



**CITY OF SAN DIEGO
PERCENTAGE LEASE AGREEMENT**

BY AND BETWEEN

**THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION**

AND

CANYONSIDE RANCH, LLC

Table of Contents

<u>SECTION 1: USES</u>	6
1.1 <u>Premises</u>	6
1.2 <u>Uses</u>	6
1.3 <u>Related Council Actions</u>	7
1.4 <u>CITY's Consent, Approval</u>	7
1.5 <u>Quiet Possession</u>	8
1.6 <u>Easements and Reservations</u>	8
1.7 <u>Competent Management</u>	8
1.8 <u>CITY Use</u>	8
1.9 <u>Political Activities</u>	9
1.10 <u>Public Use</u>	9
1.11 <u>Parking</u>	9
<u>SECTION 2: TERM</u>	9
2.1 <u>Commencement</u>	9
2.2 <u>Holdover</u>	9
2.3 <u>Quitclaim and Surrender of the Premises</u>	9
<u>SECTION 3: RENT</u>	10
3.1 <u>Time and Place of Payment</u>	10
3.2 <u>Rent</u>	10
3.3 <u>Payment Procedures</u>	11
3.4 <u>Gross Income</u>	12
3.5 <u>Inspection of Records</u>	12
3.6 <u>Delinquent Rent and Audit Fee</u>	14
3.7 <u>Unauthorized Use Charges</u>	14
<u>SECTION 4: ASSIGNMENT</u>	14
4.1 <u>Time is of Essence; Provisions Binding on Successors</u>	14
4.2 <u>Assignment and Subletting</u>	15
4.3 <u>Additional Consideration to City</u>	15
4.4 <u>Encumbrance</u>	16
4.5 <u>Default</u>	16
4.6 <u>Remedies</u>	16

4.7	Abandonment by Lessee	17
4.8	Waiver	17
<u>SECTION 5: EMINENT DOMAIN</u>		17
5.1	Eminent Domain	17
<u>SECTION 6: INSURANCE RISKS/SECURITY</u>		18
6.1	<u>Indemnification and Hold Harmless</u>	198
6.2	Insurance	19
6.2.1	<u>Additional Insureds</u>	19
6.2.2	<u>Primary & Non-Contributory</u>	19
6.2.3	<u>Qualified Insurer(s)</u>	20
6.2.4	<u>Deductibles/Retentions</u>	20
6.2.5	<u>Continuity of Coverage</u>	20
6.2.6	<u>Modification</u>	20
6.2.7	<u>Accident Reports</u>	20
6.3	<u>Causes of Loss - Special Form Property Insurance</u>	20
<u>SECTION 7: IMPROVEMENTS/ALTERATIONS/REPAIRS</u>		20
7.1	Waste, Damage, or Destruction	21
7.2	Acceptance of Premises	21
7.3	Development Plan	21
7.4	Failure to Complete Development Plan	21
7.5	Asbestos Disclosure	21
7.6	Asbestos	21
7.7	Entry and Inspection	21
7.8	Maintenance	22
7.9	Improvements/Alterations	22
7.10	Utilities	22
7.11	Construction Bond	22
7.12	Liens	22
7.13	Taxes	22
7.14	Signs	23
7.15	Ownership of Improvements and Personal Property	23
7.15.1	Improvements	23
7.15.2	Personal Property	23

7.15.3	Late Removal	23
7.16	Unavoidable Delay	24
7.17	Hazardous Substances	24
7.17.1	Release	24
7.17.2	Remediation	24
7.17.3	Removal	24
7.17.4	Indemnity	25
7.17.5	Notice of Release	25
7.18	Environmental Assessment	25
<u>SECTION 8: GENERAL PROVISIONS</u>		26
8.1.	Control by Specified Individuals or Entities	26
8.2	Accessibility Assessment	26
8.3	Notices	26
8.4	Compliance with Law	26
8.5	California Public Records Act	<u>27</u>
8.6	Equal Opportunity	<u>27</u>
8.7	Equal Benefits	28
8.8	Disabled Access Compliance	28
8.9	Drug-free Workplace	28
8.10	City Employee Participation Policy	29
8.11	Local Business and Employment	29
8.12	Water Quality Best Management Practices	29
8.13	Standard of Employees	30
8.14	Relocation Payments	30
8.15	Noxious Weeds, Pests and Erosion	30
8.16	Control of Horses	30
8.17	Cutting of Trees	30
8.18	Hold Harmless/Flood Damage and Other Acts of God	30
8.19	Nondiscrimination	30
8.20	Cumulative Remedies	30
8.21	Survival	31

8.22	Joint and Several Liability	31
8.23	No Affiliation	31
8.24	Entire Agreement	31
8.25	Partial Invalidity	31
8.26	Authority to Contract	31
<u>SECTION 9: PRESERVATION OF RESOURCES</u>		31
9.1	Lessee's Responsibility for Preserving Environmental, Historical and Cultural Resources Sites	31
<u>EXHIBIT A: PREMISES</u>		34
<u>EXHIBIT "B": RULES AND REGULATIONS FOR TRAIL RIDERS PROTECTIVE HEADGEAR REQUIREMENTS</u>		35
<u>EXHIBIT "C": DEVELOPMENT PLAN</u>		43

**CITY OF SAN DIEGO
PERCENTAGE LEASE AGREEMENT**

THIS CITY OF SAN DIEGO PERCENTAGE LEASE AGREEMENT ("**Agreement**") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("**CITY**") and CANYONSIDE RANCH LLC, a California limited liability company ("**LESSEE**"), to be effective as of FEBRUARY 16, 2017 (the "**Effective Date**"), when signed by the parties and approved by the San Diego City Attorney.

