

DUPLICATE



CITY OF SAN DIEGO

and

LA JOLLA YOUTH, INC.

**Lease
for Allen Field
(a.k.a. La Jolla Athletic Area)**

DOCUMENT NO.

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**CITY OF SAN DIEGO
LEASE FOR ALLEN FIELD
(A.K.A. LA JOLLA ATHLETIC AREA)**

THIS LEASE AGREEMENT ("Lease") is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and LA JOLLA YOUTH, INC., a California nonprofit corporation, hereinafter called "LESSEE" or "LJY."

- A. CITY is the owner of that certain 6.5 acre parcel located at 3908 Torrey Pines Road, La Jolla, 92037, commonly known as Willis and Ruth Allen Field ("Allen Field") and more particularly described in Section 9.1, Legal Description, of this Lease and depicted on Exhibit "A" attached to this Lease;
- B. CITY and LJY desire to provide low-cost recreational park facilities and athletic programs in La Jolla, which will benefit youth soccer as well as the general public and complement publicly-owned recreational park facilities;
- C. LJY desires to engage in a multi-phased capital improvement program during which LJY is willing to construct a comfort station and provide adequate additional parking as consideration for the initial ten-year term of this Lease and other improvements during the three (3) subsequent five-year extensions of this Lease to enhance and operate the existing park facility under a CITY-approved General Development Plan;
- D. In addition to the capital improvement program mentioned in Recital C above, LJY is willing to perform all of the maintenance, repairs and/or replacements and to pay all utilities necessary to maintain and preserve Allen Field in a manner suitable for its intended use as set forth herein;
- E. LJY and CITY anticipate that LJY will use its best efforts to enter into written sublease agreements with the Nomads Soccer Club, a California nonprofit corporation ("Nomads"), and La Jolla Youth Soccer League, a California nonprofit corporation ("Soccer League"), or other similar major user group, following the commencement of this Lease; and
- F. In consideration of the benefits to be provided to CITY parkland, CITY is willing to enter into a long-term ground Lease at nominal rent (\$1 per year) to facilitate LJY's capital improvement program for the Allen Field facility.

NOW, THEREFORE, in consideration of the above recitals and the mutual obligations of the parties herein expressed, CITY and LJY agree as follows:

SECTION 1: USES

- 1.1 Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that certain real property, and all improvements thereon, situated in the City of San Diego, County of San Diego, State of California, described as Allen Field, a.k.a. La Jolla Athletic Area, at 3908 Torrey Pines Road in La Jolla and further described in Section 9.1, Legal Description, of this Lease. The real property is hereinafter called the "Premises."
- 1.2 Uses. It is expressly agreed that the Premises are leased to LESSEE solely and exclusively for the purposes of providing youth soccer activities, and other youth sports activities, subject to the prior written approval of the City Manager, which shall include organizing, training, conditioning, coaching, practicing, competing, observing, mentoring and promoting youth soccer and other youth sports activities, and related administrative offices, in accordance with the General Development Plan referenced in Section 6.12 of this Lease, and for other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The use of the Premises for any unauthorized purpose shall constitute a substantial default and subject this Lease to termination at the sole option of CITY.

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

- 1.3 Related Council Actions. By entering into this Lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises.

LESSEE shall be solely responsible for processing all land use, development, and construction approvals required for the use and occupancy of the Premises. This Lease shall not be interpreted by any decision maker on any City-issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.

1.4 Quiet Possession. LESSEE, 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 Lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either event, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting from this Lease.

1.5 Easements and Reservations.

- a. CITY 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, as set forth in Section 1.2, 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 1.5. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.6 Competent Management. Throughout the term of this Lease, LESSEE shall provide competent management of the Premises to the satisfaction of the City Manager. For the purposes of this Section 1.6, "competent management" shall mean demonstrated ability in the management and operation of a nonprofit youth soccer facility and related activities in a fiscally responsible manner to serve the greatest number of members of the community.

1.7 Operation of Facilities. Subject to prior written approval by the City Manager, a regular schedule of days and hours of operation shall be established by LESSEE to best serve the public as set forth in Section 9.5, Schedule of Days and Hours of Operation, of this Lease. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.

1.8 Rates and Charges. All charges associated with use of the facilities on the Premises shall be in accordance with the schedule set forth in Section 9.4,

Schedule of Rates and Charges, of this Lease. Any changes in the schedule are subject to prior written approval by the City Manager or his authorized representative, and the schedule shall be reviewed at least annually by LESSEE and the City Manager.

