

COPY

DUPLICATE



THE CITY OF SAN DIEGO

NEIGHBORHOOD HOUSE ASSOCIATION, INC.

Nonprofit Lease

DOCUMENT NO.

R-298720

FILED

DEC 08 2003

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

LEASE OUTLINE

SECTION 1: USES	1
1.1 <u>Premises</u>	1
1.2 <u>Uses</u>	1
1.3 <u>Related Council Actions</u>	1
1.4 <u>Quiet Possession</u>	2
1.5 <u>Easements and Reservations</u>	2
1.6 <u>Competent Management</u>	2
1.7 <u>Operation of Facilities</u>	3
1.8 <u>Rates and Charges</u>	3
1.9 <u>CITY Use</u>	3
1.10 <u>Political Activities</u>	3
1.11 <u>Public Use</u>	3
SECTION 2: TERM	4
2.1 <u>Commencement</u>	4
2.2 <u>Holdover</u>	4
2.3 <u>Surrender of Premises</u>	4
SECTION 3: RENT	4
3.1 <u>Time and Place of Payment</u>	4
3.2 <u>Rent and Administrative Fee</u>	5
3.3 <u>Delinquent Administrative Fee</u>	7
3.4 <u>Unauthorized Use Charge.</u>	7
3.5 <u>Inspection of Records.</u>	7
SECTION 4: ASSIGNMENT	7
4.1 <u>Time is of Essence; Provisions Binding on Successors</u>	7
4.2 <u>Assignment and Subletting</u>	8
4.3 <u>Encumbrance</u>	9
4.4 <u>Defaults and Remedies</u>	10
4.5 <u>Eminent Domain</u>	11
4.6 <u>Additional Consideration to CITY</u>	12
SECTION 5: INSURANCE RISKS/SECURITY	13
5.1 <u>Indemnity</u>	13
5.2 <u>Insurance.</u>	14
5.3 <u>Waste, Damage, or Destruction.</u>	15
SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS	16
6.1 <u>Acceptance of Premises.</u>	16

6.2	<u>Entry and Inspection</u>	16
6.3	<u>Maintenance</u>	17
6.4	<u>Improvements/Alterations</u>	17
6.5	<u>Utilities</u>	17
6.6	<u>Construction Bond</u>	17
6.7	<u>Liens</u>	18
6.8	<u>Taxes</u>	18
6.9	<u>Signs</u>	18
6.10	<u>Ownership of Improvements and Personal Property</u>	18
6.11	<u>Unavoidable Delay</u>	19
6.12	<u>General Development Plan</u>	20
6.13	<u>Hazardous/Toxic Waste</u>	20
6.14	<u>Best Management Practices</u>	21
SECTION 7:	GENERAL PROVISIONS	22
7.1	<u>Notices</u>	22
7.2	<u>Compliance with Law</u>	22
7.3	<u>CITY Approval</u>	23
7.4	<u>Nondiscrimination</u>	23
7.5	<u>Compliance with CITY'S Equal Opportunity Contracting Program</u>	23
7.6	<u>Partial Invalidity</u>	24
7.7	<u>Legal Fees</u>	24
7.8	<u>Number and Gender</u>	24
7.9	<u>Captions</u>	24
7.10	<u>Entire Understanding</u>	24
7.11	<u>CITY Employee Participation Policy</u>	24
7.12	<u>Drug-free Workplace</u>	25
7.13	<u>Disabled Access Compliance</u>	25
7.14	<u>Corporate Authority</u>	26
7.15	<u>Standard of Employees</u>	26
7.16	<u>Estoppel Certificates</u>	26
7.17	<u>Memorandum of Lease</u>	26
7.18	<u>Survival</u>	26
SECTION 8:	SIGNATURES	27
8.1	<u>Signature Page</u>	27
SECTION 9:	EXHIBITS	28
9.1	<u>Legal Description</u>	28
9.2	<u>General Development Plan Outline</u>	29
9.3	<u>Corporate Name</u>	30
9.4	<u>Schedule of Rates and Charges</u>	31
9.5	<u>Schedule of Days and Hours of Operation</u>	32

9.6	<u>Memorandum of Lease Form.</u>	33
-----	--	----

CITY OF SAN DIEGO NONPROFIT LEASE

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and NEIGHBORHOOD HOUSE ASSOCIATION, INC., a California nonprofit corporation, hereinafter called "LESSEE."

SECTION 1: USES

1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain vacant land situated in the City of San Diego, County of San Diego, State of California, described in Section 9.1, Legal Description, hereof, and as shown on the attached Exhibit "A." Said real property is hereinafter called the "premises" or "leased premises."

1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of constructing, operating, and maintaining a child care center emphasizing day care and recreational programs for preschool children, in accordance with the General Development Plan referenced in Section 6.12 hereof, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever. Use of the leased premises for any purpose not expressly authorized in this lease or in writing by the City Manager shall constitute a material breach of the terms of this lease and shall subject this lease to termination at the sole option of CITY.

LESSEE acknowledges, understands, and agrees that the leased premises are located on parkland that is currently designated for park and recreational use. CITY reserves the right at any time during the term of this lease to formally dedicate the premises to park and recreational use by ordinance adopted by the City Council. In that event, LESSEE'S use of the leased premises shall, at all times thereafter, be limited to and consistent with park and recreational uses.

1.3 Related Council Actions. By the granting of 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 leased 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, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 Easements and Reservations.

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

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

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of

the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a nonprofit child care center with recreational programs and related activities in accordance with all applicable federal, state, and local regulations, and in a fiscally responsible manner.

- 1.7 Operation of Facilities. 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, hereof. Any changes in this schedule shall be subject to the prior written approval of the City Manager or his authorized representative, which approval shall not be unreasonably withheld and shall be based on prevailing market conditions. 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 and other government entities that govern child care programs.
- 1.8 Rates and Charges. All charges for merchandise and services or facilities on the premises shall be in accordance with the schedule set forth in Section 9.4, Schedule of Rates and Charges, hereof. Any changes in said schedule are subject to prior written approval by the City Manager or his authorized representative, which approval shall not be unreasonably withheld and shall be based on prevailing market conditions.
- 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 leased premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. 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. LESSEE may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public and are designed to allow LESSEE to use the premises for the purposes specified herein. LESSEE agrees that all activities conducted on the premises will be as stated in Section 1.2, Uses, hereof.

LESSEE shall, at all times during the lease term, maintain a 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.