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 of CITY-owned real property, including the Mohnike Adobe House, a hay barn, both registered on the National Register of Historic Places (Historical Recourses Board #419), a perimeter fence and miscellaneous other storage structures, including on site manager office, as further described in **Exhibit A** (the "**Premises**"). The area located in the southwest corner of the Premises and designated in **Exhibit A** as the Ranger Area is not included in the leasehold, and shall not be used by LESSEE for overflow parking or any other use during the term of this Agreement. It is further agreed that the Premises has not been surveyed; however CITY and LESSEE agree to the approximate acreage and boundaries as set forth in **Exhibit A**.
- 1.2 **Uses.** The Premises is leased to LESSEE solely and exclusively for the purposes of operating and maintaining an equestrian center as follows:
- a. The primary services ("**Primary Uses**") to be offered on the Premises shall be horse boarding, riding lessons, riding training classes, and guided trail rides. Incidental uses ("**Incidental Uses**") may include picnics, barbecues, hay rides, educational programs and activities, machine vending of beverages and snacks, and show ring activities. All Primary Uses and Incidental Uses are to serve LESSEE's patrons and the general public. Other related or incidental purposes to the Primary Uses and Incidental Uses as may be first approved in writing by CITY may be conducted on the Premises and for no other purposes whatsoever.
 - b. The consumption of alcohol is expressly forbidden on the Premises at all times during the term of this Agreement.
 - c. Smoking is forbidden on the Premises at all times during the term of this Agreement.
 - d. Operate, on a nonexclusive basis, riding trails commencing on the Premises and through the Los Penasquitos Canyon Preserve ("**Park**"), as described in **Exhibit B**, during regular business hours, as approved in writing by the CITY, except

when the Park is closed or during inclement weather. LESSEE shall comply with the Rules and Regulations for Trail Rides set forth in **Exhibit B**.

The Rules and Regulations for Trail Rides may be amended by CITY, in its sole discretion, or by LESSEE, upon the written consent of CITY, as necessary to ensure the continued safe operation of trail rides.

LESSEE shall be responsible for weekly horse manure removal and proper manure disposal to CITY's satisfaction as more particularly described in the **Exhibit B**. 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.

LESSEE's right to operate the riding trails may be immediately limited or suspended, temporarily or indefinitely, by CITY, in its sole discretion. CITY may, upon ten (10) days written notice to LESSEE, suspend LESSEE's use of the riding trails when, in the opinion of CITY, 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 CITY. Such suspensions shall be for such periods of time as are deemed necessary by CITY, in its sole discretion, and shall be without liability of CITY to LESSEE for damages of any kind suffered by LESSEE or its sublessees as result thereof.

The use of the Premises for any unauthorized purpose, use or operation shall constitute a substantial default and subject this Agreement to termination at the sole option of the 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 ground for termination of the Agreement 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 rezoning's, variances, environmental clearances, or any other governmental agency approvals which may be required for the development, use and operation of the Premises. LESSEE shall be solely responsible to secure all applicable authorizations and permits for the uses and operations as set forth in Section 1.2, above, required pursuant to all applicable local, state and federal laws, rules and regulations.
- 1.4 CITY's Consent, Approval. CITY's consent or approval under this Agreement shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided in this Agreement or as required by law. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided in this Agreement.

1.5 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 there from. 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' written notice from CITY.

1.6 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 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 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.

1.7 Competent Management. Throughout the term of this Agreement, LESSEE shall provide full time, on site, competent management of the Premises to the satisfaction of the CITY. 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 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, and CITY, in its sole discretion, may terminate this Agreement.

1.8 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.

- 1.9 Political Activities. The 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 a "candidate forum" and similar events.
- 1.10 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 designed to allow LESSEE to use the Premises for the purposes specified in Section 1.2, Uses, of this Agreement.
- 1.11 Parking. LESSEE shall maintain existing on-site parking to adequately serve the need of its patrons and any special events held at the Premises.