- 1.9 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.
- 1.10 Political Activities. The Premises shall be used exclusively for the purposes specified in Section 1.2, Uses, of this Lease. The Premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan; provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.11 Public Use. The general public shall not be wholly or permanently excluded from any portion of the Premises provided that LESSEE may develop reasonable restrictions for the facility use that are consistent with the rights of the general public and are designed to allow LESSEE to use the Premises for the purposes specified in this Lease. LESSEE agrees that all activities conducted on the Premises will be as stated in Section 1.2, Uses, of this Lease.
- 1.12 Public Signage. LESSEE shall, at all times during the Lease term, maintain a prominent CITY-approved sign identifying the property as City-owned and available for public use consistent with the terms of this Lease. The sign shall be installed by LESSEE at a location agreeable to CITY. LESSEE shall keep a reasonable schedule of times when facilities on the Premises are available for public use.
- 1.13 Parking. LESSEE shall maintain the parking lot within the Premises in accordance with the General Development Plan described in Sections 6.12 and 9.2 of this Lease.
- 1.14 Noise Abatement. Amplified sound, including air horns, shall be prohibited on the Premises. LESSEE shall use its reasonable best efforts to minimize noise on the Premises during the early morning hours of all weekends, using such educational tools as meetings, signage, written notices to all users, including but not limited to all players, coaches, referees and sublessees, and by any other method that will result in the elimination of disturbance in the community.

- 1.15 Temporary Restroom Facilities. Within one hundred eighty (180) days after the commencement of this Lease, LESSEE shall, at LESSEE'S sole cost and expense, install on the Premises a temporary restroom facility in compliance with all applicable laws, statutes, ordinances and regulations of CITY, county, state and federal governments, and subject to LESSEE'S best efforts to obtain approvals.

SECTION 2: TERM

- 2.1 Commencement. The term of this Lease shall be ten (10) years commencing on the first day of the calendar month following execution by the City Manager (the "Initial Term"). LESSEE shall construct the improvements described in Section 6.12 Development Plan on the Premises during the Initial Term. "Lease year" as used in this Lease shall mean the twelve (12) month period commencing on the first day of the calendar month following the execution of this Lease by the City Manager.
- 2.2 Right to Extend. LESSEE has the right to extend this Lease three (3) times for an additional term of five (5) years each (each an "Extension Term"), subject to all original agreements, considerations, covenants, and conditions of this Lease and upon the following additional terms and conditions:
- a. LESSEE must give CITY written notice of its intention to extend the Lease no sooner than one (1) year and no later than six (6) months prior to expiration of the then current term of this Lease;
 - b. LESSEE is not in default of this Lease at the time the option is exercised; and
 - c. LESSEE shall have constructed the parking lot described in Section 6.12 Development Plan on the Premises during the Initial Term.
 - d. For the Extension Terms, LESSEE shall construct the additional improvements described in Section 6.12 Development Plan on the Premises.
- If the above terms and conditions are met to the satisfaction of the City Manager, LESSEE will be granted each additional five (5) year extension.
- 2.3 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall

continue in full force and effect; provided, however, CITY shall have the right to terminate the holdover tenancy at will.

- 2.4 Surrender of Premises. At termination of this Lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the Premises. The Premises shall be delivered free and clear of all liens and encumbrances created by LESSEE and in a decent, safe, and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this Lease provision, and the notice will be conclusive evidence of the termination of this Lease and all LESSEE'S rights to the Premises.

SECTION 3: RENT

- 3.1 Time and Place of Payment. The Administrative Fee, as defined in Section 3.2(c), is due annually in advance on or before the first day of each Lease year. All annual Administrative Fees will be prorated during the first and final months of any Lease year in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California.

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

- 3.2 Consideration.

- a. Rent Amount. The annual rent is One Dollar (\$1) per Lease year, receipt of which is hereby acknowledged by CITY.
- b. Capital Improvements. LESSEE agrees to construct a comfort station and provide additional parking during the Initial Term and other improvements as approved by the City Manager during the Extension Terms.

- c. Administrative Costs. LESSEE shall pay an initial fee of Two Thousand Seven Hundred Twelve Dollars and Fifty Cents (\$2,712.50) per Lease year ("Administrative Fee" or "Fee"), payable annually to partially offset the CITY'S costs of administering this Lease. The Administrative Fee is subject to annual adjustments based on percentage increases in the Consumer Price Index ("CPI") as hereinafter provided.
- d. (1) CPI Adjustments. On the anniversary date of each Lease year following the commencement date of this Lease, the Fee shall be adjusted to reflect the percentage increase in the CPI based on the average of the indices for the third quarter (July, August, September) of the calendar year prior to each adjustment.

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a Fee adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to CPI in any event.

In no event shall the adjusted Fee as established by the CPI be less than the Fee in existence immediately prior to the adjustment date. The failure of CITY to deliver timely notice of any Fee adjustment shall not constitute a waiver by CITY of its rights hereunder.

- (2) CPI Adjustment Computation. The Fee for each one (1) year period shall be calculated by CITY as follows:

The "adjustment multiplier" shall be established by dividing the "current index" by the "base index" as defined below.