SECTION 2: TERM

- 2.1 Commencement. The term of this lease shall be twenty (20) years commencing on the first day of the calendar month following execution by the City Manager or designee. "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 or designee.
- 2.2 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 apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.3 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 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 defined in Section 3.2 below is due annually in advance on or before the first day of each lease year. All rents or fees required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California, 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, Suite 100, San Diego, California.

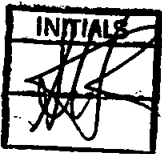
The place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the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

3.2 Rent and Administrative Fee.

- a. Rent Amount. The annual rent is One Dollar (\$1) per lease year, receipt of which is hereby acknowledged by CITY.
- b. Administrative Costs. LESSEE shall pay a fee of Two Thousand Six Hundred Twenty-one Dollars (\$2,621) per lease year ("Administrative Fee" or "Fee"), payable annually, to partially offset 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.
- c. (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, and 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 adjustment 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 of 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 2004 Fee Adjustment

Current Index (Third Quarter 2003)	187.1	
	-----	= 1.0482 (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)
x 1.0482	(Adjustment Multiplier)
\$2,621	(Rounded 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 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.
- 3.4 Unauthorized Use Charge. LESSEE shall pay CITY fifty percent (50%) of the gross receipts for any service or use that is not permitted by this lease. 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 fifty percent (50%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.
- 3.5 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine LESSEE'S compliance with this lease. These records and accounts will be made available by LESSEE at the leased premises and will be complete and accurate showing all income and receipts from use of the premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

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 therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this lease which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment that LESSEE pay additional consideration to CITY, as set forth in Section 4.6, Additional Consideration to CITY, hereof, commencing on the effective date of such proposed sublease of the majority portion of the leasehold or assignment, and may further require 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., 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 or assignee.

CITY hereby covenants that, so long as a sublessee is not in default in the payment of rentals or otherwise in default under the sublease beyond any applicable cure period, its interest under the sublease and possession of the subleased premises shall not be terminated in the event of a termination of this lease (except as herein provided in the event of damage, destruction, condemnation, or the expiration of the term of this lease), provided that the sublessee pays all rent under the sublease to CITY and continues to perform all of sublessee's obligations under the sublease.

- 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 thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with Section 6.12, General Development Plan, hereof. 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, which approval shall not be unreasonably withheld. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said General Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to CITY as set forth in Section 4.6, Additional Consideration to CITY, hereof, and further that LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then-current rents and provisions.

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

Upon prior written approval by CITY, said 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 hereof. 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.

a. Default. In the event that:

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

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Subsection 4.4a.(1) above is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

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

- b. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to

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

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

- 4.5 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 such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled but limited 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. LESSEE and CITY agree that in the event of a assignment; in the event of a subletting of the majority portion of the leasehold; or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the General Development Plan as described in Section 6.12 hereof, LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the lease, two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the encumbrance

needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this section shall be void. The provisions of this section shall not apply to:

- a. An assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) or LESSEE'S principal owner or chief executive officer (if LESSEE is other than an individual);
- b. Such other assignment for which the City Manager determines that the legal and equitable ownership interests in the leasehold have remained unchanged, such as a change in the legal or fictitious name of LESSEE without any other change in the equity in beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby.

SECTION 5: INSURANCE RISKS/SECURITY

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

5.2 Insurance.

- 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.
 - (2) Other Insurance. 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 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, hereof, 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 said insurance also includes the following:
- (1) Additional Insureds. All insurance policies will name "The City of San Diego, its elected officials, officers, employees, agents, and representatives" as additional insureds, protect them 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 to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

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 leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased

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 said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, replacement, or removal of the facility on the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, replacement, or removal 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 such 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. In the event that such entry or inspection by CITY discloses that the premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, 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 such necessary maintenance work done, in order to keep the premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that the premises are not in a decent, safe, healthy, and sanitary condition, CITY

may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said 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 agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. 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 the General Development Plan described in Section 6.12, General Development Plan, hereof and with all applicable laws.
- 6.4 Improvements/Alterations. Except as provided in the General Development Plan described in Section 6.12 hereof, 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, which approval shall not be unreasonably withheld. 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. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities shall be installed underground.
- 6.6 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The

bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.

- 6.7 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 agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this 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 administrative fees due CITY.

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

- 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 agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage at its expense.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said 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, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay administrative fees as required pursuant to this lease. 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 General Development Plan. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager, which plan is attached hereto and by this reference made part of this lease. The general contents and provisions of the General Development Plan are described in Section 9.2 hereof. The City Manager or his designee shall have the authority to authorize changes to said plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this lease to termination by CITY. The City Manager, in his sole discretion, may approve an extension to the date specified for construction completion in the General Development Plan of up to one (1) year without further City Council approval.

6.13 Hazardous/Toxic Waste. LESSEE will not allow the installation of additional 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, 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 an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.14 Best Management Practices. CITY and LESSEE are committed to the implementation of programs to manage activities on the leased 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 Stormwater Pollution Prevention Plan ("SPPP") approved by CITY'S Stormwater Management Program. LESSEE shall submit for review and approval by the City Manager or his designee, within ninety (90) days of the effective date of this lease, BMP and SPPP that will control erosion and reduce the amount of pollutants and other sediments discharged from the leased premises. The BMP and SPPP 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 SPPP for City Manager review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP and SPPP as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

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

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE, with a copy to:

KQC Investors, LLC
Attention: Howard J. Kaplan, Manager
P.O. Box 609
Lewisville, NC 27023;

and to CITY as follows:

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. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 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 submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement 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 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 agreement 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 leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the 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) 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 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 said 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, hereof, and all steps have been taken prior to the effective date hereof to qualify LESSEE to do business in California.
- 7.15 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.16 Estoppel Certificates. CITY and LESSEE shall at any time during the term of this lease, within thirty (30) days of written notice from the other party, execute and deliver to the requesting party a statement in a form certifying that this lease is unmodified and in full force and effect or, if modified, stating the nature of such modification, the current rent, the date to which rent is paid, whether such party has any knowledge of a breach of this lease by either party, and such other information regarding this lease as may be reasonably requested. Any such statement may be relied upon conclusively by any prospective assignee, sublessee, or encumbrancer of the premises, or of LESSEE'S or CITY'S interest in this lease.
- 7.17 Memorandum of Lease. At the written request of LESSEE, the parties shall execute, acknowledge, and record a Memorandum of Lease in the form shown in Section 9.6 hereof. Promptly after the expiration or earlier termination of this lease, LESSEE agrees to execute, acknowledge, and deliver to CITY a document sufficient to cancel the Memorandum of Lease.
- 7.18 Survival. Any obligation which accrues under this lease prior to its expiration or termination shall survive the expiration or termination of the lease.