SECTION 2: TERM

- 2.1 Commencement. The term ("Term") of this Agreement shall commence on February 1, 2017 ("**Commencement Date**") and shall expire on the earlier of (1) three (3) years; and (2) the day prior to the effective date of a lease agreement that results from the CITY's issuance of a request for proposals ("**RFP**") for the lease, use and operation of the Premises. LESSEE acknowledges that CITY may issue an RFP for the lease, use and operation of the Premises during the Term. "**Lease Year**" as used in this Agreement shall mean the 12-month period commencing on the Commencement Date.
- 2.2 Holdover. Any holding over by LESSEE after expiration of this Agreement shall not be considered as a renewal or extension of this Agreement. LESSEE's occupancy of the Premises after the expiration of this Agreement shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Agreement shall continue in full force and effect; provided, however, CITY shall have the right to receive from LESSEE rent up to two (2) times the then rent for the Premises, which rent shall be effective as of the first day of the holdover period.
- 2.3 Quitclaim and Surrender of the Premises. 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 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 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 Term, any liens and encumbrances must be approved in writing by CITY.

SECTION 3: RENT

- 3.1 Time and Place of Payment. All payments to be paid by LESSEE under this Agreement shall be made payable to "City Treasurer" and be mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

- 3.2 Rent. As set forth below, each month during the Term, LESSEE shall pay in arrears the greater of the following two (2) amounts: one-twelfth of the annual Minimum Rent or the total Percentage Rent.

- a. Minimum Rent. The annual minimum rent established for the Term of this Agreement is Thirty Thousand Dollars (\$30,000), which is Two Thousand Five Hundred Dollars (\$2,500) on a monthly installment basis.
- b. 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 and operation of the Premises:

Percentages

Ten Percent (10%)

Ten Percent (10%)

Ten Percent (10%)

Twenty-five Percent (25%)

Business Activities

Gross income from boarding

Per person, from trail rides

Per student from lessons, instruction and training.

Commissions or any other compensation 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 for use on the Premises, whichever is greater.

Ten Percent (10%)

Gross income generated on the Premises from all other authorized activities

- c. Rent for Other Uses. CITY, in its 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) as set forth under Section 1.2, Uses, of this Agreement, as may be approved in writing by CITY prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the Premises without prior approval by CITY shall be subject to the requirements of Section 3.7, Unauthorized Use Charge, of this Agreement.
- d. 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 revenue to be from more than one business operation.
- c. The percentage rental 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 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 an 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 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 following the expiration of the Term.

- a. Records. LESSEE shall, at all time during the 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 throughout the Term and for five (5) years thereafter 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 Premises. CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessee, 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 each CITY 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 the 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 failed to maintain true, accurate and complete books, records, accounts and supporting source documents in strict accordance with this section of this Agreement.

LESSEE shall pay any rent deficiency determined by the audit(s) plus interest on such amount 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 CITY 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 a breach of this Agreement and cause for termination.

- 3.6 Delinquent Rent and Audit Fees. If LESSEE fails 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 after fifteen (15) days, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount (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 other rights and remedies granted in this Agreement. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

- 3.7 Unauthorized Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts for any service or use that is not allowed 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 Unauthorized Use charge shall otherwise be considered "rent" under this Agreement, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of the one hundred percent (100%) 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 place Agreement in default for participating in or allowing any unauthorized use by LESSEE on the 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, shall not sublet the Premises or any part thereof, or grant any or other 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 CITY in each instance. Consent is in the sole discretion of CITY. 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, subletting, occupation or use 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 CITY.

"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 LESSEE.

Approval of any assignment, sublease, occupancy or use shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned, subleased or granted and that it will keep and perform all covenants, conditions, and provisions of this Agreement which are applicable to the rights acquired. CITY 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, CITY must review and approve every person or entity which will have an interest in this Agreement or leasehold as a sublessee or assignee. Each and every person and/or entity proposed to have an interest in this Agreement shall be subject to CITY's prior review and approval, in CITY's sole discretion.

- 4.3 **Additional Consideration to CITY.** LESSEE agrees that in the event of an assignment or in the event of a subletting of the majority portion of the 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. 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 judgements. Prior to CITY's consent to any assignment or majority subletting, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this Section 4.3, together with an acknowledgment from the proposed assignee or sublessee 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 or sublease. Any assignment or subletting 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, interstate 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 CITY 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. LESSEE may not encumber this Agreement, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument.

4.5 Default. LESSEE shall be in default of this Agreement if any of the following occurs:

- a. LESSEE fails to make any payment required under this Agreement when due;
- b. LESSEE breaches any of its obligations under this Agreement, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
- c. LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- d. LESSEE is adjudicated a bankrupt; or
- e. LESSEE makes a general assignment for the benefit of creditors.

4.6 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, (1) a written "Three Day Notice to Pay or Quit," or (2) a "Notice of Termination" for defaults not requiring payment to CITY, in order that CITY may seek to terminate this Agreement and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- a. The worth at the time of any unpaid rent that was due at the time of termination;
- b. The worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;

- c. the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- d. any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- e. all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses a and b, above, the "**worth at the time of award**" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause c, above, the "**worth at the time of award**" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "**rent**" shall include rent and any other amounts payable by LESSEE under this Agreement.