The "base index" denominator for the calculation is 178.5. This is a fixed number representing the three (3) month average of index figures published by the CPI using the months of July, August and September 2001.

The "current index" numerator for the calculation is a variable number that shall be the three (3) month average of index figures published by the CPI using the months of July, August and September of the calendar year preceding the adjustment date.

The "base figure" for purposes of calculating the annual adjustment shall be a fixed amount of Two Thousand Five Hundred Dollars (\$2,500).

Example Calculation for Calendar Year 2005 Fee Adjustment

Current Index (Third Quarter 2002)	193.6667	
		----- = 1.0850 (Adjustment
Base Index (Third Quarter 2001)	178.5	Multiplier)

The "base figure" is then multiplied by the adjustment multiplier to determine the new Fee. Using the foregoing example, the adjusted Fee is calculated as follows:

\$2,500	(Base Figure)
<u>x 1.0850</u>	<u>(Adjustment Multiplier)</u>
\$2,712.50	(Adjusted Fee)

- (3) Maximum Increase. Notwithstanding the foregoing, the Fee adjustments shall not increase the Fee in excess of six percent (6%) per calendar year.

- 3.3 Inspection of Records. LESSEE shall 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 Lease. LESSEE shall maintain complete and accurate records showing all income and receipts from the use of the Premises. The records and accounts will be made available by LESSEE at the Premises. LESSEE'S failure to reasonably keep and maintain records and make them available for inspection by CITY is a breach of this Lease and cause for termination. LESSEE shall maintain all records and accounts for a minimum period of five (5) years.

- 3.4 Delinquent Administrative Fee. If LESSEE fails to pay the Administrative Fee when due, LESSEE shall pay, in addition to the unpaid Fee, five percent (5%) of the delinquent Fee. If the Fee is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from Fee 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 payment of the Fee be less than Twenty-five Dollars (\$25). LESSEE 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 of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Lease.
- 3.5 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this Lease including but not limited to unauthorized subleases. This payment is subject to the due date provided in this Lease for Administrative Fee payments and the provision for delinquent Administrative Fees. The existence of the twenty percent (20%) charge in this clause and the payment of this charge, or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the Premises.
- 3.6 Annual Budget. LESSEE shall submit to the City Manager for approval by September 1 of each year copies of documents evidencing the proposed programs and financial status of LESSEE for the fiscal year commencing July 1. Without limiting the generality of the foregoing, the documents shall include (i) a copy of LESSEE'S proposed programs, including those for capital improvements; (ii) a copy of a detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures, including compensation for the director and staff of LESSEE; and (iii) an adequate reserve account, in the reasonable opinion of the City Manager, for maintenance and capital improvements to 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 Lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this Lease 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 Lease or any interest in this Lease during the term of this Lease. LESSEE shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part of the Premises, without the prior written consent of the City Manager in each instance. A consent to subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent subletting, occupation, or use by another person. Any subletting without CITY consent shall be void and shall, at the option of CITY, terminate this Lease.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this Lease from the original LESSEE, whether by LESSEE or by any of LESSEE'S stockholders.

Approval of any sublease shall be conditioned upon the sublessee agreeing in writing that it will assume the rights and obligations thereby subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease, which are applicable to the rights acquired. LESSEE shall submit to CITY annually on June 1 of each year of this Lease for written consent by the City Manager, or his authorized representative, a list of proposed sublessees of the Premises for the subsequent twelve (12) month period ("Sublease Period"). During the Sublease Period, LESSEE shall submit to CITY the name of any additional sublessee, within three (3) days of LESSEE'S knowledge of such sublessee, for written consent by the City Manager or his authorized representative. No sublessee shall be approved unless the sublessee is specifically named as an additional insured under LESSEE'S public liability insurance in accordance with Section 5.2 or has provided CITY with evidence of equivalent public liability insurance to CITY's satisfaction. The City Manager may require, as a condition of approval of any sublease of the majority portion of the leasehold, that this Lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. The City Manager may also require, as a condition to approval of any sublease of a commercial nature (e.g., permanent food vending or telecommunications installations), that LESSEE pay CITY market rents for such uses. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this Lease as a sublessee.

LESSEE agrees to use reasonable good faith efforts to enter into written sublease agreements with the Nomads and the Soccer League, or other similar major user group, within three (3) months following the commencement of this Lease upon reasonable terms and conditions subject to the approval and written consent of the City Manager or his authorized representative.

- 4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this Lease, its leasehold estate, and its improvements on the Premises by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the Premises in accordance with Section 6.12, Development Plan. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the Premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Subsequent encumbrances shall only be for the exclusive purpose of development of the Premises. LESSEE specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the Lease to provide then current provisions.