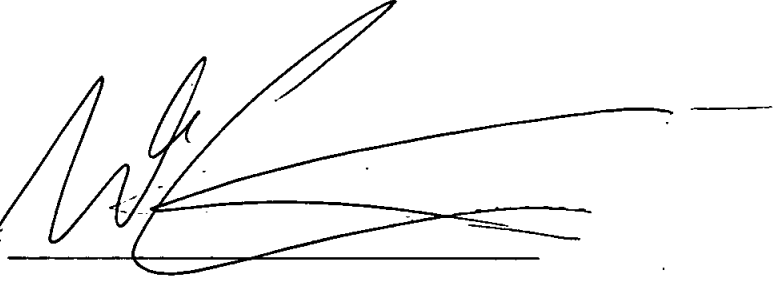
SECTION 8: SIGNATURES

8.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager pursuant to City Council Resolution No. R-298720, and by LESSEE, acting by and through its lawfully authorized officers.

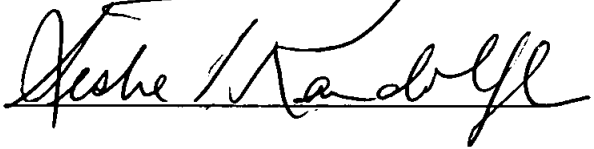
THE CITY OF SAN DIEGO

Date 12-16-03

By 

LESSEE: NEIGHBORHOOD HOUSE
ASSOCIATION, INC.

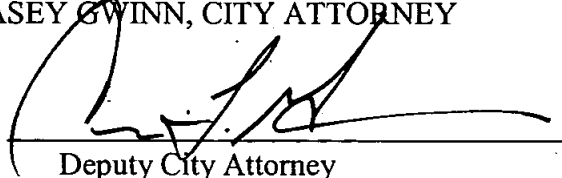
Date November 25, 2003

By 

By Leslie Randolph

APPROVED as to form and legality this 19th day of December, 2003.

CASEY GWINN, CITY ATTORNEY

By 

Deputy City Attorney

PTC/cdj

05/02/03

I:\WP02003\CRAWFORD\LEASE-NEIGHBORHOOD HOUSE ASSOCIATION INC.wpd

R-298720

SECTION 9: EXHIBITS

9.1 Legal Description.

Lots 21 through 27 in Block 15 of Subdivision of Lots 20 to 50, Block N, Teralta, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 1000 filed in the Office of the San Diego County Recorder, July 18, 1906.

ORIGINAL

454-75
SHT 1 OF 2

1"=100'

74
SHT. 1

74
SHT. 2

18 CONDM
4174 MARLBOROUGH
DOC 81-054258
(SEE SHT 2)



ORANGE

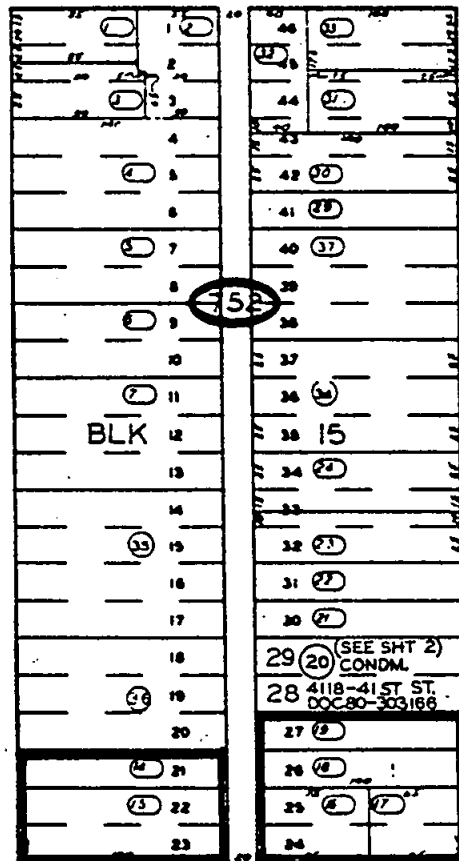
AVE. 1

CHANGES

BLK	OLD	NEW	OUT
753	20	29	30
752	20	CONDM	81
753	25	CONDM	81
751	5-7	KILL	81
751	11/12	36	83
751	32	KILL	85
751	24	HWY	88
751	12/13	HWY	88
751	14/35	HWY	89
751	8	HWY	89
751	9	HWY	89
751	34/26	HWY	89
751	23	HWY	90
751	17/36	HWY	90
751	15	HWY	91
751	28	HWY	91
751	16/20/21	HWY	91
751	21	HWY	92

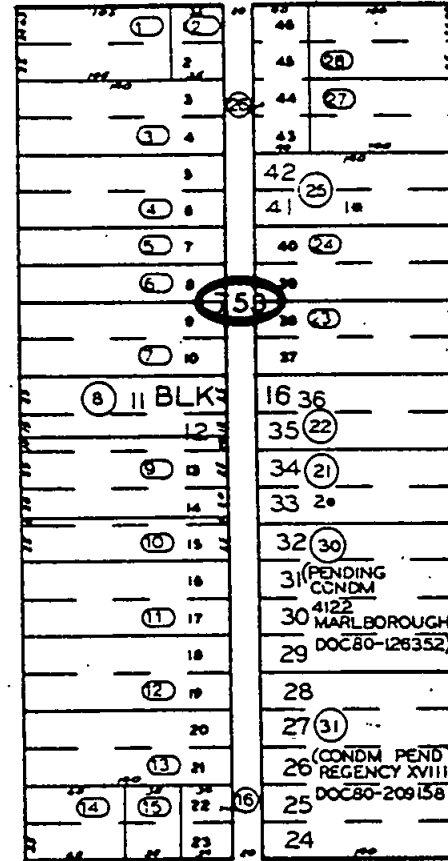
-28a-

EXHIBIT A



ST. 1

ST. 4



ST. 2

ST. 5

28 (CONDM PEND)
4138 MARLBOROUGH AVE
DOC 85-057542

76

MAP 1000 - TERALTA RESUB OF LOTS 20-50 BLK N

9.2 General Development Plan Outline:

The General Development Plan consists of:

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

and is attached hereto and made part of this lease.