- 4.7 Abandonment by LESSEE. If LESSEE abandons the Premises, this Agreement shall continue in effect as long as CITY does not terminate this Agreement, and CITY may enforce all of its rights and remedies under this Agreement, including without limitation the right to recover rent as it becomes due, plus damages as provided in this Agreement and/or applicable law.
- 4.8 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Agreement. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

SECTION 5: EMINENT DOMAIN

- 5.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:
 - a. Full Taking. If 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. Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are unsuitable for continued operation, this Agreement shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are suitable for continued 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 rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. 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.

SECTION 6: INSURANCE RISKS/SECURITY

- 6.1 Indemnification and Hold Harmless. LESSEE shall protect, defend, indemnify,⁴ and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEES's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEES's acts or omissions in the performance of its obligations under this Agreement, and all expenses of investigating and defending against same, including without limitation reasonable attorneys' fees and costs; provided, however, that LESSEES's duty to indemnify and hold CITY harmless shall not include any established liability arising from the gross negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

- 6.2 **Insurance.** Prior to the Commencement Date, LESSEE shall not begin operating under this Agreement until it has: (a) obtained, and upon CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance required in below; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the Term may be treated as a material breach of contract by CITY.

Further, LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of this Agreement.

LESSEE shall deliver to CITY's Real Estate Assets Department a current certificate of insurance for:

- (1) Commercial General Liability Insurance, providing coverage on the Premises for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000);
- (2) Automobile Liability Insurance, providing coverage on the Premises for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage; and
- (3) Workers' Compensation Insurance, as required by the laws of the State of California for all of LESSEE's employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).

6.2.1 **Additional Insureds.** Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.

6.2.2 **Primary & Non-Contributory.** Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.

- 6.2.3 Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 6.2.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 6.2.5 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. LESSEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and obtain replacement insurance as soon as possible.
- 6.2.6 Modification. To assure protection from and against the kind and extent of risk existing with the allowed uses of the Premises under this Agreement or the Premises, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the allowed uses of the Premises under this Agreement or the Premises.
- 6.2.7 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the allowed uses of the Premises under this Agreement or the Premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 6.3 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the allowed uses of the Premises under this Agreement or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.

SECTION 7: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 7.1 Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises

clean and clear of refuse and obstructions, and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall restore the Premises to their prior condition within a reasonable time.

- 7.2 Acceptance of Premises. LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof.
- 7.3 Development Plan. LESSEE shall develop the Premises in accordance with the Development Plan, attached to this Lease as **Exhibit C**, Development Plan. CITY shall have the authority to authorize changes to the Development Plan provided that the basic concept may not be modified without written CITY approval. Failure by LESSEE to comply with the Development Plan shall constitute a major default and subject this Lease to termination by CITY. CITY, at its sole discretion, may approve an extension to the date specified for completion in the Development Plan of up to six (6) months.
- 7.4 Failure to Complete Development Plan. Subject to any extensions authorized under Section 7.3, Development Plan, should LESSEE fail to complete improvements in accordance with the Development Plan, it is specifically agreed by LESSEE and CITY that a breach of this Lease will have occurred. In the event any of the improvements set forth in the Development Plan are not completed by the date specified for completion in this Lease, CITY may, at its option, terminate this Lease.
- 7.5 Asbestos Disclosure. Portions of the structural components of the Premises may contain asbestos. LESSEE acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose to all appropriate parties the existence of asbestos on the Premises, as required by Health and Safety Code Section 25915. LESSEE shall protect, defend, indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.
- 7.6 Asbestos. If LESSEE makes improvements, alterations or repairs to the Premises, LESSEE shall be responsible for any asbestos removal, management, or containment, and shall pay all costs associated therewith. Asbestos removal, management or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations or repairs to the Premises made by LESSEE. CITY may, at its discretion, station supervisory personnel at the work site to ensure that LESSEE's obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration or repair, and except in the event of an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.
- 7.7 Entry and Inspection. Excepting in the case of an emergency, in which case CITY may enter at all times and without notice, CITY, acting as lessor, may only enter and inspect the Premises and the operations conducted on the Premises during normal business hours on reasonable advance notice.

- 7.8 **Maintenance.** LESSEE shall maintain the Premises in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY, including without limitation performing all maintenance and repair to the structural components of the Premises, such as interior wall supports, exterior wall supports, the roof, floor supports, and building-wide mechanical systems. LESSEE shall, at its sole cost and expense, obtain and maintain trash receptacles and trash-removal service.
- 7.9 **Improvements/Alterations.** No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without CITY's prior written approval. Once approval is given for any specific improvement/alteration, LESSEE shall not make any structural or architectural design alterations to said approved improvements, structures, or installations on the Premises without CITY's additional prior written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Agreement. CITY shall not be obligated by this Agreement to make or assume any expense for any improvements or alterations to the Premises.
- 7.10 **Utilities.** LESSEE shall order, obtain, and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises. All utilities shall be installed underground.
- 7.11 **Construction Bond.** If LESSEE constructs any type of improvements or alterations on the Premises, CITY may require LESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
- 7.12 **Liens.** LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the property, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 7.13 **Taxes.** LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Agreement may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's

payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use, or occupancy of the Premises.

- 7.14 Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.