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

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

- 4.4 Defaults and Remedies. On the occurrence of a default by LESSEE, CITY shall have the right to pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to CITY in law or equity. These remedies are not exclusive but cumulative.

a. Defaults. Each of the following shall constitute an event of default under this Lease:

- (1) LESSEE'S failure to make any payment required under this Lease when due if the failure continues for fifteen (15) days following written notice of the failure by CITY; or
- (2) LESSEE defaults in the performance of any covenant or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice from CITY; or if any default, other than those requiring payment to CITY, is not curable within thirty (30) days, and fails to commence to cure the default(s) within the thirty-day period and diligently pursue the cure to completion; or
- (3) LESSEE voluntarily files any petition under any bankruptcy or insolvency act or law; or
- (4) LESSEE has involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the matter is not dismissed within ninety (90) days of filing; or
- (5) LESSEE is adjudicated a bankrupt; or
- (6) LESSEE makes a general assignment for the benefit of creditors; or
- (7) LESSEE uses the Premises for any unauthorized purpose.

b. Remedies

- (1) For Default Based Upon Nonpayment. Upon default by LESSEE for nonpayment under Section 4.4a(1) above, City may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written Three-Day Notice to Pay or Quit or CITY may terminate this Lease and all rights of LESSEE and of all persons claiming through LESSEE to the Premises or to possession of the Premises and CITY may enter and take possession of the Premises and may recover the sum set forth below.
- (2) For Any Other Default. Upon default by LESSEE based upon Section 4.4a(2-7) above, CITY may, at its option, terminate this

Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or possession of the Premises, and CITY may enter and take possession of the Premises and may recover from LESSEE the sums set forth below. However, in the event that any default described in Sections 4.4a (2-7) is not curable within thirty (30) days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues the cure to completion.

- (3) Upon termination of this Lease due to default, City may recover the sum of:
- (a) the worth at the time of award of any unpaid rent that had been due at the time of termination;
 - (b) the worth at the time of award of the amount by which (i) the unpaid rent that would have been earned after termination until the time of award minus (ii) the amount of the rent lost, if any, and LESSEE affirmatively proves could have been reasonably avoided;
 - (c) the worth at the time of award of the amount by which (i) the unpaid rent for the balance of the Term after the time of the award minus (ii) the amount of rent lost, if any, as LESSEE affirmatively proves could be reasonably avoided;
 - (d) any other amount necessary to compensate CITY for the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations 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) of this Section, the "worth at time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c) of this Section, 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 Base Rent,

Percentage Rent and any other payments required by
LESSEE.

- (4) If there is a deed of trust or mortgage on the leasehold interest, and LESSEE has provided CITY with an address where notice can be sent to the respective mortgagee or beneficiary, CITY will give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary will have thirty (30) days from the notice to cure the default(s) or, if the default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue the cure to completion. The thirty (30) day period may be extended during the time as mortgagee or beneficiary pursues the cure with reasonable diligence.

If the mortgagee or beneficiary will be required to exercise its right to cure the default(s) through litigation or through foreclosure, then CITY will have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

- (a) CITY may correct the default(s) and charge the costs of the default(s) to the account of LESSEE, which charge will be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of the costs.
- (b) CITY may correct the default(s) and may recover the costs of the default(s) from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the cost of correction performed by or at the direction of CITY.
- (c) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new tenant reasonably satisfactory to the mortgagee or

beneficiary. Any reasonable costs incurred by CITY in releasing to a new tenant will be the responsibility of the terminated LESSEE, and LESSEE agrees to reimburse CITY for any costs.

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, will have the absolute right to substitute itself in place of LESSEE under this Lease and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to so substitute itself within the thirty (30) day period after receiving written notice by CITY of the default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary and LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary.

- c. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the property, this Lease will continue in effect so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.

LESSEE and CITY agree that any personal property left at the Premises thirty (30) days after termination of this Lease shall be considered abandoned and LESSEE forfeits all ownership to the abandoned personal property, and it is mutually agreed CITY may dispose of the abandoned personal property as it deems appropriate, without further liability to LESSEE or any person claiming an interest in the personal property. CITY may, at its option, remove or dispose of the abandoned personal property at LESSEE'S expense. LESSEE shall hold CITY harmless and shall defend CITY against all claims asserted by third persons claiming an interest in the personal property.

- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY

delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the Premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when the defaults are discovered or when the City Council directs the City Manager to take action or require the cure of any default after the default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

- 4.5 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:
- a. In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the Premises is suitable for continued Lease operation, this Lease 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.
 - d. Award. All monies awarded in any such taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to, LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

- e. Transfer. CITY has the right to transfer CITY'S interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

4.6 Additional Consideration to CITY. With the exception of those subleases with the Soccer League and the Nomads, or other similar major user group, LESSEE and CITY agree that in the event of a subletting of the majority portion of the leasehold, or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the General Development Plan as described in Section 6.12 of this Lease, LESSEE shall pay to CITY two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any majority subletting or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed sublessee or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it a sublease or a refinancing. Any subletting or refinancing in violation of the terms and conditions of this paragraph shall be a material default under Section 4.4(a).