9.3 Corporate Name.

NEIGHBORHOOD HOUSE ASSOCIATION, INC.
CORPORATE NAME

I, Kathy Davis, certify that I am the
Treasurer of the corporation named in the attached
agreement; that Leslie Randolph, who signed this agreement on
behalf of the corporation, was then V.P. Business Services of said corporation;
that said agreement was duly signed for and on behalf of said corporation by authority of its
governing body, ~~pursuant to a resolution duly adopted by its Board of Directors on~~
by unanimous written consent of the Executive Committee of
the Board of Directors duly adopted as of the date of this lease,
~~xxxxxxxxxxxxxxxxxxxxxx, 20xxxx~~ and is within the scope of its corporate powers; and that set
out below are the names of the officers and directors of said corporation.

By Kathy Davis 11-25-03

CORPORATE SEAL

Name Cheryl Fisher, Chair
Title

Name Rudy Johnson, 1st Vice Chair
Title

Name Larry Brown, 2nd Vice Chair
Title

Name Katherline Hardie, Secretary
Title

9.4 Schedule of Rates and Charges.

Neighborhood House Association Head Start is federally funded and provides services free of charge to its income-eligible clients. There are no registration or tuition fees.

9.5 Schedule of Days and Hours of Operation.

Extended Program 6:00 a.m. - 6:00 p.m., Monday - Friday
Full-Day Program 8:00 a.m. - 4:00 p.m., Monday - Friday
Part-Time "Twilight" Program 4:00 p.m. - 8:00 p.m., Monday - Friday
Extended Program 4:00 p.m. - 11:30 p.m., Monday - Friday

Programs operate year-round except for legal holidays.

9.6 Memorandum of Lease Form.

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum") is effective as of _____, 2003, by and between THE CITY OF SAN DIEGO, a municipal corporation ("Lessor"), and NEIGHBORHOOD HOUSE ASSOCIATION, INC., a California nonprofit corporation.

NOW, THEREFORE, the parties hereto agree as follows:

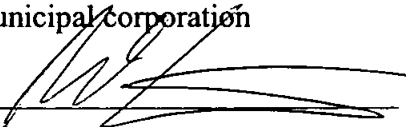
1. Lease of Premises. Pursuant to that certain Ground Lease dated DEC 08 2003, 2003, City Clerk Document No. L-298720 ("Lease"), Lessor has leased to Lessee for a term commencing on the commencement date as defined in the Lease and expiring twenty (20) years thereafter, those certain premises more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.
2. Purpose of this Memorandum. This Memorandum is executed for the purpose of giving notice of record of the Lease. This Memorandum is not a complete summary of the terms and conditions of the Lease, which are incorporated herein by this reference.

"LESSOR"

"LESSEE"

THE CITY OF SAN DIEGO,
a municipal corporation

NEIGHBORHOOD HOUSE ASSOCIATION, INC.,
a California nonprofit corporation

By: 

By: 

Title: Real Estate Assets Director

Title: Leslie Randolph

Date: 12-16-03

Date: 11/25/03

EXHIBIT "A"

Lots 21 through 27 in Block 15 of Subdivision of Lots 20 to 50, Block N, Teralta, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 1000 filed in the Office of the San Diego County Recorder, July 18, 1906.

**Neighborhood House Association, Inc.
City of San Diego
Non Profit Lease**

Central Head Start

General Development Plan

Introduction:

Neighborhood House Association (NHA) was established in 1914 as part of the "settlement house movement". Today, NHA is a multipurpose human services agency serving over 300,000 San Diego residents, providing Social Services, Children Youth and Family Services, Employment Services, Health Services, San Diego Food Bank and Senior Services programs.

NHA has had a long established working relationship with the City of San Diego. NHA has leased space for the San Diego Food Bank and the NHA Head Start program leases child care facilities at several City of San Diego sites. NHA administers \$68,725,961 in grants, contracts and donation revenues. A copy of the 2001 Annual report is attachment I.

NHA Head Start and Early Head Start provide services to 9,498 preschool age children, 608 infants, toddlers, pregnant women and their families throughout San Diego County for a total of 10,106 children. Head Start is a federally funded program that gives a priority to families with young children living in poverty and young children with disabilities. NHA Head Start operates 127 Head Start Child Development Centers, 5 home based units and 292 Family Child Care providers. Programs are designed to meet the individual educational, training, employment and child care needs of families moving from welfare to work and the working poor.

History:

The Mayor and San Diego City Council approved the right for the City Manager to enter into an exclusive lease negotiation with the NHA Head Start program to develop, construct and operate a Head Start child care facility on City-owned land at 41st Street and Polk Street adjacent to Central Elementary School on March 4, 1996. NHA Head Start has identified federal funds to operate a center for 100 children ages 0-5 years

old. NHA Head Start had also identified funding for constructing a 10,000 square foot, two-story facility. KQC Properties is the lender for this \$1,200,000 child care project.

The Central Head Start child care center site was approved in 1995 by the Recreation Council, Recreation Area Committee, Design Committee and the Park and Recreation Department as an integral part of the "Children's Mall" that connects Central Elementary to the Terra Alta cut and cover park.

Over the last several years complex development of the Highway 15 extension has been completed. The Terra Alta Park has been established, fully constructed, and is open to the public.

Most recently, the Central Elementary School long-range committee has worked with the community, School District, Redevelopment Agency, and Park and Recreation Department to design a long term Master Plan redevelopment project involving all of the area adjacent to Central Elementary School. The Central Head Start Child Care Center was included in the Master Plan and approved by the long-range committee and the PAC.

Financial Plan:

The NHA Head Start program budget is \$100,034,272 including federal and non-federal funding. NHA Head Start has applied for and received expansion dollars for the operation of a Head Start and Early Head Start program to serve 100 children at the new Central Elementary Head Start.

NHA Head Start has entered into an agreement with KQC Investors LLC, a North Carolina limited liability company, for design and construction costs on a build to suit, turn-key child care facility. NHA will repay a lease loan to KQC to repay construction costs over the term of 20 years.

