESSEE's use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

- 7.5 Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.6 Legal Fees. In the event of any litigation regarding this Agreement, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.7 Number and Gender. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.8 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Agreement.
- 7.9 Entire Understanding. This Agreement contains the entire understanding of the parties. LESSEE, by signing this Agreement, agrees that there is no other written or oral understanding between the parties with respect to the Leased Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself. Each of the parties to this Agreement agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement.

The failure or refusal of any party to read the Agreement or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Agreement will be valid unless it is in writing and signed by all parties.

- 7.10 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or agreements with consultants, vendors, or LESSEES shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

- 7.11 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
 - b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) LESSEE's policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
 - c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.
- 7.12 Disabled Access Compliance. LESSEE agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE's compliance shall include but not necessarily be limited to the following:
- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
 - b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
 - c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

- d. Where required by law, LESSEE shall comply with CITY's disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.
- e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Agreement.

- 7.13 Company Authority. Each individual executing this Agreement on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of LESSEE, in accordance with Operating Agreement for Canyonside Stables, LLC, and that this Agreement is binding upon LESSEE in accordance with its terms, and that LESSEE is a duly qualified Limited Liability Company and all steps have been taken prior to the date of this Agreement to qualify LESSEE to do business in the state of California.
- 7.14 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Leased Premises in a creditable manner.
- 7.15 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Agreement.
- 7.16 Noxious Weeds, Pests, and Erosion. LESSEE shall take proper corrective action, to the satisfaction of CITY, to prevent the infestation of noxious weeds, pests, and erosion throughout the entire Leased Premises. Prior to the use of any herbicide or pesticide, LESSEE shall contact on-site Park Ranger.
- 7.17 Control of Horses. The Premises shall be adequately fenced at LESSEE's sole expense to control horses and in a manner satisfactory to CITY. LESSEE shall be solely responsible for all damage of any kind resulting from horses leaving the Premises, including any damage caused by the escape of horses.
- 7.18 Cutting of Trees. No growing or mature trees are to be destroyed or removed without the prior written consent of the City Manager.
- 7.19 Hold Harmless/Flood Damage and Other Acts of God. LESSEE understands and agrees that the Leased Premises is subject to flood damage and that other damage may result to the leasehold from other manmade or natural causes, including weather conditions, fire, and earthquakes. LESSEE agrees that any damages resulting from flooding or such other manmade or natural causes shall not result in any liability on the part of CITY, and LESSEE specifically agrees to assume the

defense of, indemnify, and hold CITY harmless for any such damages. LESSEE further specifically agrees that CITY shall have no obligation whatsoever to construct or maintain channels or to construct, maintain, or operate reservoirs or release water from reservoirs in such a way as to control, alleviate, or minimize potential damages to the leasehold area. LESSEE specifically assumes the risk of all damages resulting from flooding or weather conditions or other natural causes.

LESSEE understands and agrees that if LESSEE did not agree to assume all risks, costs liabilities and less described in this Section 7.19, including LESSEE's agreement that CITY has absolutely no obligation with regard to controlling or mitigating or reducing flood damages or potential flood damages, CITY would not enter into this Agreement.

SECTION 8: PRESERVATION OF RESOURCES

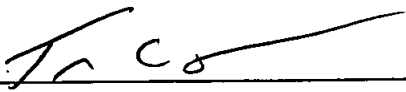
- 8.1 LESSEE's Responsibility for Preserving Environmental, Historical and Cultural Resource Sites. LESSEE understands and agrees that, in connection with the establishment of the Los Penasquitos Canyon Preserve, sensitive resource sites as well as environmental, historical, and cultural resources may be identified on the Leased Premises. LESSEE understands the importance of protecting these resources and agrees to work with CITY to ensure their continued existence. LESSEE agrees that it shall be responsible for and shall use its best efforts to protect such sites and resources. In addition, LESSEE shall immediately report to City Manager any change in conditions, that LESSEE knows or has reason to know may threaten or cause significant damage to the resources. Provided, however, if additional measures are required for protecting a site or resource, such as fencing, the installation and maintenance costs involved shall be the sole responsibility of CITY or other public agency or body charged with operating and/or maintaining the Los Penasquitos Canyon Preserve.

SECTION 9: SIGNATURES

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

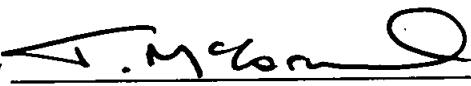
THE CITY OF SAN DIEGO

Date 1-3-02

By 
Name TIM C. ROTHANUS
Title DEPUTY DIRECTOR

LESSEE:

Date 11-27-01.

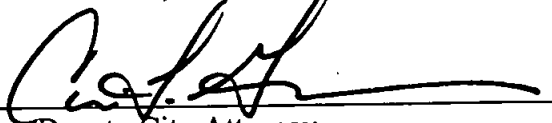
By 
Name TRACEY MCCORMICK
Title PRESIDENT