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold CITY, its elected officials, representatives, agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner

directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this Lease, or LESSEE'S use of the Premises, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, representatives, agents, officers, or employees.

5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this Lease the following insurance at its sole expense:
 - (1) Public liability and property damage insurance in the amount of not less than Two Million Dollars (\$2,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the Premises or the work and operations to be performed under this Lease.
 - (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the Premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss to improved real property or fixtures shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, of this Lease, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the Premises.
- b. LESSEE'S responsibility to maintain insurance also includes the following:
 - (1) Additional Insured. All insurance policies covering the Premises shall name, by separate endorsement, "The City of San Diego, its elected officials, representatives, agents, officers, and employees" as additional insureds, protect CITY against any legal costs in

defending claims, and will not terminate without sixty (60) days prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the Lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the Lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Lease.

- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right, but not the obligation, to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. The reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection b.(4), if LESSEE fails or refuses to take out or maintain insurance as required in

this Lease or fails to provide the proof of insurance, CITY has the right to declare this Lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within ten (10) days of fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of the damage and to restore the Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE agrees to clear and remove from the Premises all debris resulting from the damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to the damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, of this Lease.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on independent inspection, tests, investigations, and observations in making this Lease. LESSEE further acknowledges that the Premises are in the condition called for by this Lease, that CITY has performed all work with respect to the Premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the Premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted thereon. Inspections may be done annually or more frequently at CITY'S discretion. Except in emergencies, CITY will make an effort

to notify LESSEE at least three (3) days in advance of any entry. In the event that entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having the necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of CITY to correct the identified unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

- 6.3 Maintenance. LESSEE shall assume full responsibility and cost for the operation and maintenance of the Premises throughout the term, including the clubhouse, the irrigation system for the Premises, all turf, all landscaping, all fencing and all parking areas. LESSEE shall make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws, and shall take all precautions to ensure against fire hazards.
- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.
- 6.5 Utilities and Water Conservation.
- a. LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Premises including water used for irrigation purposes. All utilities shall be installed underground, and LESSEE shall always maintain a water sub-meter on the Premises.

- b. LESSEE shall practice water conservation. LESSEE shall pay any additional water costs resulting from excess water use beyond recommended levels established by the City's Water Conservation Manager and may, in times when the County Water Authority determines that there is a water emergency, and mandatory water rationing exists, result in CITY requiring LESSEE to pay any fines imposed by the County Water Authority due to non-compliance with mandatory water restrictions.

6.6 Construction Bond. Whenever there is any capital improvement to be constructed on the Premises, LESSEE shall 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 will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY and may be used on a percentage of completion basis for the payment of those improvements that are completed and will operate on a stand-alone basis. This provision does not apply to general maintenance and repairs which do not require a construction contract.

6.7 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including reasonable attorneys' fees.

If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.8 Taxes. LESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the

Premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees, and assessments will not reduce any rent or Administration Fee due CITY.

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

6.10 Ownership of Improvements and Personal Property.

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

Premises upon expiration or termination of this Lease, then CITY shall have the first right to acquire or purchase the personal property.

- 6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, the party shall be excused from performing that act for the period equal to the period of the prevention or delay. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.
- 6.12 Development Plan. LESSEE agrees to use its best efforts to construct a comfort station and provide additional parking during the Initial Term of this Lease and other improvements as approved by the City Manager during the Extension Terms of this Lease as capital improvements to the Premises. The capital improvements may be funded in money or in kind, through contributed or discounted services and materials. LESSEE shall construct the capital improvements in accordance with a General Development Plan, the general contents and provisions of which are described in Section 9.2a., General Development Plan. All improvements shall be consistent with the intent of, and comply with the requirements of, the latest edition of the CITY Park and Recreation Department's "Consultant's Guide to Park Design and Development." LESSEE'S capital improvements shall be for the purpose of enhancing the programs and services offered on the Premises. Prior to the construction of any capital improvements, LESSEE shall submit to CITY a complete General Development Plan that is reasonably consistent with the Conceptual Development Plan list provided in Section 9.2b., Conceptual Development Plan. The General Development Plan shall be subject to review and approval by the City Manager, which review shall be consistent with the California Environmental Quality Act, and the CITY'S Park and Recreation Board. LESSEE shall be solely responsible for performing any work, taking any actions, and paying any costs necessary to mitigate environmental impacts of the proposed development. The General Development Plan, upon approval by the City Manager and CITY'S Park and Recreation Board, shall be made part of this Lease. The City Manager and CITY'S Park and Recreation Board shall have the authority to authorize subsequent changes to the approved General Development Plan provided the changes are reasonably consistent with the Conceptual Development Plan. Failure by LESSEE to comply with the requirements of this Section 6.12 or with the approved General Development Plan shall constitute a default and subject this Lease to termination by CITY.

At least six (6) months prior to the tenth anniversary of this Lease and every five (5) years thereafter, LESSEE shall submit a new Development Plan to CITY

describing the capital investment that LESSEE will make to construct new capital improvements and refurbish existing ones on the Premises during the next five (5) years. Each new Development Plan shall be subject to review and approval by the City Manager and CITY'S Park and Recreation Board as to sufficiency of investment to ensure that good quality improvements are maintained on the Premises at all times to satisfy LESSEE'S program requirements and the terms of this Lease. Approval of any proposed subsequent Development Plan shall be consistent with the California Environmental Quality Act. LESSEE shall be solely responsible for performing any work, taking any actions, and paying any costs necessary to mitigate environmental impacts of the proposed development.

- 6.13 Hazardous/Toxic Waste. LESSEE shall not allow the installation of any underground storage tanks or release of hazardous substances in, on, under, or from the Premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704-1 and by this reference is incorporated herein.

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

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the Premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the

Premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this Lease, LESSEE, at CITY'S sole option, shall cause a Phase 1 environmental assessment of the Premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. If in the City Manager's opinion, the Phase 1 results so warrant, CITY may require further environmental assessment of the Premises, which shall establish what, if any, hazardous substances exist on, in, or under the Premises, and in what quantities. All environmental assessments shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the Premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. Provided the existence of hazardous substances have been caused by LESSEE, then LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.14 Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the Premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the Premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.
- 6.15 Water Quality - Best Management Practices and Storm Water Management Plan. CITY and LESSEE are committed to the implementation of programs to manage activities on the Premises in a manner which aids in the protection of San Diego's precious water resources. LESSEE shall comply with the Best Management Practices ("BMP") including the Storm Water Management Plan ("SWMP") approved by CITY'S Stormwater Management Program. LESSEE shall submit for review and approval by City Manager or its designee, within ninety (90) days of the execution of this Lease, BMP and SWMP that will control erosion and reduce the amount of pollutants and other sediments discharged from the Premises. The BMP and SWMP will be reviewed periodically by CITY. Upon written notice from the City Manager requesting an update of the BMP, LESSEE

shall submit updated BMP and SWMP for City Manager review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP and SWMP as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

LESSEE shall maintain and enforce the BMP and SWMP once developed and implemented, including informing employees, contractors, subcontractors, agents and vendors of the BMP and SWMP.

All pesticides used by LESSEE (or its designee) at Allen Field shall be stored, selected, prepared, mixed and applied in conformance with the laws and regulations of the State of California, and in a manner consistent with use at public facilities. LESSEE shall only use or allow the use of pesticides on the "Park and Recreation Director's List of Approved Pesticides." The list will be supplied to LESSEE by the Park and Recreation Department.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows or at such other address designated in writing:

LESSEE:

La Jolla Youth, Inc.
3908 Torrey Pines Road
La Jolla, CA 92037
Attn: President

CITY:

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

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.
 - c. Notice served pursuant to the terms of this Section 7.1 shall be effective upon personal service or two (2) days after service by mail.
- 7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.
- 7.3 CITY Approval or Notice. The approval or consent of CITY or notice to CITY, wherever required in this Lease, shall mean the written approval or consent of the City Manager or his authorized representative unless otherwise specified, without need for further resolution by the City Council. "Authorized representative" shall mean the Director of the Real Estate Assets Department or any other individual designated by the City Manager in written notice to LESSEE.
- 7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 7.5 Compliance with CITY'S Equal Opportunity Contracting Program. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will 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 any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this Lease so that such provisions will be binding upon each

subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

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

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

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or lessees shall include

a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Disabled Access Compliance. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with the 1990 Americans with Disabilities Act and Title 24 of the California Code of Regulations (Building Code), as defined in Section 18910 of the California Health and Safety Code, and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

- 7.14 Bylaws. Membership in LESSEE'S organization shall be open to anyone meeting the requirements of its rules and bylaws. All restrictions, rules, bylaws, and fees, if any, and changes thereto proposed by LESSEE'S organization shall, before being put into effect, be submitted to and receive written acceptance from the City Manager. The accepted bylaws shall be on file in the office of the Real Estate Assets Department prior to CITY execution of this Lease.
- 7.15 Corporate Authority. Each individual executing this Lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of the corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this Lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation, as provided in Section 9.3, Corporate Name, of this Lease, and all steps have been taken prior to the date of this Lease to qualify LESSEE to do business in California.
- 7.16 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.
- 7.17 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Lease.
- 7.18 Membership. Residents of CITY shall comprise at least fifty percent (50%) of the members using the Premises, which shall be subject to annual verification by CITY.
- 7.19 Program Review. CITY and LESSEE shall annually review the operation of LESSEE'S programs and activities on the Premises with the goal of improving and coordinating public services.
- 7.20 Supersedure. It is mutually agreed that this Lease, upon its effective date, supersedes and annuls that certain lease executed on January 29, 1979, with La Jolla Youth, Incorporated, City Clerk Document 765592, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under the agreement.
- 7.21 CITY Satisfaction. Whenever in this Lease LESSEE is required to perform to the satisfaction of the City Manager, CITY'S satisfaction or similar requirement, the performance shall be in accordance with the standards set by CITY'S Park and Recreation Department for other CITY park and recreation fields and facilities.
- 7.22 Conflict of Interest Standards. LESSEE shall not enter into any contract or transaction with respect to the use, occupancy or development of the Premises if one of its officers, directors, committee members, staff members or volunteers has