Design:

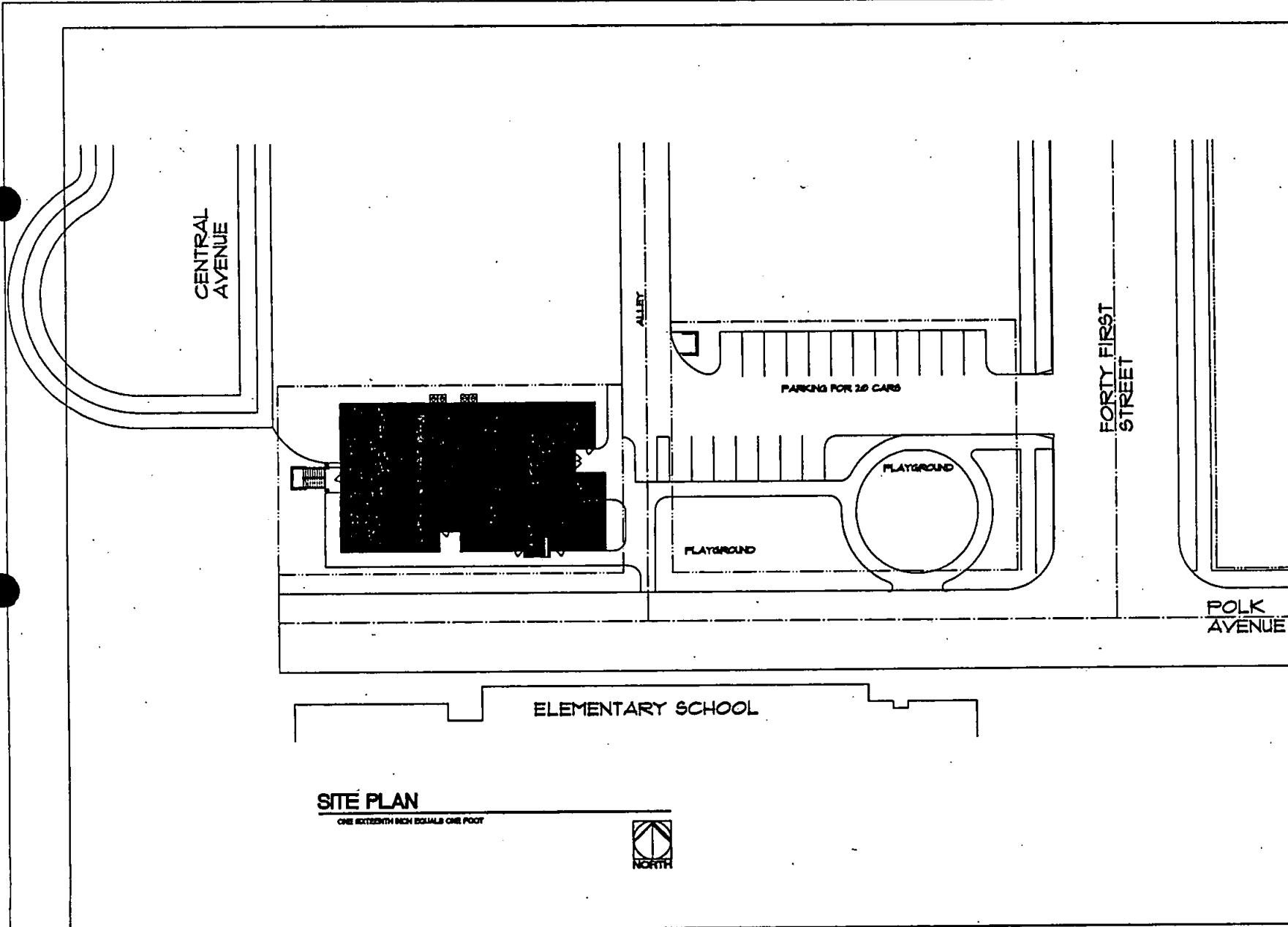
A competitive interview process for a design and architectural firm to design the "Children's Mall" and promenade was administered by the City of San Diego Park and Recreation staff, assisted by the Child Care Coordinator, in 2001. The firm of Edward J. Cass and Associates was selected because of their architectural, planning, engineering, and design build experience that they have demonstrated with the completion of numerous child care centers and public projects.

Mark Sowatski, AIA, is the principal architect selected to provide the design work for Central Elementary School. The Central Head Start Child Care Center preliminary design work has been completed. The Head Start center will be a \$10,000 sq ft. two story child care center that will serve a

minimum of 100 children ages 0-5 years old. The state of the art facility will have child sized sinks, toilets and changing tables adjacent to each classroom. A separate tot-lot playground will be built to serve infants and toddlers, and children 2-5 years old. The playgrounds will be for joint use and community use during the non-Head Start hours.. Head Start will operate from 6:00 am to 6:00 pm with a twilight program available from 4:00 – 11:00 pm to serve families who work the early shift, five days per week, Monday – Friday.

The following requirements have been attached:

- 9.2 a. Plot Plan
- b. Floor Plan
- c. Schematic Elevations
- d. Development Schedule
- e. Landscape Plan



CENTRAL
AVENUE

ALLEY

PARKING FOR 20 CARS

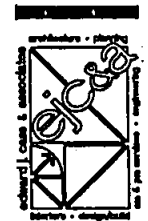
FORTY FIRST
STREET

POLK
AVENUE

ELEMENTARY SCHOOL

SITE PLAN

ONE SIXTEENTH INCH EQUALS ONE FOOT



0500 5TH AVENUE
SAN DIEGO, CA 92103-6005
FAX (619) 296-7470
(619) 296-0480

REVISIONS

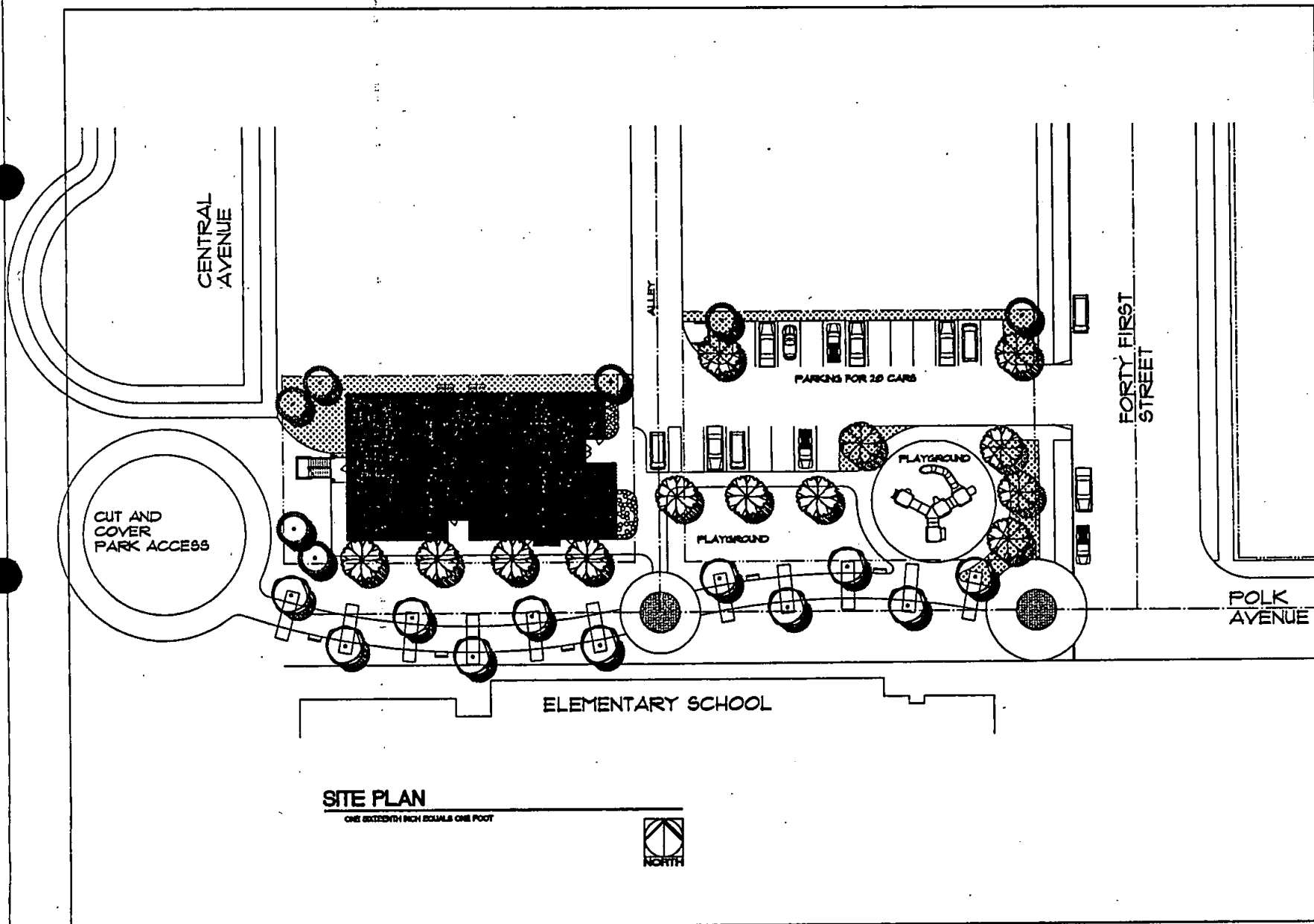
CENTRAL HEAD START

4th STREET AND POLK
SAN DIEGO, CALIFORNIA

4 of 10

PROJECT NO.	03-03
DRAWN	
DATE	4/25/00
SHEET NAME	PLOT PLAN

SHEET NUMBER
A0



SITE PLAN

ONE SIXTEENTH INCH EQUALS ONE FOOT



0500 6TH AVENUE
SAN DIEGO, CA 92101-0005
FAX (619) 296-7470
(619) 296-0480

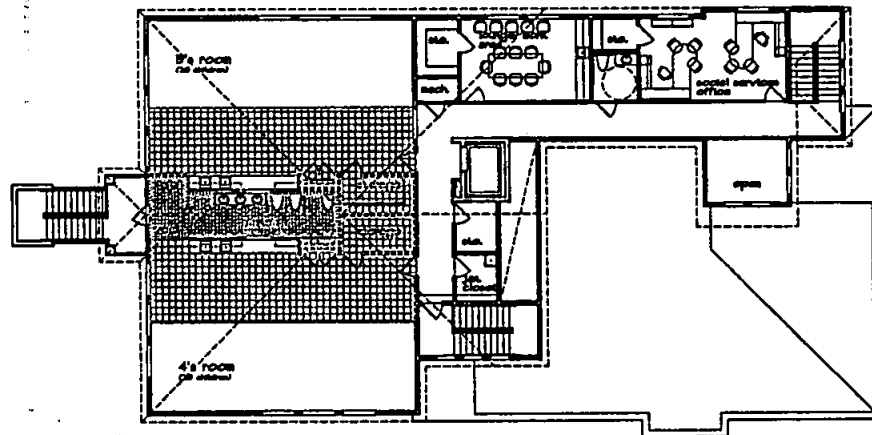
REVISIONS

CENTRAL HEAD START

4th STREET AND POLK,
SAN DIEGO, CALIFORNIA

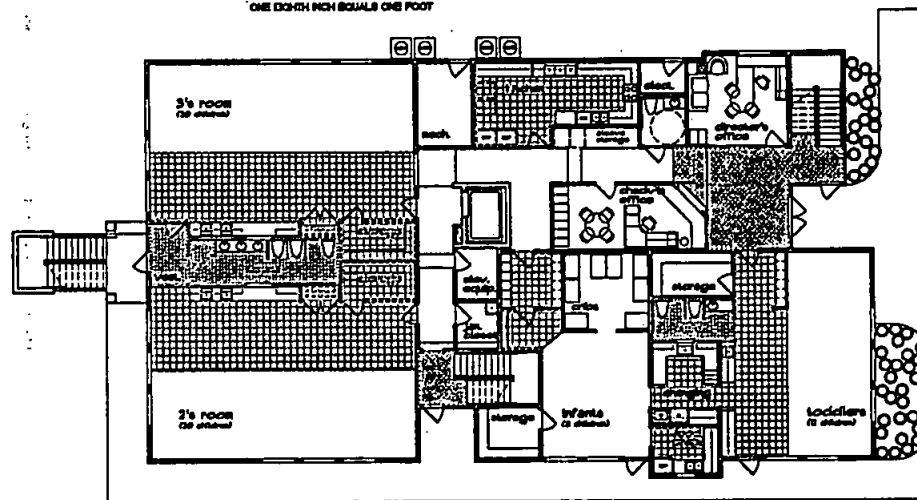
PROJECT NO.	02-43
DRAWN	
DATE	4/02/05
SHEET NAME	SITE PLAN

SHEET NUMBER
A1



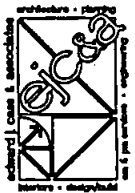
SECOND FLOOR PLAN

ONE EIGHTH INCH EQUALS ONE FOOT



FIRST FLOOR PLAN

ONE EIGHTH INCH EQUALS ONE FOOT



3500 5TH AVENUE
SAN DIEGO, CA 92103-0005
FAX (619) 296-7470
(619) 296-0480

REVISIONS

CENTRAL HEAD START

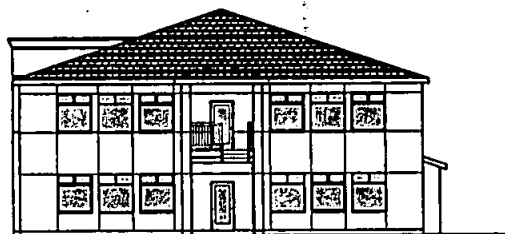
4th STREET AND POLK
SAN DIEGO, CALIFORNIA

6 of 10

PROJECT NO. 02-03
DRAWN
DATE 4/05/03
SHEET NAME
FLOOR PLANS

SHEET NUMBER

A2



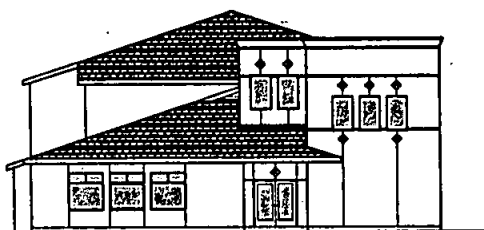
WEST ELEVATION

ONE EIGHTH INCH EQUALS ONE FOOT



SOUTH ELEVATION

ONE EIGHTH INCH EQUALS ONE FOOT



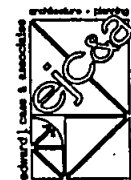
EAST ELEVATION

ONE EIGHTH INCH EQUALS ONE FOOT



NORTH ELEVATION

ONE EIGHTH INCH EQUALS ONE FOOT



EDWARD J. CASE & ASSOCIATES, INC.
3550 6TH AVENUE
SAN DIEGO, CA 92103-6003
FAX (619) 298-7470
(619) 298-3480

REVISIONS



CENTRAL HEAD START

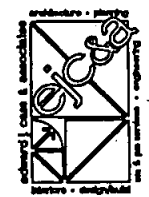
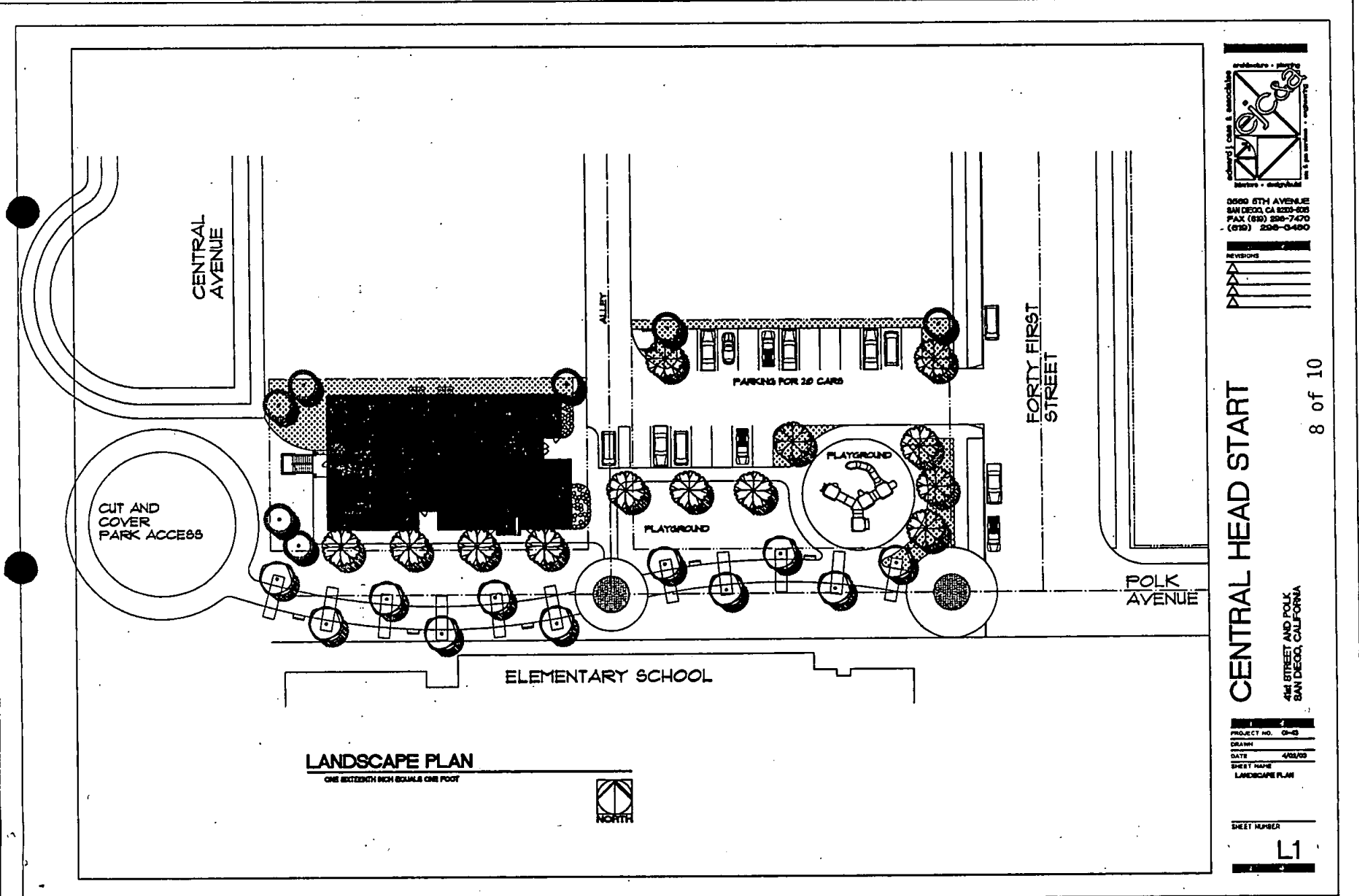
4th STREET AND POLK
SAN DIEGO, CALIFORNIA

7 of 10

PROJECT NO. 05-03
DRAWN
DATE 4/02/08
SHEET NAME
EXTERIOR ELEVATIONS

SHEET NUMBER

A3



0500 5TH AVENUE
SAN DIEGO, CA 92101-0205
FAX (619) 596-7470
(619) 236-0490

REVISIONS

CENTRAL HEAD START

4th STREET AND POLK
SAN DIEGO, CALIFORNIA

PROJECT NO.	05-03
DRAWN	
DATE	4/02/02
SHEET NAME	LANDSCAPE PLAN

SHEET NUMBER

L1

LANDSCAPE PLAN

ONE SIXTEENTH INCH EQUALS ONE FOOT



PROJECT SCHEDULE

EJCA Job Number 01-43

DURATION (IN WEEKS)	ACTIVITY
0-1	Project approvals
0-4	Soils report
0-3	Site survey
0-12	Building design
3-12	Site design
12	Submit design documents to City
12-18	1 st City document review and corrections
17-18	Prepare bid documents and send out for bids
19-21	2 nd City document review and corrections
20-21	Revised bid documents sent out
21-24	Receive bids
25	Negotiations
26	Mobilization on site; site clearing
26-28	Excavation
28-30	Utilities
29-30	Slab preparation
30-32	Concrete
32-39	Framing
34-39	Rough-in mechanical/electrical/plumbing
38-41	Sheathing
40-44	Exterior finishes/roofing
41-47	Drywall/interior framing
44-49	Interior mechanical/electrical plumbing
45-54	Site work, pavement, playgrounds, etc.
47-53	Interior finishes/casework
52-54	Landscaping
52-54	Punch-out
55	Final inspection(s); Certificate of Occupancy

CENTRAL HEAD START
PRELIMINARY ESTIMATE OF PROBABLE COST
RL MILLER
MARK SOWATSKY

LEVEL REPORT 1

<u>LEVEL DESCRIPTION</u>	<u>HOURS</u>	<u>LABOR</u>	<u>MATERIAL</u>	<u>EQUIPMENT</u>	<u>OTHERS</u>	<u>TOTAL</u>
- CENTRAL HEAD START	40,624	\$1,010,318	\$878,405	\$7,736	\$0	\$1,896,458
- BASE BID	40,624	\$1,010,318	\$878,405	\$7,736	\$0	\$1,896,458
- GENERAL REQUIREMENTS	29,502	\$210,217	\$11,511	\$3,856	\$0	\$225,585
0001 FIELD OVERHEAD	17,089	\$162,697	\$11,511	\$3,856	\$0	\$178,065
0002 QUALITY CONTROL	12,414	\$47,520	\$0	\$0	\$0	\$47,520
- PRIMARY FACILITIES	11,122	\$738,058	\$862,295	\$2,339	\$0	\$1,602,692
+ 01 SUBSTRUCTURE	208	\$12,856	\$7,839	\$394	\$0	\$21,089
+ 02 SUPERSTRUCTURE	495	\$32,064	\$54,345	\$78	\$0	\$86,488
+ 03 EXTERIOR CLOSURE	1,890	\$115,327	\$79,977	\$1,610	\$0	\$196,913
+ 04 ROOFING	166	\$10,208	\$9,252	\$122	\$0	\$19,582
+ 05 INTERIOR CONSTRUCTION	894	\$55,090	\$61,761	\$0	\$0	\$116,851
+ 06 INTERIOR FINISHES	390	\$23,958	\$43,298	\$0	\$0	\$67,257
+ 07 CONVEYING SYSTEMS	164	\$12,371	\$43,727	\$0	\$0	\$56,097
+ 08 PLUMBING	1,310	\$86,118	\$97,824	\$0	\$0	\$183,942
+ 09 HVAC	2,430	\$160,816	\$165,909	\$0	\$0	\$326,724
+ 10 FIRE PROTECTION SYSTEMS	307	\$20,991	\$10,071	\$135	\$0	\$31,198
+ 11 ELECTRIC POWER & LIGHTING	2,840	\$206,481	\$281,576	\$0	\$0	\$488,057
+ 13 EQUIPMENT	28	\$1,777	\$6,716	\$0	\$0	\$8,493

E. J. CASS & ASSOCIATES

04/28/2003

RESOLUTION NUMBER R- **298720**

ADOPTED ON **DEC 08 2003**

WHEREAS, the City of San Diego and the Neighborhood House Association, a California nonprofit corporation, have negotiated a nonprofit lease agreement for the construction, operation, and maintenance of a two-story, 10,000-square-foot child care center on approximately 0.56 of an acre of City-owned land located at Polk and Central Avenues in the City Heights neighborhood; and

WHEREAS, the proposed lease is for a term of twenty years at a rental rate of \$1 per year plus an annual administrative fee starting at \$2,562; and

WHEREAS, pursuant to the proposed lease, Neighborhood House Association agrees that it will construct the \$1.2 million child care center at no cost to the City, maintain the facility and grounds, operate the center as a Head Start Program utilizing operating funds from the Health and Human Services Department at no cost to the enrollees, and serve a minimum of 100 low-income and special-needs preschool children; and

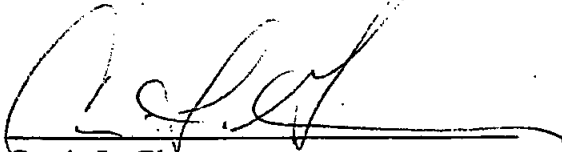
WHEREAS, the fair market value of the property to be leased is \$450,000 as determined by the City's Real Estate Assets staff; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized to execute, for and on behalf of the City of San Diego, a 20-year lease agreement with

Neighborhood House Association, Inc., a California nonprofit corporation, to construct, operate, and maintain a child care center on 0.56 acre of City-owned vacant land on Polk Avenue between Central Avenue and 41st Street, at a rental of \$1 per year plus an annual administrative fee beginning at \$2,562 and adjusted annually, on the terms and conditions substantially as set forth in the Nonprofit Lease on file in the office of the City Clerk as Document No. RR- 298720.

APPROVED: CASEY GWINN, City Attorney

By



Carrie L. Gleeson
Deputy City Attorney

CLG:mm

06/17/03

Job Order:223319

Or.Dept:READ

R-2003-1491

Form=auagr.frm

Passed and adopted by the Council of the City of San Diego on December 8, 2003 by the following vote:

YEAS: PETERS, ZUCCHET, ATKINS, LEWIS, MAIENSCHIN, FRYE, MADAFFER, MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: INZUNZA.

AUTHENTICATED BY:

DICK MURPHY
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: PEGGY ROGERS Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of

RESOLUTION No. R-298720 passed and adopted by the Council of The City of San Diego, California on December 8, 2003

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy