



THE CITY OF SAN DIEGO

June 1, 1998

Mr. William A. Davis
Executive Vice President
and General Manager
Sea World of California
1720 South Shores Road
San Diego, California 92109-9980

RE: Maintenance Permit - Portion of Mission Bay Park

Dear Mr. Davis:

In connection with Sea World's use and occupancy of certain premises in Mission Bay Park known as "Sea World" pursuant to that certain lease (the "Lease") between the City of San Diego ("City") and Sea World, Inc., a Delaware corporation ("Permittee") dated as of JUN 29 1998, as amended from time to time, City hereby grants permission to Permittee, and its officers, agents and employees to enter upon that certain City-owned property ("Permit Area"), as depicted on the attached Exhibit A-1 upon the following terms and conditions:

1. Permittee's use of the Permit Area shall be limited to entry upon the same for the purpose of maintaining the landscaping, and irrigation systems for such landscaping, located within the Permit Area. Such maintenance obligations shall include but not be limited to irrigation, weeding, pruning and landscape replacement.
2. Consideration to City for granting this permit shall be the Permittee's assuming and discharging the responsibility for complete maintenance of the landscaping within the Permit Area, its irrigation and irrigation systems. Landscaping plans and future changes in landscaping will be subject to the prior written approval of the District Manager of Mission Bay Park, which shall not be unreasonably withheld. Permittee shall not be responsible for any other equipment, facilities or other property not owned by it located within the Permit Area including but not limited to traffic signals, street lighting, directional signs or utilities, it being understood that the operation, maintenance, repair or replacement thereof shall remain the responsibility of City.



Real Estate Assets
202 C Street, MS 98 • San Diego, CA 92101
Tel (619) 236-6144 Fax (619) 236-7003

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

3. Permittee shall operate, repair, maintain and replace the irrigation systems required for the landscaping located within the Permit Areas, provided that City shall first provide and install (and convey to Permittee by bill of sale) a working irrigation and landscaping system initially required as part of the City's planned development of South Shores. Water for the maintenance of such landscaping shall be provided by the City, but only to the extent that would have been required as part of the City's planned development of South Shores. Permittee shall not be required to provide water for the City's landscaping.

4. The term of this permit shall be the same as the term of the Lease, with the right of cancellation by the City upon six (6) months prior written notice to the Permittee; provided, that in the event this permit is no longer in effect as a result of cancellation or other action by the City, then Permittee's obligations as set forth in this permit, including the obligation to maintain, repair and replace certain landscaping and irrigation systems of the City, shall terminate.

5. Permittee certifies that a policy of public liability and property damage insurance, in which "The City of San Diego" is named as an additional insured, has been secured in an amount of not less than \$5 million combined single limit liability with an occurrence claims form and that said policy shall be kept in force for the duration of this permit. A certificate of said insurance shall be filed with the City Real Estate Assets Department upon execution of this permit.

6. Permittee agrees to defend, indemnify, protect, and hold City and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries (including death) to any person or property, including, but not limited to, injury to Permittee's employees, agents, officers or invitees, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of Permittee and its agents, officers, or employees in performing the work or services herein and all expenses of investigating and defending against same; provided, however, that Permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of City, its agents, officers, or employees.

City agrees to defend, indemnify, protect, and hold Permittee and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries (including death) to any person or property, including, but not limited to, injury to City's employees, agents, officers or invitees, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of City and its agents, officers, or employees within or related to the Permit Area and all expenses of investigating and defending against same; provided, however, that City's duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of Permittee, its agents, officers, or employees.

7. All risks in connection with Permittee's use of the Permit Area and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee but only to the extent such damages are not the result of the negligent acts or omissions of the City or its agents.
8. Permittee shall not use the Permit Area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
9. As set out in Section 5 above, this permit is revocable upon six (6) months written notice to Permittee at any time by the City of San Diego. It is mutually agreed that the City of San Diego shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this permit, and, further, that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this permit.
10. Permittee recognizes and understands that this permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Permittee further agrees that such tax payment shall not reduce any fee paid the City of San Diego hereunder and that such tax shall be paid by Permittee before becoming delinquent.
11. Permittee shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the performance of its obligations in the Permit Area.
12. Permittee shall not assign any rights granted by this permit nor any interest therein. Any assignment by operation of law shall automatically terminate this permit. Notwithstanding the foregoing, this permit may be assigned to an approved assignee of Sea World, Inc.'s Lease with the City.
13. No signs shall be displayed on the Permit Area without the prior written consent of the City Manager, which shall not be unreasonably withheld provided: all such signs are in compliance with Mission Bay Park standards, laws related to sign requirements, and acceptable to the Traffic Engineering Division of the City.
14. Permittee shall not remove any plant material from the Permit Area without the prior written consent of the Park and Recreation Department of City. Should the Permittee need to remove any plant material, a written request must be submitted to the City of San Diego, Park and Recreation Department, Coastal Division, attention District Manager, at 2581 Quivira Way, San Diego, California 92109. Permittee agrees to transplant or box trees disturbed within the Permit Area and relocate the same within Mission Bay Park as directed by the Park and Recreation Department of City. Permittee shall be responsible for the

maintenance of the Permit Area and that maintenance will conform to Mission Bay Park maintenance standards.

15. Permittee will provide plans for irrigation systems that will be demolished or made obsolete by any proposed construction and showing how they will be repaired by Permittee. Plans shall be submitted to the City Park and Recreation Department and all repairs shall be done in conformance with Mission Bay Park maintenance standards with regard to parts used, etc.

16. Upon execution of this Permit, Permittee will provide a construction schedule for all improvements and will furnish updates to District Manager, City of San Diego, Park and Recreation Department, 2581 Quivira Way, San Diego, California 92109.

17. This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

18. Permittee and City understand and agree that if any provisions of this permit augment, modify, remove, or conflict with the project description and/or special conditions of any required coastal development permit, further action by the Coastal Commission may be required, either through an amendment to the coastal development permit or issuance of a separate coastal development permit.

19. Permittee 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 Permittee's use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

Please acknowledge your agreement to the foregoing terms and conditions on the enclosed copy of this letter and return it to the City Property Department, together with your insurance certificate.

If you should require additional information or have any questions, please call Linda M. Fierro, Property Agent, at 236-6985.

Very truly yours,



ROBERT J. COLLINS
Real Estate Assets Manager

jmj

Attachments

cc: County Assessor

HWPO1998FERROLMANT.SEA

THE ABOVE IS ACKNOWLEDGED AND ACCEPTED
THIS 1 DAY OF JUNE, 1998

SEA WORLD, INC.
a Delaware corporation

By: William A. Davis

APPROVED AS TO FORM AND LEGALITY

CASEY GWINN, City Attorney

By: Preella Dwyer
Deputy City Attorney

DEVELOPMENT AND ENVIRONMENTAL PLANNING

ENVIRONMENTAL CLEARANCE:

Steph M. Kase SR PLANNING/EAS
7/8/98
5

0-18538

EXHIBIT A-1

SEA WORLD
PERMIT AREA

THURS ROAD

Landscape Maintenance
Permit Area

Landscape Maintenance
Permit Area

Landscape Maintenance
Permit Area

ALL VARIOUS
LANDS

ALL VARIOUS
LANDS

HALE ENGINEERING
INCORPORATED
1000 N. 10th St.
Tampa, FL 33604
Tel: 813-288-1111
Fax: 813-288-1112