a material financial interest in the contract or transaction, except in the following circumstances:

- a. An action by the board fixing the compensation of a director or officer of LESSEE; or
- b. All of the following conditions are met:
 - a. The material facts as to the transaction and as to the party's interest are fully disclosed or known to the members, board or committee voting on the matter;
 - b. The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties;
 - c. The interested party abstains from voting on the matter;
 - d. The contract or transaction is just and reasonable to the members, board or committee voting on the matter at the time it is authorized, approved or ratified;
 - e. The interested party does not participate in the decision on the transaction or contract, except to answer questions asked; and
 - f. The action is recorded in meeting minutes, noting which members voted, how the members voted and identifying any members who abstained from voting.
- c. A committee or person authorized by the board approved the transaction consistent with the standards in Section 7.22b above, and it was not reasonably practicable to obtain approval of the board prior to entering into the transaction and the board ratified the action at its next meeting by a majority vote of the directors, without counting the vote of the interested party or parties.

A violation of any provision of this Section 7.22 shall be grounds for termination of this Lease.

- 7.23 Board Roster. At the time LESSEE submits LESSEE'S annual budget pursuant to Section 3.6 above, LESSEE shall provide to CITY a list of all board members and their business affiliations.

SECTION 8: SIGNATURES

8.1 Signature Page.

This Lease is executed by CITY, acting by and through its City Manager pursuant to City Council Resolution No. R. 300679, and by LESSEE, acting by and through its lawfully authorized officers.

Date _____

CITY OF SAN DIEGO

By 

William T. Griffith

Real Estate Assets Director

Date MAY 3, 2005

LESSEE: LA JOLLA YOUTH, INC.

By 

Patrick W. Kearney

President

APPROVED as to form and legality
this 11th day of August, 2005.

MICHAEL J. AGUIRRE, CITY ATTORNEY

By 
Deputy City Attorney

CLY:cdj
4/26/05
LEASE-LAJOLLA YOUTH10.wpd

R. 300679

SECTION 9: EXHIBITS

9.1 Legal Description.

All that portion of Pueblo Lot 1299 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof made by James Pascoe in 1870, a copy of which Map was filed in the Office of the County Recorder of San Diego County, November 14, 1921, as Miscellaneous Map No. 36, lying Westerly of the Westerly boundary of Torrey Pines Road (formerly La Jolla Canyon Drive), as now located and established.

EXCEPTING THEREFROM that portion lying Southerly of the Northerly line of La Jolla Highlands Unit No. 2, according to Map thereof No. 3361, filed in the Office of the County Recorder of San Diego County, January 27, 1956.

ALSO EXCEPTING THEREFROM that portion lying Northerly of a line which bears South 89°05'43" East from a point in the Westerly line of said Pueblo Lot 1299, distant thereon South 00°52'22" West, 1,000.00 feet from the Northwest corner of said Pueblo Lot 1299.

9.2a General Development Plan.

The General Development Plan will consist of:

- a. Plot Plan
- b. Development Schedule
- c. Estimated Construction Costs
- d. Financial Plan
- e. Schematic Elevations
- f. Landscape Plan
- g. Others as applicable

and, upon approval by the City Manager and CITY'S Park and Recreation Board, will be attached hereto and made part of this Lease.

9.2b. Conceptual Development Plan.

Comfort station

Additional parking

Other improvements

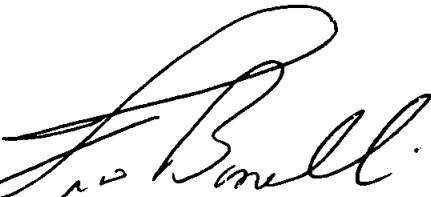
9.3 Corporate Name.

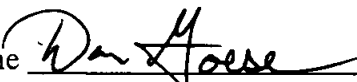
LA JOLLA YOUTH, INC.

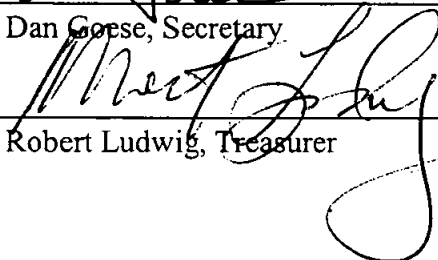
I, Patrick W. Kearney, certify that I am the President of the corporation named in the attached agreement; that the agreement was duly signed for and on behalf of the corporation by authority of its governing body, pursuant to a resolution duly adopted by its Board of Directors on MAY 3, 2005, and is within the scope of its corporate powers; and that set out below are the names of the officers of the corporation.

By 
Patrick W. Kearney
President

CORPORATE SEAL

Name 
Fred Borrelli, Vice President

Name 
Dan Goese, Secretary

Name 
Robert Ludwig, Treasurer

9.4 Schedule of Rates and Charges.

Sublet Fees:

Full day both fields	\$1,400
Full day single field	800
Half day both fields	800
Half day single field	500

9.5 Schedule of Days and Hours of Operation.

Daily: 8 a.m. to one-half ($\frac{1}{2}$) hour after sunset



Legend

Allsites.shp
 Parcels

Exhibit "A"

1:1552



Vicinity Map



SanGIS
 We Have San Diego Covered

This report is provided for informational purposes only. It is not intended to be used as a basis for any legal or financial decision. The information contained herein is for informational purposes only and should not be used as a basis for any legal or financial decision. The information contained herein is for informational purposes only and should not be used as a basis for any legal or financial decision.

Plot Date: 03/07/05

(R-2006-6)
COR.COPY

RESOLUTION NUMBER R- 300679
ADOPTED ON JUL 19 2005

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE CITY MANAGER TO EXECUTE A TEN-YEAR LEASE AGREEMENT WITH THREE FIVE-YEAR OPTIONS TO EXTEND WITH LA JOLLA YOUTH, INC. FOR THE PROPERTY LOCATED AT 3908 TORREY PINES ROAD COMMONLY KNOWN AS ALLEN FIELD.

WHEREAS, the City of San Diego is the owner of a 6.5 acre parcel located at 3908 Torrey Pines Road in La Jolla, commonly known as the Willis and Ruth Allen Field or Allen Field; and

WHEREAS, on April 5, 1982, the City Council dedicated this property for park and recreational purposes in perpetuity pursuant to Ordinance No. 15696; and

WHEREAS, this parcel is currently improved with turf for two soccer fields, an irrigation system, a small field house consisting of offices, a meeting room and locker rooms, and a parking lot for 24 vehicles; and

WHEREAS, La Jolla Youth, Inc. has leased and maintained a youth soccer field on this parcel since January 1979 and has agreed to construct additional parking and a comfort station on the parcel; and

WHEREAS, the City and the La Jolla Youth, Inc. have negotiated a 10-year renewal of the lease agreement with three 5-year options to extend with an administrative fee of \$2,712.50 per year with an annual CPI adjustments;

Passed and adopted by the Council of San Diego on July 19, 2005 by the following vote:

YEAS: **PETERS, ATKINS, YOUNG, MAIENSCHIN, FRYE, MADAFFER,
MAYOR MURPHY.**

NAYS: **NONE.**

NOT PRESENT: **ZUCCHET, INZUNZA.**

AUTHENTICATED BY:

TONI ATKINS

Mayor Pro Tem of The City of San Diego, California

JOYCE LANE

Assistant City Clerk of The City of San Diego, California

(SEAL)

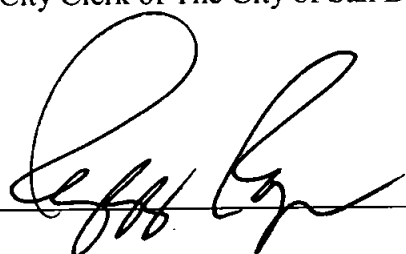
By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R- 300679 passed and adopted by the Council of The City of San Diego,
California on July 19, 2005.

JOYCE LANE

Assistant City Clerk of The City of San Diego, California

(SEAL)

By:  , Deputy

WHEREAS, City staff estimates that the fair market value of this land if available for private residential use would be \$16,000,000; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the City Manager or designee is authorized to execute, for and on behalf of the City of San Diego, a 10-year lease agreement with three five-year options to extend with the La Jolla Youth, Inc. for the operation and maintenance of a youth soccer field and youth sports facility, at 3908 Torrey Pines Road in La Jolla, with and administrative fee of \$2,712.50 per year with an annual CPI adjustments, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- **300679**.

2. That the Council waives Council Policy 700-41 regarding the use of the RFP process for the lease of City-owned land.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Elisa A. Cusato
Deputy City Attorney

EAC:nda
07/01/05
07/05/2005COR.COPY
Or.Dept:READ
R-2006-6
MMS#879

L- 300679