7.15 Ownership of Improvements and Personal Property.

7.15.1 Improvements. LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises during the Term of this Agreement. Upon expiration or termination of this Agreement, all such improvements, fixtures, structures, and installations or additions on the Premises shall be deemed a part of the Premises and thereafter shall be owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Agreement termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by LESSEE at the expiration or termination of this Agreement. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Agreement. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.

7.15.2 Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Agreement. Any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.

7.15.3 Late Removal. Notwithstanding any provision of this Agreement to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Agreement needed to remove improvements or personal property as required by this Agreement, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by qualified CITY staff.

- 7.16 Unavoidable Delay. If the performance of an act required by this Agreement is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.
- 7.17 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.
- 7.17.1 Release. For the purposes of this provision, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.
- 7.17.2 Remediation. If LESSEE's occupancy, use, development, maintenance, or restoration of the Premises results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 7.17.3 Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Premises immediately upon or prior to the expiration or earlier termination of this Agreement. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.

7.17.4 Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies. CITY shall protect, defend, indemnify, and hold LESSEE harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CITY's occupancy, use, development, maintenance or restoration of the Premises.

7.17.5 Notice of Release. If LESSEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

7.18 Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance, or restoration of the Premises ("LESSEE's Operations"), resulted in any hazardous substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefore.

SECTION 8: GENERAL PROVISIONS

8.1 Control by Specified Individuals or Entities. Canyonside Ranch, LLC named herein as LESSEE is owned and controlled by Robert C. Osborne and Brandon C. Osborne, both as “Managers.” Managers, individually and collectively, are obligated to actively administer and supervise the business enterprise operated on the Premises. Pursuant to CITY Charter Section 225, CITY must review and approve every person or entity which will have an interest in this Agreement, in its sole discretion. The termination, voluntary or involuntary dissolution of the Canyonside Ranch, 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.

8.2 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises have not been inspected by a Certified Access Specialist (CASP).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: “A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

8.3 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or by United States certified mail, return receipt requested, postage prepaid, or by recognized overnight delivery service, and addressed as follows:

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

If to LESSEE:

Canyonside Ranch LLC
12115 Black Mountain Road
San Diego, CA 92129

8.4 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE’s sole cost

and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE's fire-suppression equipment in the Premises).

- 8.5 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Agreement is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY, with such notice, specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
- 8.5.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.
- 8.5.2 LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.
- 8.6 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all subleases, sublicenses and all contracts for any work covered by this Agreement so that such provisions will be binding upon each sublessee, sublicensee and contractor. Upon CITY's request, BRAEMAR shall submit a current Workforce Report and, if authorized by law and required by CITY, an Equal Opportunity Plan which set forth the actions LESSEE will take to achieve the City of San Diego's goals for the employment of African Americans, Native Americans, Asians, Latinos, women and people with disabilities. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 8.7 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this Agreement. LESSEE's failure to maintain equal benefits shall be a default of this Agreement.
- 8.8 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, 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:
- 8.8.1 LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- 8.8.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- 8.8.3 LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 8.8.4 Where required by law, any improvements made to the Premises by LESSEE shall comply with municipal disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.
- 8.8.5 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.
- 8.8.6 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.
- 8.9 Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- 8.9.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Permit Area and specifying the actions that will be taken against employees for violations of the prohibition.

- 8.9.2 Establish a drug-free awareness program to inform employees about all of the following:
 - 8.9.3 The dangers of drug abuse in the workplace;
 - 8.9.4 LESSEE's policy of maintaining a drug-free workplace;
 - 8.9.5 Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 8.9.6 The penalties that may be imposed upon employees for drug abuse violations.
 - 8.9.7 LESSEE shall include in each of its sublicenses and contracts related to this Permit language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.
- 8.10 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Agreement if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Agreement. It is not the intent of this policy that these provisions apply to members of the City Council.
- 8.11 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Agreement and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- 8.12 Water Quality Best Management Practices. CITY and LESSEE are committed to the implementation of controls ("best management practices" or "BMPs") to manage activities on the Premises in a manner which aids in the protection of the CITY's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of the San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

- 8.13 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.
- 8.14 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Agreement.
- 8.15 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 Premises, including full responsibility for brush management within the Premises, existing structures, parking and fence areas. Prior to the use of any herbicide or pesticide, LESSEE shall contact CITY and obtain CITY's advance approval in writing.
- 8.16 Control of Horses. The Premises shall be adequately fenced at LESSEE's sole cost and expense to control horses and in a manner satisfactory to CITY. Any damaged portion of the fence shall be repaired or replaced by LESSEE immediately. 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.
- 8.17 Cutting of Trees. No growing or mature trees are to be destroyed or removed without the prior written consent of CITY. LESSEE shall be responsible for safety within the Premises by removing all fallen limbs and tree branches immediately.
- 8.18 Hold Harmless/Flood Damage and Other Acts of God. LESSEE understands and agrees that the Premises is subject to flood damage and other damage may result to the Premises 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 Premises. LESSEE specifically assumes the risk of all damages resulting from flooding or weather conditions or other natural causes.
- 8.19 Nondiscrimination. This Agreement is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.
- 8.20 Cumulative Remedies. CITY's rights and remedies under this Agreement are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.

- 8.21 Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
- 8.22 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Agreement.
- 8.23 No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
- 8.24 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Agreement and LESSEE's occupancy, use, operation, development, maintenance, and restoration of the Premises. Any modification, alteration, or amendment of this Agreement shall be in writing and signed by all the parties hereto.
- 8.25 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 shall remain in full force and effect.
- 8.26 Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

SECTION 9: PRESERVATION OF RESOURCES

- 9.1 LESSEE's Responsibility for Preserving Environmental, Historical and Cultural Resources 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 Premises. LESSEE acknowledges that the existing Mohnike Adobe House and Hay Barn are designated as historical structures and both are registered on the National Register of Historic Places (Historical Resource Board #419). 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 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.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Canyonside Ranch, LLC
a California limited liability company

Date: 1-31-17

By: [Signature]
Name: Robert Osborne
Title: President

THE CITY OF SAN DIEGO, a California municipal corporation

Date: 2/16/17

By: [Signature]
Cybele Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

This activity has been determined to be exempt from CEQA pursuant to CEQA Section 15301 (Existing Facilities), Section 15304 (Minor Alteration to Land), and Section 15332 (Historical Resource Restoration/Rehabilitation).

Date: 2/15/17

By: [Signature]
Name: Alyssa Muto
Title: Deputy Director, Planning Dept.

Approved as to form this 16th day
of February, 2017.

MARA W. ELLIOTT, City Attorney

By: [Signature]
Name: Hilda R. Mendoza
Deputy City Attorney

I:\Support Staff Group\WPO\2017\BALOTSKY\CANYONSIDE LESSEES PERCENTAGE LEASE.docx

Exhibit A: Premises
Exhibit B: Rules and Regulations for Trail Riders
Exhibit C: Development Plan