Date _____

By _____
Name _____
Title _____

APPROVED as to form and legality this 8th day of January 2002

CASEY GWINN, CITY ATTORNEY

By 
Deputy City Attorney

CPA:jmj
11/27/01
IAWPO2001ANDERSONLS-CANYONSIDE STABLES2.wpd

R-295858

SECTION 10: EXHIBITS

10.1 Description of Map (Exhibit A).

See Exhibit A

10.2 General Development Plan.

A. Scope of Improvements

- Phase 1. Additional Wash Rack - A second wash rack must be constructed adjacent to the existing wash rack. Estimated cost is \$3,000.
- Phase 2. Relocate Horse Rental Operations Onto Main Area of Property - This is considered necessary to allow for the proposed Trans County Trail that will pass adjacent to the current horse rental operation. A diagram showing the proposed layout is attached as Figure 1 and Happy Trails Area 1 and incorporated herein by this reference. The area to be set aside for the rental operations will be delineated by a split rail fence. Estimated cost is \$2,500.
- Phase 3. Fence the Dressage Arena - Construct a fence on the current dressage arena. This will improve safety for all users of the dressage arena. Estimated cost is \$5,000.
- Phase 4. Improve Picnic Area - To facilitate greater public use of the picnic area, a major upgrade of the current picnic area is needed. The improvements will include installation of two (2) built-in barbeques, installation of approximately 500' of split rail fence to better delineate the picnic area, establishment of a second smaller picnic area adjacent to the current one, installation of a small stone fire ring, and establishment of an in-ground irrigation system to allow for better care of the grass and trees around the picnic area. Estimated cost for these improvements is \$6,500.
- Phase 5. Replace Arena Fencing. The current fencing on both the main and round arena is in poor condition. The fence will be replaced with either wood or PVC fencing similar to the existing fence. The estimated cost is \$11,000. The work will be performed by the 5th Lease year.
- Phase 6. Repair or Replacement of Tack Sheds. The existing tack sheds (36 small wooden structures) are in very poor repair and will need replacement by the 5th Lease year. Estimated cost is \$18,000.

B. Schedule of Improvements

- Phase 1. Additional Wash Rack- Completed by end of first Lease year;
- Phase 2. Relocate Horse Rental Operations - Completed by end of first Lease year;
- Phase 3. Fence the Dressage Arena - Completed by end of second Lease year;
- Phase 4. Improve Picnic Area - Completed by end of third Lease year;

Phase 5. Replace Arena Fencing - Completed by end of fifth Lease year;

Phase 6. Repair or Replacement of Tack Sheds - Completed by end of fifth Lease year.

C. Cost of Improvements (Estimated)

Phase 1: \$ 3,000

Phase 2: \$ 2,500

Phase 3: \$ 5,000

Phase 4: \$ 6,500

Phase 5: \$11,000

Phase 6: \$18,000

Total Estimated Cost: \$46,500. Rent credits may be authorized on 50% of this amount only, pursuant to Section 3.2 Rent, of this Lease.

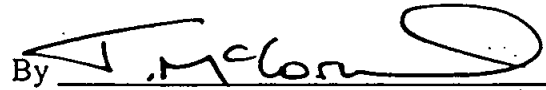
10.3 Rules and Regulations for Trail Riders (Exhibit B).

10.4

Limited Liability Company Name.

CANYON SIDE STABLES LLC
NAME OF LLC

I, TRACEY M'CORMICK, certify that I am the
PRESIDENT of the Limited Liability Company executing the attached
Lease; that TRACEY M'CORMICK, who signed this agreement on behalf of the
Limited Liability Company is the PRESIDENT of the company; that this
Lease was duly signed for and on behalf of the company pursuant to the authority of its articles
of organization and operating agreement; that execution of this Lease is within the scope of the
company's powers; and that set forth below are the names of the managers, officers, or members
of the company who have the authority to conduct the business and affairs of the company.

By 
Title: PRESIDENT

Name TRACEY M'CORMICK

Name RANDALL HAMUD

Name DONALD SCOTT

Name BARBARA JACOBSON

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA		T.M.	20094
ORIGINAL					SHEET 1 OF 1 SHEET		W.O.	
					<i>John P. Calderines</i> 10-17-95		1920-6288 (NAD 83)	
					FOR CITY ENGINEER DATE		280-1728 (NAD 27)	
							LAUBERT COORDINATES	
STATUS							18379 - B	

EXHIBIT "B"

RULES AND REGULATIONS FOR TRAIL RIDERS

PROTECTIVE HEADGEAR REQUIREMENTS FOR EQUESTRIAN SERVICES PROVIDERS

It is recommended that Trail Guides wear SEI CERTIFIED ASTM STANDARD F 1163 Equestrian Riding Helmets during all trail rides.

1. **Minor Age Riders.** The stable must require all minor age, able-bodied riders to wear SEI CERTIFIED ASTM STANDARD F 1163 protective headgear. If the parents or legal guardian choose not to have their child wear protective headgear, they must sign a helmet refusal form stating that ASTM/SEI protective headgear was offered to their child and that not wearing protective headgear increases the risk of serious injury and/or death to their child during horseback riding activities. A minor cannot sign such a statement for himself or herself, but their parent or legal guardian must sign it.

The stable must provide helmets for these riders, maintaining an adequate supply in various sizes. However, a rider may provide his or her own ASTM/SEI Equestrian helmet. The helmets must be placed in a highly visible area where riders can see them. The rider must keep the helmet on his or her head with harnesses fastened securely prior to mounting, throughout the ride, and until after dismounting.