EXHIBIT A: PREMISES

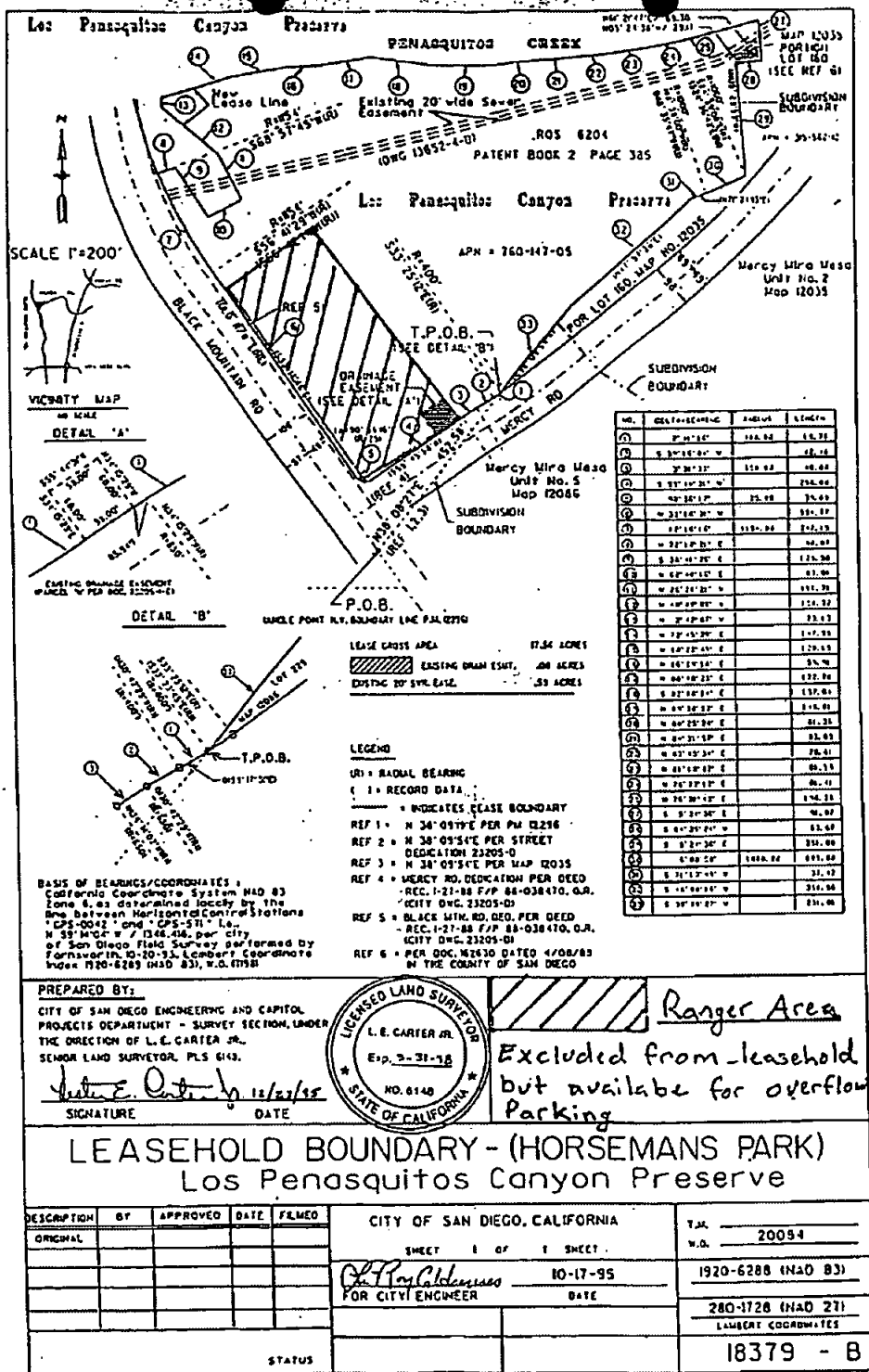


EXHIBIT "B": RULES AND REGULATIONS FOR TRAIL RIDERS PROTECTIVE HEADGEAR REQUIREMENTS

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 LESSEE must require all minor age (17 years of age and younger), 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, as approved by CITY in advance, 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 LESSEE 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 harness fastened securely prior to mounting, throughout the ride, and until after dismounting.

2. **Adult Riders.** The LESSEE must inform all adult (18 years of age and older) riders that SEI CERTIFIED ASTM STANDARD F 1163 protective headgear may protect them from serious head injuries and even death during riding activities. This must be done in writing through the LESSEE's release agreement, as approved by CITY in advance, and also verbally prior to the riding activity. A rider may provide his or her own ASTM/SEI Equestrian helmet. However, the LESSEE must offer a LESSEE-owned helmet to the rider if they are not providing their own. The LESSEE 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 adult rider decides not to wear the protective headgear, they must sign a helmet refusal form stating that ASTM/SEI protective headgear was offered to them and that not wearing protective headgear increases the risk of serious injury and/or death 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.** The helmet manufacturer's care instructions and helmet life span projection shall be considered and adhered to by LESSEE. The LESSEE-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 no 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 LESSEE's Protective Headgear Policy.** LESSEE or LESSEE's Equestrian service providers may establish their own policies and standards concerning the wearing of protective headgear, however, the standards must meet or exceed the mandatory standards as stated in 2016 Standard for Protective Headgear for use Horseback Riding at: <http://www.smf.org/standards/E/E2016/E2016.pdf>.

PUBLIC RIDE PROCEDURE

6. **Release and Warning Agreements.** The use of CITY approved release and warning agreements are required.
7. **Two-Way Radios or Cell Phones.** 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 LESSEE's emergency procedure plan. All staff members must be trained in the use of this equipment as part of LESSEE's emergency procedure plan.
8. **Beginner Riders Require Special Attention.** 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.** Children under the age of seven shall not be allowed to ride on trial rides.
10. **A Rider's Size.** A rider's size must correlate with the size of horse chosen, both with regard to height and weight. A general guideline is that a rider shall weigh no more than 20% of the weight of the mount, as recommended by US Certified Horsemanship Association should apply.
11. **Obviously Intoxicated People.** Obviously intoxicated people must not be allowed to ride or come near horses under any circumstances.
12. **Riding Double.** Two riders on one mount shall not be allowed under any circumstances.
13. **Pre-Ride Inspection.** 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 LESSEE, through lecture and demonstration. The presentation shall include the following outline of topics:
 - a. Trail guide/drag riders name or names;
 - b. Introduction To Horseback Riding at Rancho Penasquitos Canyon;

- c. Verbal warning that LESSEE advises pregnant women not to ride horses unless permission is given under advice of her physician or a waiver is signed prior to a ride.
- 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 ; and
 7. No slapping, hard kicking of horses, jerking on reins, or any abuse of horses.
14. **Mounting Assistance and Stirrup Adjustment.** LESSEE personnel 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 by LESSEE personnel just prior to mounting and tightened as needed. LESSEE 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 shall not be allowed to carry or wear objects on a ride which may drop, bounce, flap, blow-away, make noises or otherwise possibly 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 beyond the Term of the Agreement. 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 LESSEE personnel on duty.

PERSONNEL MANAGEMENT

17. **Workers' Compensation and Labor Laws.** If LESSEE employs part-time or full-time employees, contract labor workers, exchange labor, or volunteers working on its behalf, LESSEE shall be in compliance with the current Workers' Compensation and Labor laws of California.
18. **Employee Background Check.** LESSEE shall employ the most reputable counselors, instructors, and personnel. Employment applications, employee health records, references, and training certification papers, shall be carefully screened in advance of hiring.

19. **Employee Records.** All employee records shall be kept on file for five years beyond the Term of the Agreement. Employment applications should be completed by each employee and references provided to employer. Employers shall fully check all references prior to hiring. Next-of-kin names, addresses, phone numbers, and forwarding addresses must be on file.

20. **Trail Guides and Drag Riders**

- a. All Trail Guides **MUST** be at least 18 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 LESSEE- 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.
- g. Trail Guides must be thoroughly trained in LESSEE 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.
- 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 Ridding Helmet is highly recommended and the LESSEE 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.** Basic first aid procedure shall be taught to all trail guides 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.
23. **Risk Reduction Meeting 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 LESSEE. Document these meeting and retain documentation on file.

POSTING SIGNS

24. **Emergency Phone Numbers.** Emergency phone numbers must be posted for police, veterinarians, fire department and hospital beside all phones.
25. **LESSEE Rules.** LESSEE rules must be prominently posted around the Premises.
26. **"Ride At Own Risk" Signs.** Signs stating "Ride at Your Own Risk" must be prominently posted in public high traffic areas of the Premises.
27. **"Child Supervision" Signs.** Signs stating "Child Supervision Required" must be prominently posted.
28. **Signs Required by State and Federal Law.** Any and all signs required by local, state and federal laws, rules and regulations must be prominently posted.

OTHER RULES AND REGULATIONS

29. LESSEE shall be responsible for weekly manure removal and proper disposal from the Premises to the turnaround point for the rental rides located just west of the Penasquitos Preserve Creek crossing.
30. LESSEE shall post on the Premises 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 provides an application no less than 48 hours in advance to CITY. LESSEE shall not assume an application is approved and shall not conduct the requested activity unless prior written approval is specifically provided by CITY. 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 Premises is historic in nature, no non-operational, non-registered or non-related vehicles are to be stored on the Premises. No improvements or additions of any kind are to be installed on the Premises 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 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 Park per week.
37. During the months of November through March (rainy period) trail rides on the singles track shall be limited to four (4) rental horses per string. The rainy period can be lengthened or shortened by authorization from the CITY.
38. There shall be no wagon/hay rides on the trails east of the 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 the opposite direction.
40. There shall be no more than nine (9) wagon/hay rides in the Park per day.

41. No one person shall board more than four (4) horses on the 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 Premises at any one time.

EXHIBIT “C”: DEVELOPMENT PLAN

- 1) Provide ADA compliant level concrete parking space for accessible van parking near the existing rental office (“Horsebound office”). (Completion Date January 31, 2018).
- 2) Provide ADA compliant walkway between the ADA accessible parking space and the Horsebound office. (Completion Date January 31, 2018).
- 3) Modify the existing entrance to the Horsebound office to provide ADA access, including ADA compliant service counter space. (Completion Date July, 31, 2017).
- 4) Connect the existing parking lot ADA accessible portable restroom with the ADA accessible path between the ADA accessible parking space (referenced in Section 1 above) and the Horsebound office. (Completion Date January 31, 2018).
- 5) Provide ADA compliant accessible spectator seating area adjacent to the existing horse lessons arena and either (1) provide an ADA accessible path to the existing horse lessons arena from the adjacent parking lot or (2) provide ADA accessible parking to be located closer to the existing horse lessons arena (material for either option (1) and (2) could be concrete, deck/boardwalk, or other compliant surface). (Completion Date January 31, 2018).
- 6) Either (1) modify the existing restroom located next to the onsite manager office to provide ADA compliant access for people with disabilities or (2) install a new ADA accessible portable restroom to replace the existing restroom next to the onsite manager office. (Completion Date July 31, 2017).



Date of Notice: January 31, 2017

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Canyonside Stables, City of San Diego Percentage Lease Agreement

COMMUNITY PLAN AREA: Mira Mesa

COUNCIL DISTRICT: 6

LOCATION: 12115 Black Mountain Road, San Diego, CA 92129

PROJECT DESCRIPTION: Authorize the Mayor or his designee to execute a three year City of San Diego Percentage Lease Agreement with Canyonside Ranch LLC, allowing the lessee to continue operate and maintain an existing public equestrian center on approximately 15 acres of City-owned property at 12115 Black Mountain Road, in San Diego.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego Mayor-Appointed Designee

ENVIRONMENTAL DETERMINATION: CEQA Exemption Section 15301 (Existing facilities), Section 15304 (Minor Alteration to Land), and Section 15332 (Historical Resource Restoration/Rehabilitation)

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee, Environment & Policy Analysis, Planning Department

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION: This activity has been determined to be exempt from CEQA pursuant to CEQA Section 15301 (Existing Facilities) which allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use, Section 15304 (Minor Alteration to Land) which allows minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes and Section 15332 (Historical Resource Restoration/Rehabilitation) which allows projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer. Exceptions listed in CEQA Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effect on the environment were identified; and by being consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties would not cause a substantial adverse change in the significance of a historical resource; and the project is not adjacent to a scenic highway. For the exception for hazardous materials the underground tank formally located at Canyonside Stables is

listed on GeoTracker as a closed case. Therefore there are no open environmental cases of known hazardous material contamination which would otherwise preclude use of a CEQA exemption pursuant to Section 65962.5 of the Government Code.

PROJECT MANAGER: Vladimir Balotsky, Supervising Property Agent
Real Estate Assets Department
MAILING ADDRESS: 1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101
PHONE NUMBER: (619) 235-5248

On January 31, 2017, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (**February 14, 2017**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: - 1/31/17

REMOVED: 2/15/17

POSTED: M. Hermann