2. **Legal Age Riders.** The stable must warn all legal age riders that SEI CERTIFIED ASTM STANDARD F 1163 Protective Headgear may protect them from some serious head injuries and even death during riding activities. This must be done in writing through the stable's release agreement and also verbally prior to the riding activity. A rider may provide his or her own ASTM/SEI Equestrian helmet. However, the stable must offer a stable-owned helmet to the student if they are not providing their own. The stable must maintain an adequate supply of ASTM/SEI helmets in various sizes. The helmets must be placed in a highly visible area where riders can see them. A rider choosing to wear a helmet must keep the helmet on his or her head with harness fastened securely prior to mounting, throughout the ride, and until after dismounting. If the parents or legal guardians choose not to have their child wear protective headgear, they must sign a helmet refusal form stating that ASTM/SEI protective headgear was offered to their child, that they choose not to have their child wear the protective headgear, and that they understand that not wearing protective headgear increases the risk of serious injury and/or death to their child during horseback riding activities.
3. **Disabled Riders.** It may not be appropriate or safe for some disabled riders to wear protective headgear. Follow the directions of your disabled and therapeutic riding certification organization and the directions of the medical professional who oversees the health care of the disabled rider.

4. **Helmet Manufacturer's Care Instructions and Helmet Life Span Projection.** Must be considered and adhered to. The stable-owned ASTM/SEI helmet labeling must state that the helmet was manufactured within the previous five year period, as the life span of the ASTM/SEI helmet is five years and not helmet may be used after it is five years old. If any operator-owned helmet receives a blow, it must be replaced and taken out of service immediately. Clean and disinfect helmets after each wearing, using a product that complies with the manufacturer's requirement so that the condition of the helmet is not compromised.
5. **Establishing Your Stable's Protective Headgear Policy.** Equestrian services providers may establish their own policies and standards concerning the wearing of protective headgear, however, the standards must meet or exceed the mandatory standards stated.

PUBLIC RIDE PROCEDURE

6. **Release and Warning Forms.** The use of City approved release and warning agreements are required.
7. **Two-Way Radios or Cell Phones.** Must be carried by a guide on each ride. This equipment must be functional for the distance the group travels from the base operation, and an effective part of the stable's emergency procedure plan. All staff members must be trained in the use of this equipment as part of your emergency procedure plan.
8. **Beginner Riders Require Special Attention.** And supervision, regarding their placement in the trail line, the type of horse and equipment they are assigned to use, and gaits at which they will be allowed to ride.
9. **Children Under Age Seven.** Must not be allowed to ride on trail rides.
10. **A Rider's Size.** Must correlate with the size of horse chosen, both with regard to height and weight. No rider's weight may exceed 240 pounds. (A general guideline is that a rider shall weight no more than 20% of the weight of the mount.)
11. **Obviously Intoxicated People.** Must not be allowed to ride or come near horses under any circumstances.
12. **Riding Double.** Two riders on one mount must not be allowed under any circumstances.
13. **Pre-Ride Instruction.** Commercial horse ride operators must provide at least 10 to 15 minutes of pre-ride instruction either by video presentation and/or by uniform, standardized presentation of trail guide or management personnel of the stable, through lecture and demonstration. The presentation shall include the following outline of topics:
 - a. Trail Guides/Trail Riders Name or Names;

- b. Introduction to Horseback Riding at the Stable;
- c. Verbal Warning That Your Stable Advises Pregnant Women Not To Ride Horses Unless Permission is Given Under Advice of Her Physician; and
- d. Nature of Riding Horses for Guests.
- e. Description of:
 - 1. Trails on which riders will go [length; flat, gently rolling hills, moderately steep or steep hills, mountainous, rigged wilderness, etc.];
 - 2. Terrain [rocky, grassy, dirt, clay, sand, etc.];
 - 3. Obstacles over or across which horses will go [Note all obstacles, streams with water depth stated at deepest part, logs, public road, etc.]; and
 - 4. Current trail condition caused by weather.
- f. Offering of SEI Certified ASTM Standard F 1163 Protective Head Gear
- g. Basic Riding Skills
 - 1. Mounting the horse;
 - 2. Body, arm, leg, and foot position in stirrups while riding;
 - 3. Holding the reins [finger position; hand low and over saddle pommel, use of neck rein and direct rein];
 - 4. How to stop and slow down a horse by checking [tugging or pulling reins back and releasing pressure]. (It is best to put a hand on the rider's hand and demonstrate the feel of how hard to pull the reins and when to release pressure);
 - 5. How to turn a horse to left and right;
 - 6. How to cue a horse to move forward at a walk;
 - 7. How to dismount, hold and lead a horse from the ground;
 - 8. Emergency stopping techniques [pulley rein and direct rein into a smaller circle];
 - 9. How to be aware of saddle girth looseness; and

10. Test rider's ability to stop and turn the horse.
- h. Trail Ride Rules [For Safety of All]
1. Ride single file at all times - do not pass the horse ahead of you;
 2. One horse length between;
 3. No carry-on objects;
 4. No screaming, yelling or making loud, sharp noises;
 5. No holding horses back, but to stay with the group;
 6. No going faster than the group, no running toward stable; and
 7. No slapping, hard kicking of horses, jerking on reins, or any abuse of horses.
14. **Mounting Assistance and Stirrup Adjustment.** Management shall assist all guest riders in mounting. Horse shall be led away from hitching post and other horses when checking saddles and mounting rider. (The use of a mounting block is suggested.) Saddle girth tightness shall be checked just prior to mounting and tightened as needed. Stable personnel shall hold mount at the head and brace each saddle with a hand as the rider mounts to deter sore backs from developing in the horses, Stirrups shall then be adjusted for the rider's leg length. Final individual instruction must be given and the rider asked if they are ready to ride.
15. **Carry-On Objects.** Riders must not be allowed to carry or wear objects on a ride which may drop, bounce, flap, blow-away, make noises or otherwise possible frighten a horse, such as hats not securely tied under the chin, toys, purses, cameras, extra unworn clothing not tied securely to person or saddle, cell phones, etc. Riders shall be advised not to put on or take off clothing while the trail group is moving.
16. **Guest Rider Record Keeping.** Complete records must be maintained on file concerning guest riders for a minimum of 5 years or as your legal counsel directs. Besides original release agreements, registration lists must be maintained which include the names of all guest riders in a riding group, names of horses assigned to each, the date and time of the ride, the trail guides/drag riders and stable personnel on duty. Such records can be helpful when guests come back to ride and request a specific horse or guide. These records also provide defense evidence.

PERSONNEL MANAGEMENT

17. **Worker Compensation and Labor Laws.** If you have part-time or full-time employees, contract labor workers, exchange labor, or volunteers working on your behalf, be certain you are in compliance with Worker Compensation and Labor laws of your state. This can best be assessed by contacting an attorney, or your state's Worker Compensation Division and/or Department of Labor.
18. **Employee Background Check.** Only the most reputable counselors, instructors, and personnel may be employed. Employment applications, employee health records, references, and training certification papers, shall be carefully screened in advance of hiring. Minimum age of counselors is 18, or as is required by your state law.
19. **Employee Records.** Generally shall be kept on file for five years or as your legal counsel directs. Employment applications should be completed by each employee and references provided to the employer. Employers shall fully check out all references prior to hiring. Next-of-kin names, addresses, phone numbers, and forwarding addresses must be on file. Employees often become prime witnesses in claims or litigation and it is important that they can be found easily after termination of employment. Seek legal counsel on all employee applications, agreements or contracts and be careful of what you promise verbally and in writing to employees.
20. **Trail Guides and Drag Riders**
 - a. Senior Trail Guides MUST be at least 18 years old, while secondary Trail Guides may be no younger than 16 years old.
 - b. When one Trail Guide is used for 4 riders or less he or she must ride at the front of the group.
 - c. One senior Trail Guide must accompany each ride. The Drag Rider is defined as a Trail Guide who rides at the rear of the trail group and they shall always be the most experienced senior Trail Guide of the attending Trail Guide crew.
 - d. Trail Guides must be trained, skilled and seasoned horsemen, and the employees, owners, and official representatives of the stable business - NOT GUEST RIDERS.
 - e. Trail Guides must speak fluent English and have no less than average communication skills.
 - f. Trail Guides must have reputable, responsible, authoritative personality traits, which will encourage both adult and child guest riders to follow their instruction. (A common problem is the flirtatious situations between the Trail Guides and customers or other employees, which cause Trail Guides to take their minds off the job at hand, posing a hazard to the group.)

- g. Trail Guides must be thoroughly trained in stable procedures, public relations, emergency and safety procedures, and basic first aid, should a rider become injured.
 - h. Trail Guides must never be verbally or physically abusive to people or horses or use obscene language. They should never correct or reprimand horses while the public looks on. They should be carefully trained about what they may or may not tell guests.
 - i. Trail Guides must never use or be under the influence of alcohol or drugs while on the job.
 - j. Trail Guides shall provide clear signals to riders for changes of gait and other instructions as would be expected of a leader.
 - k. Drag Riders shall watch over all riders from the last position in the trail string so as to notice riders having problems with a horse, their riding skills, or attempting to ride in an unsafe or unruly manner. Drag Riders will likely notice unsafe riders first and be the primary witness if any injury occurs.
 - l. The trail guest group must never be left alone without a Trail Guide, except in an emergency with 8 or less riders, at which time horses shall first be tied and secured well away from the guests. (Drag Riders for all trail groups of 8 or less are strongly recommended.)
21. **Trail Guide/Employee Apparel.** Suitable apparel is required for personnel working around horses, to include smooth, full soled boots or shoes that cover the ankle [with at least one inch heels when riding], and ankle length, flexible or moderately loose fitting pants. (The use of the SEI CERTIFIED ASTM STANDARD F 1163 Equestrian Riding Helmet is highly recommended and the stable must at least recommend that all persons working around horses wear them consistently. It is recommended that staff members wear uniform clothing, i.e., same colored shirts or jackets. This assists both staff and customers in identification.)
22. **Basic First Aid.** Procedure shall be taught to all trail guides, preferably by a certified first aid teacher. In the event of an accident, personnel must be able to recognize signs of serious injury and know what to do while waiting for official medical assistance. Basic first aid kits must be kept close at hand, accessible to adults, and personnel must know where the kits are located. Kits must be fully supplied and contain disposable surgical masks, a good supply of disposable gloves, disposable mouthpieces, and proper medical waste disposal equipment. Such items are required due to HIV infectious diseases and OSHA Hazards and Exposure regulation requirements for working with blood and body fluid related injuries. [For more information contact the American Red Cross.]
23. **Risk Reduction Meetings and Safety Drills.** Have staff risk reduction meetings at least once per month. Read and review rules and all applicable Risk Reduction Programs with staff. Drill employees on emergency procedures by setting up mock emergencies, so they

will be able to competently handle a similar real emergency. Staff shall include, but not be limited to, employees, instructors, trainers, volunteers and/or anyone working on behalf of the stable owner. Document these meetings and retain documentation on file.

POSTING SIGNS

24. **Emergency Phone Numbers.** Must be posted for police, veterinarians, fire department and hospital beside all phones.
25. **Stable Rules.** Must be prominently posted around the stable.
26. **"Ride At Own Risk" Signs.** Must be prominently posted in public high traffic areas.
27. **"Child Supervision" Sign.** Must be prominently posted.
28. **Signs Required by State and Federal Law.** Must be prominently posted.

OTHER RULES AND REGULATIONS

29. Lessee shall be responsible for weekly manure removal and proper disposal from the stables to the turn around point for the rental rides located just west of the Penasquitos Preserve Creek crossing.
30. Lessee shall post the hours of operation of guided trail rides in plain view.
31. Lessee shall be limited to thirty-five (35) rental horses on the premises at any one time.
32. Hay rides and trail rides may be allowed into the Park after sunset if Lessee delivers, by hand or fax, an application no less than 48 hours in advance to Park Rangers. Lessee shall assume application is approved unless notified otherwise within 24 hours. Such approval is subject to the nomination of an acceptable point-of-contact as ride organizer.
33. Lessee is responsible at all times to maintain the trail ride operation in a safe, clean and orderly manner. Because the Leased Premises is historic in nature, no non-operational, non-registered or non-related vehicles are to be stored on site. No improvements or additions of any kind are to be installed without CITY authorization; any unauthorized improvements are to be removed within 24 hours notice thereof by CITY.
34. Lessee as part of regular property maintenance, shall water roads and paths on the Leased Premises to prevent dusty conditions.
35. Trail rides shall be limited to ten (10) rental horses per string. Each string shall have radio contact with each other and be separated by no less than 200 yards, unless going in opposite directions.

36. There shall be no more than three hundred (300) rental horse rides in the Los Penasquitos Canyon Preserve ("Preserve") per week.
37. During the months of November through March (rainy period) trail riders on the single track shall be limited to four (4) rental horses per string. The rainy period can be lengthened or shortened by authorization from this City Manager or his designee.
38. There shall be no wagon/hay rides on trails east of the Leased Premises.
39. There shall be no more than two (2) wagon/hay rides in the Preserve at one time and each ride shall have radio contact with each other and be separated by no less than 200 yards, unless going in opposite directions.
40. There shall be no more than nine (9) wagon/hay rides in the Preserve per day.
41. No one person shall board more than four (4) horses on the Leased Premises at one time. This provision shall not apply to rental horses and riding instructors.
42. Lessee shall not board more than one hundred (100) horses on the Leased Premises at any one time.

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Figure 1

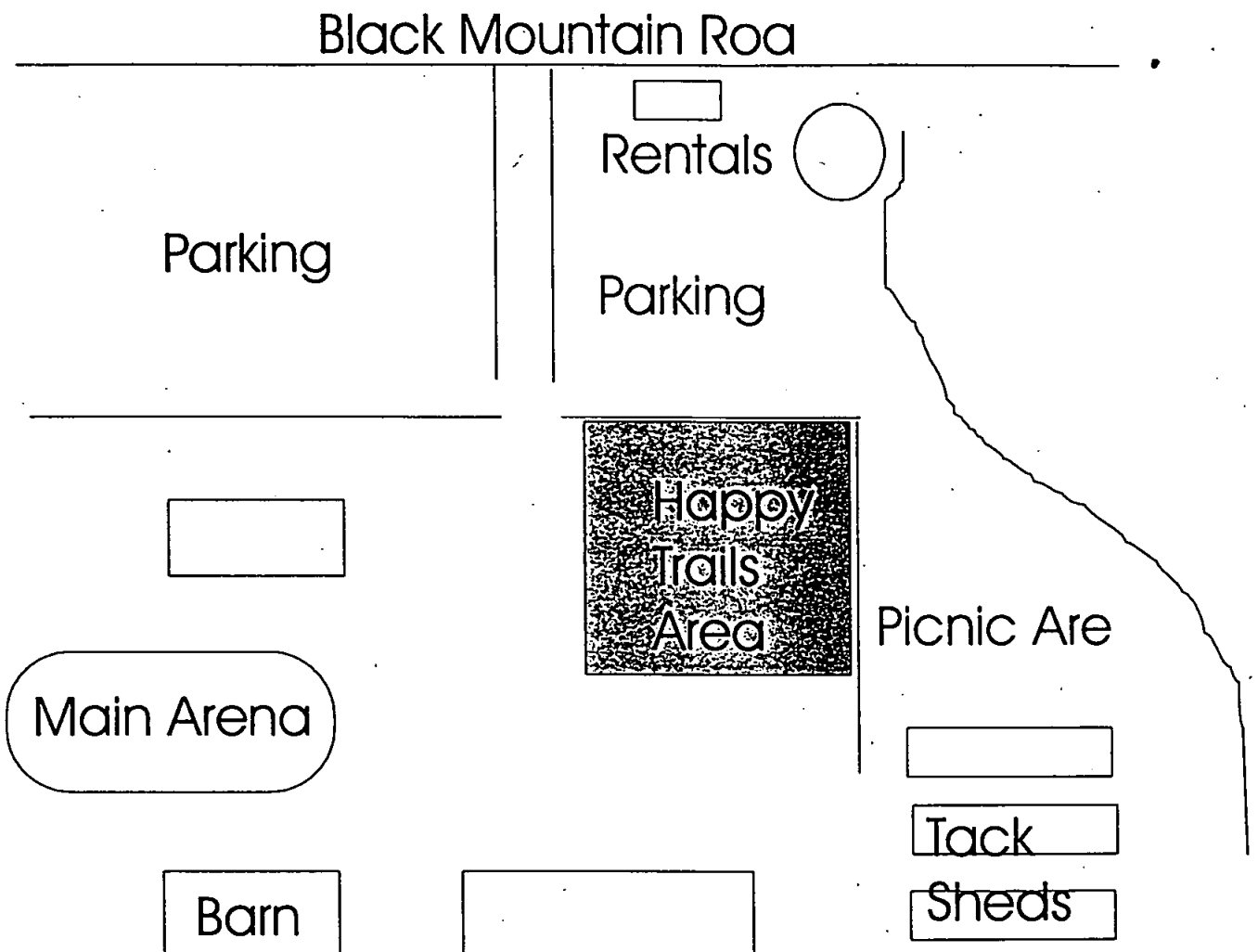


EXHIBIT "C"

RULES AND REGULATIONS FOR TRAIL RIDERS

PROTECTIVE HEADGEAR REQUIREMENTS FOR EQUESTRIAN SERVICES PROVIDERS

All equestrian services providers must provide and require SEI CERTIFIED ASTM STANDARD F 1163 Equestrian Riding Helmets to be worn by all able-bodied riders 7 through 15 years of age. Trail Guides must wear SEI CERTIFIED ASTM STANDARD F 1163 Equestrian Riding Helmets during all trail rides.

Minor Age Riders 16 Years and Older The stable must require all minor age, able-bodied riders 16 years and older to wear SEI CERTIFIED ASTM STANDARD F 1163 protective headgear. If the parents or legal guardian choose not to have their child wear protective headgear, they must sign a helmet refusal form stating that ASTM/SEI protective headgear was offered to their child and that not wearing protective headgear increases the risk of serious injury and/or death to their child during horseback riding activities. A minor cannot sign such a statement for himself or herself, but their parent or legal guardian must sign it.

The stable must provide helmets for these riders, maintaining an adequate supply in various sizes. However, a rider may provide his or her own ASTM/SEI Equestrian helmet. The helmets must be placed in a highly visible area where riders can see them. The rider must keep the helmet on his or her head with harnesses fastened securely prior to mounting, throughout the ride, and until after dismounting.

Legal Age Riders The stable must warn all legal age riders that SEI CERTIFIED ASTM STANDARD F 1163 Protective Headgear may protect them from some serious head injuries and even death during riding activities. This must be done in writing through the stable's release agreement and also verbally prior to the riding activity. A rider may provide his or her own ASTM/SEI Equestrian helmet. However, the stable must offer a stable-owned helmet to the student if they are not providing their own. The stable must maintain an adequate supply of ASTM/SEI helmets in various sizes. The helmets must be placed in a highly visible area where riders can see them. A rider choosing to wear a helmet must keep the helmet on his or her head with harness fastened securely prior to mounting, throughout the ride, and until after dismounting. If the parents or legal guardians choose not to have their child wear protective headgear, they must sign a helmet refusal form stating that ASTM/SEI protective headgear was offered to their child, that they choose not to have their child wear the protective headgear, and that they understand that not wearing protective headgear increases the risk of serious injury and/or death to their child during horseback riding activities.

Disabled Riders It may not be appropriate or safe for some disabled riders to wear protective headgear. Follow the directions of your disabled and therapeutic riding certification organization and the directions of the medical professional who oversees the health care of the disabled rider.

Helmet Manufacturer's Care Instructions and Helmet Life Span Projection must be considered and adhered to. The stable-owned ASTM/SEI helmet labeling must state that the helmet was manufactured within the previous five year period, as the life span of the ASTM/SEI helmet is five years and not helmet may be used after it is five years old. If any operator-owned helmet receives a blow, it must be replaced and taken out of service immediately. Clean and disinfect helmets after each wearing, using a product that complies with the manufacturer's requirement so that the condition of the helmet is not compromised.

Establishing Your Stable's Protective Headgear Policy Equestrian services providers may establish their own policies and standards concerning the wearing of protective headgear, however, the standards must meet or exceed the mandatory standards stated.

PUBLIC RIDE PROCEDURE

Release and Warning Forms The use of City approved release and warning agreements are necessary and required in nearly all commercial horse activities and must never be undervalued.

Two-Way Radios or Cell Phones must be carried by a guide on each ride. This equipment must be functional for the distance the group travels from the base operation, and an effective part of the stable's emergency procedure plan. All staff members must be trained in the use of this equipment as part of your emergency procedure plan.

Beginner Riders Require Special Attention and supervision, regarding their placement in the trail line, the type of horse and equipment they are assigned to use, and gaits at which they will be allowed to ride.

Children Under Age Seven must not be allowed to ride on trail rides.

A Rider's Size must correlate with the size of horse chosen, both with regard to height and weight. No rider's weight may exceed 240 pounds. (A general guideline is that a rider shall weight no more than 20% of the weight of the mount.)

Obviously Intoxicated People must not be allowed to ride or come near horses under any circumstances.

Riding Double Two riders on one mount must not be allowed under any circumstances.

Pre-Ride Instruction Commercial horse ride operators must provide at least 10 to 15 minutes of pre-ride instruction either by video presentation and/or by uniform, standardized presentation of trail guide or management personnel of the stable, through lecture and demonstration. The presentation shall include the following outline of topics:

- A Trail Guides/Drive Riders Name or Names;
- B Introduction to Horseback Riding at the Stable;
- C Verbal Warning That Your Stable Advises Pregnant Women Not To Ride Horses Unless Permission is Given Under Advice of Her Physician; and

- D Nature of Riding Horses for Guests.
- E Description of:
 - 1 Trails on which riders will go [length; flat, gently rolling hills, moderately steep or steep hills, mountainous, rugged wilderness, etc.];
 - 2 Terrain [rocky, grassy, dirt, clay, sand, etc.];
 - 3 Obstacles over or across which horses will go [Note all obstacles, streams with water depth stated at deepest part, logs, public road, etc.]; and
 - 4 Current trail condition caused by weather.
- F Offering of SEI Certified ASTM Standard F 1163 Protective Head Gear
- G Basic Riding Skills
 - 1 Mounting the horse;
 - 2 Body, arm, leg, and foot position in stirrups while riding;
 - 3 Holding the reins [finger position; hand low and over saddle pommel, use of neck rein and direct rein];
 - 4 How to stop and slow down a horse by checking [tugging or pulling reins back and releasing pressure]. (It is best to put a hand on the rider's hand and demonstrate the feel of how hard to pull the reins and when to release pressure);
 - 5 How to turn a horse to left and right;
 - 6 How to cue a horse to move forward at a walk;
 - 7 How to dismount, hold and lead a horse from the ground;
 - 8 Emergency stopping techniques [pulley rein and direct rein into a smaller circle];
 - 9 How to be aware of saddle girth looseness; and
 - 10 Test rider's ability to stop and turn the horse.
- H Trail Ride Rules [For Safety of All]
 - 1 Ride single file at all times - do not pass the horse ahead of you;
 - 2 One horse length between;
 - 3 No carry-on objects;
 - 4 No screaming, yelling or making loud, sharp noises;
 - 5 No holding horses back, but to stay with the group;
 - 6 No going faster than the group, no running toward stable; and
 - 7 No slapping, hard kicking of horses, jerking on reins, or any abuse of horses.

Mounting Assistance and Stirrup Adjustment Management shall assist all guest riders in mounting. Horse shall be led away from hitching post and other horses when checking saddles and mounting rider. (The use of a mounting block is suggested.) Saddle girth tightness shall be checked just prior to mounting and tightened as needed. Stable personnel shall hold mount at the head and brace each saddle with a hand as the rider mounts to deter sore backs from developing in the horses, Stirrups shall then be adjusted for the rider's leg length. Final individual instruction must be given and the rider asked if they are ready to ride.

Carry-On Objects Riders must not be allowed to carry or wear objects on a ride which may drop, bounce, flap, blow-away, make noises or otherwise possible frighten a horse, such as hats not securely tied under the chin, toys, purses, cameras, extra unworn clothing not tied securely to

person or saddle, cell phones, etc. Riders shall be advised not to put on or take off clothing while the trail group is moving.

Guest Rider Record Keeping Complete records must be maintained on file concerning guest riders for a minimum of 5 years or as your legal counsel directs. Besides original release agreements, registration lists must be maintained which include the names of all guest riders in a riding group, names of horses assigned to each, the date and time of the ride, the trail guides/drag riders and stable personnel on duty. Such records can be helpful when guests come back to ride and request a specific horse or guide. These records also provide defense evidence.

PERSONNEL MANAGEMENT

Worker Compensation and Labor Laws If you have part-time or full-time employees, contract labor workers, exchange labor, or volunteers working on your behalf, be certain you are in compliance with Worker Compensation and Labor laws of your state. This can best be assessed by contacting an attorney, or your state's Worker Compensation Division and/or Department of Labor.

Employee Background Check Only the most reputable counselors, instructors, and personnel may be employed. Employment applications, employee health records, references, and training certification papers, shall be carefully screened in advance of hiring. Minimum age of counselors is 18, or as is required by your state law.

Employee Records generally shall be kept on file for five years or as your legal counsel directs. Employment applications should be completed by each employee and references provided to the employer. Employers shall fully check out all references prior to hiring. Next-of-kin names, addresses, phone numbers, and forwarding addresses must be on file. Employees often become prime witnesses in claims or litigation and it is important that they can be found easily after termination of employment. Seek legal counsel on all employee applications, agreements or contracts and be careful of what you promise verbally and in writing to employees.

Trail Guides and Drag Riders

- A Senior Trail Guides **MUST** be at least 18 years old, while secondary Trail Guides may be no younger than 16 years old.
- B When one Trail Guide is used for 4 riders or less he or she must ride at the front of the group.
- C One senior Trail Guide must accompany each ride. The Drag Rider is defined as a Trail Guide who rides at the rear of the trail group and they shall always be the most experienced senior Trail Guide of the attending Trail Guide crew.
- D Trail Guides must be trained, skilled and seasoned horsemen, and the employees, owners, and official representatives of the stable business - NOT GUEST RIDERS.
- E Trail Guides must speak fluent English and have no less than average communication skills.
- F Trail Guides must have reputable, responsible, authoritative personality traits, which will encourage both adult and child guest riders to follow their instruction. (A common

problem is the flirtatious situations between the Trail Guides and customers or other employees, which cause Trail Guides to take their minds off the job at hand, posing a hazard to the group.)

- G Trail Guides must be thoroughly trained in stable procedures, public relations, emergency and safety procedures, and basic first aid, should a rider become injured.
- H Trail Guides must never be verbally or physically abusive to people or horses or use obscene language. They should never correct or reprimand horses while the public looks on. They should be carefully trained about what they may or may not tell guests.
- I Trail Guides must never use or be under the influence of alcohol or drugs while on the job.
- J Trail Guides shall provide clear signals to riders for changes of gait and other instructions as would be expected of a leader.
- K Drag Riders shall watch over all riders from the last position in the trail string so as to notice riders having problems with a horse, their riding skills, or attempting to ride in an unsafe or unruly manner. Drag Riders will likely notice unsafe riders first and be the primary witness if any injury occurs.
- L The trail guest group must never be left alone without a Trail Guide, except in an emergency with 8 or less riders, at which time horses shall first be tied and secured well away from the guests. (Drag Riders for all trail groups of 8 or less are strongly recommended.)

Trail Guide/Employee Apparel Suitable apparel is required for personnel working around horses, to include smooth, full soled boots or shoes that cover the ankle [with at least one inch heels when riding], and ankle length, flexible or moderately loose fitting pants. (The use of the SEI CERTIFIED ASTM STANDARD F 1163 Equestrian Riding Helmet is highly recommended and the stable must at least recommend that all persons working around horses wear them consistently. It is recommended that staff members wear uniform clothing, i.e., same colored shirts or jackets. This assists both staff and customers in identification.)

Basic First Aid procedure shall be taught to all trail guides, preferably by a certified first aid teacher. In the event of an accident, personnel must be able to recognize signs of serious injury and know what to do while waiting for official medical assistance. Basic first aid kits must be kept close at hand, accessible to adults, and personnel must know where the kits are located. Kits must be fully supplied and contain disposable surgical masks, a good supply of disposable gloves, disposable mouthpieces, and proper medical waste disposal equipment. Such items are required due to HIV infectious diseases and OSHA Hazards and Exposure regulation requirements for working with blood and body fluid related injuries. [For more information contact the American Red Cross.]

Risk Reduction Meetings and Safety Drills Have staff risk reduction meetings at least once per month. Read and review rules and all applicable Risk Reduction Programs with staff. Drill employees on emergency procedures by setting up mock emergencies, so they will be able to competently handle a similar real emergency. Staff shall include, but not be limited to, employees, instructors, trainers, volunteers and/or anyone working on behalf of the stable owner. Document these meetings and retain documentation on file.

POSTING SIGNS

Emergency Phone Numbers must be posted for police, veterinarians, fire department and hospital beside all phones.

Stable Rules must be prominently posted around the stable.

"Ride At Own Risk" Signs must be prominently posted in public high traffic areas.

"Child Supervision" Sign must be prominently posted.

Signs Required by State and Federal Law must be prominently posted.

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RESOLUTION NUMBER R- 295858

ADOPTED ON DEC 10 2001

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING A LEASE AGREEMENT
WITH CANYONSIDE STABLES, LLC

WHEREAS, an equestrian center has been located on approximately 15 acres at Black Mountain Road and Mercy Road for more than 18 years on property that was part of an original rancho that boarded and raised horses and is now part of Los Penasquitos Canyon Preserve; and

WHEREAS, the Council of the City of San Diego has previously expressed its desire to continue providing equestrian uses on the property; and

WHEREAS, on August 26, 1998, the City issued a Request for Proposals for lease and operation of the equestrian center, and thereafter entered into exclusive negotiations with Canyonside Stables, LLC; and

WHEREAS, the Valuation Division of the Real Estate Assets Department of the City has appraised the property at a fair market rental value of \$2000 per month; and

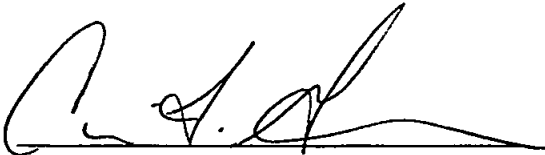
WHEREAS, the terms of the lease are set forth in the Agreement on file in the office of the City Clerk and include a term of five years with two five-year options to renew, rent to be paid at the rate of 10% of the Lessee's Gross Income or approximately \$24,000 per year, and, capital improvements to be built by the Lessee with City review and approval, which

improvements will be owned by the City upon lease termination; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Council authorizes the City Manager to execute, for and on behalf of the City, the Lease Agreement with Canyonside Stables, LLC, for the operation of the stables in Los Penasquitos Canyon Preserve upon substantially the terms and conditions set forth in the Agreement on file in the Office of the City Clerk as Document No. RR- 235858, together with any reasonably necessary modifications or amendments which the City Manager shall deem necessary from time to time in order to carry out the purpose and intent of the Agreement.

APPROVED: CASEY GWINN, City Attorney

By



Carrie L. Gleeson
Deputy City Attorney

CLG:mm

11/21/01

12/06/01 CORR.COPY

Aud.Cert: N/A

Or.Dept:READ.

R-2002-733

Form=auagr.frm

Passed and adopted by the Council of the City of San Diego on December 10, 2001 by the following vote:

YEAS: PETERS, WEAR, ATKINS, STEVENS, MAIENSCHIN, FRYE, MADAFFER, INZUNZA, MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: NONE.

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

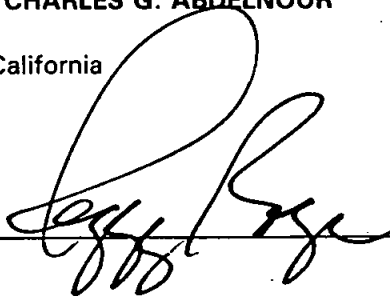
By: PEGGY ROGERS Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION No. R- 295858, passed and adopted by the Council of The City of San
Diego, California on December 10, 2001.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy