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THE CITY OF SAN DIEGO

STAR/PAL CORPORATION

Colina Del Sol Community Park Lease

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**CITY OF SAN DIEGO
STAR/PAL LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and the STAR/PAL CORPORATION, a California 501(c)(3) nonprofit public benefit corporation, hereinafter called "LESSEE," based upon the following:

RECITALS

A. The City of San Diego ("City") is the owner of a 34.1-acre parcel known as Colina Del Sol Community Park; and

B. The City and the STAR/PAL Corporation ("STAR/PAL") desire to inspire and aid the youth of Greater San Diego to make positive life choices through active participation in educational, athletic and recreational activities, which will benefit the general public and complement publicly owned recreational facilities; and,

C. STAR/PAL desires to engage in a \$450,000 capital campaign to finance, enhance, enlarge and operate its facilities at Colina Del Sol Community Park; and,

D. City and STAR/PAL desire to enter into a long-term ground lease at nominal rent to facilitate the STAR/PAL's capital campaign for the Colina Del Sol Community Park facility.

NOW, THEREFORE, City and STAR/PAL agree as follows:

SECTION 1: USES

- 1.1 Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that certain real property situated on a portion of Colina Del Sol Community Park, containing approximately 34.1 acres, in the City of San Diego, County of San Diego, State of California, described in Section 9.1 attached hereto and by this reference made part of this agreement (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 construction, operation, and maintenance of a STAR/PAL community center for recreational, educational, and athletic uses by STAR/PAL participants and the general public, 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. The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises throughout the term hereof for the above-specified purposes and to diligently conduct the business consistent with its status as a nonprofit public benefit corporation. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

- 1.3 Related Council Actions. By the granting of this 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. LESSEE may schedule use of park areas outside the leased premises with the City Manager. This Lease does not give LESSEE preference or disproportionate scheduling of park areas outside the leased premises over other user groups.

- 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 community recreation center and related activities in a fiscally responsible manner to serve the community.
- 1.7 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public, including both STAR/PAL members and nonmembers, 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, and the schedule shall be reviewed at least annually by LESSEE and the City Manager. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.
- 1.8 Rates and Charges. All charges associated with use of the facilities on the premises shall be in accordance with the schedule set forth in Section 9.4, Schedule of Rates and Charges, hereof. Fees charged to STAR/PAL participants shall be reasonable in the opinion of the City Manager and comparable with those charged at similar nonprofit youth-oriented facilities in San Diego County. Any changes in this schedule shall be subject to prior written approval by the City Manager or his authorized representative, and the schedule shall be reviewed at least annually by LESSEE and the City Manager.
- 1.9 CITY Use. The premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, City shall leave the premises in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use.

LESSEE agrees to arrange for two formal dedication ceremonies for the Mayor and City Council of CITY to break ground to commence construction of the new facility on the premises and to officially open the facility upon its completion.

- 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 use of the facilities 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. Public use of the facilities on the premises shall be permitted without membership in accordance with the operating and fee schedules in Sections 1.7 and 1.8 hereof.
- 1.12 Public Signage. LESSEE shall, at all times during the lease term, maintain a prominent CITY-approved sign identifying the property as City-owned and available for public use consistent with the terms of this lease. The sign shall be installed by LESSEE at a location agreeable to CITY.
- 1.13 Parking. LESSEE shall maintain the parking lot within the leased premises, in accordance with Section 9.1 hereof. At no time shall LESSEE restrict public access to the parking lot or access road.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be five (5) years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the twelve (12)-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.2 Right to Extend. Provided that LESSEE is not in default of this lease, LESSEE has the right to extend this lease for two (2) additional terms of ten (10) years, subject to all original agreements, considerations, covenants, and conditions hereof. Provided further, however, at least six (6) months prior to expiration of the original or extended term of this lease, LESSEE must give CITY written notice of its intention to extend the lease and include a General Development Plan (Sections 6.12 and 9.2) describing the capital investment that LESSEE will make to construct new capital improvements and refurbish existing ones on the premises during the next ten (10) years. Each new General Development Plan shall be subject to review and approval by the City Manager as to sufficiency of investment to ensure that good quality improvements are maintained on the premises at all times to satisfy LESSEE'S program requirements and the terms of

this lease, including review for compliance with the California Environmental Quality Act.

2.3 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.

2.4 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances 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 is due annually in advance on or before the first day of each lease year. All annual administrative fees will be prorated during the first and final months of any lease year in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, Suite 100, San Diego, California.

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed administrative fee payments shall be deemed paid upon the date 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 Twenty-five Hundred Dollars (\$2,500) per lease year, payable annually, to compensate CITY for the average costs of administering nonprofit leases. Said administrative fee ("fee") is subject to annual adjustments based on increases, if any, in the Consumer Price Index (CPI) as hereinafter provided.
- c. (1) CPI Index Adjustments. At the end of the first year following the effective date of the lease and at the end of each one (1)-year period thereafter during the lease term, the fee shall be adjusted to reflect increases in the Consumer Price Index (CPI).

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.

Regardless of the index publication dates, the effective date of the fee adjustment is as specified in this Subsection c.(1), CPI Index Adjustments. Until the fee adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing fee rate. When the adjustment is determined, the balance of the fee due at the adjusted rate will be paid to CITY within thirty (30) days. In no event shall the adjusted fee as established by the Consumer Price Index be less than the fee in existence immediately prior to the adjustment date.

- (2) Index Adjustment Computation. The fee for each one (1)-year period following the adjustment until the next adjustment shall be determined prior to the date of adjustment by multiplying the fee which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three (3)-month average of index figures published by said CPI using the fourth, fifth, and sixth full months preceding the effective date of this agreement.

To illustrate, if the lease began in May, the CPI figures for November (sixth month), December (fifth month), and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three (3)-month average of index figures published by said CPI. The three (3) months to be used to establish said average shall be the fourth, fifth, and sixth full months preceding the adjustment date.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index 121

Base Figure 110 = 1.10 (Adjustment Figure)

Effective Fee x 1.10 = Adjusted Fee

Example 2

Current Index 138

Base Figure 121 = 1.14 (Adjustment Figure)

Effective Fee x 1.14 = Adjusted Fee

The adjustment figure is then multiplied by the annual fee from the preceding adjustment period to determine the new fee. Using the foregoing examples, if the fee is now \$1,000 per year, after the first adjustment it will be \$1,100 per year (\$1,000 x 1.10). In the second adjustment it will be \$1,254 per year (\$1,100 x 1.14).

- 3.3 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.

- 3.4 Delinquent Administrative Fee. If LESSEE fails to pay the administrative fee ("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). Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.
- 3.5 Unauthorized Use Charge. LESSEE shall pay CITY 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.
- 3.6 Annual Budget. LESSEE shall submit to the City Manager by February 1 of each year copies of documents evidencing the proposed programs and financial status of LESSEE for the calendar year commencing January 1. Without limiting the generality of the foregoing, such documents shall include (i) a copy of LESSEE'S proposed programs; (ii) a copy of a detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures, including compensation for the director and staff of LESSEE; and (iii) an adequate reserve account, in the reasonable opinion of the City Manager, for maintenance and capital improvements to the premises.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein during the term of this lease. LESSEE shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent subletting, occupation, or use by another person. Any such subletting without such consent shall be void and shall, at the option of CITY, terminate this lease.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this lease 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 sublease shall be conditioned upon the sublessee agreeing in writing that it will assume the rights and obligations thereby subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement 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, 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.

- 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, 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. Such subsequent encumbrances shall also be for the exclusive purpose

of development of the premises. 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 property, 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 rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of

San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when 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 acknowledges that CITY expends considerable sums for maintenance of Colina Del Sol Community Park areas adjacent to the leasehold. LESSEE further acknowledges that the expenditure of such funds enhances the value of the leasehold. LESSEE and CITY agree that the exact amount of such enhancement is impossible to ascertain. However, CITY desires to be reimbursed to a reasonable extent in consideration for the continued maintenance of adjacent park areas. Therefore, LESSEE and CITY agree that in the event of a subletting of the majority portion of the leasehold, or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, pursuant to the General Development Plan as described in Section 6.12 hereof, LESSEE shall pay to CITY two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance against the property over and above the amount of the encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any majority subletting or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed sublessee or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it a sublease or a refinancing. Any subletting or refinancing in violation of the terms and conditions of this paragraph shall be void.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the 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 the 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) 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 Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right 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, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on 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 all applicable laws.

6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

6.5 Utilities. 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 rent 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 rental 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 Development Plan. Upon exercise of its initial right to extend, in the manner described in Section 2.2 hereof, LESSEE agrees to develop the leased premises in accordance with a General Development Plan approved by the City Manager. 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 completion in the General Development Plan of up to one (1) year without further City Council approval. LESSEE must submit a new General Development Plan for review and approval by the City Manager in order to exercise each extension of the lease term, in accordance with Section 2.2, Right to Extend, hereof.

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 Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the leased premises, as required by Health and Safety Code Section

25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the leased premises.

6.15 Best Management Practices. CITY and LESSEE acknowledge that the preservation of Colina Del Sol Community Park for the enjoyment of the public is influenced by the continued protection of land and water quality in the park. To further this goal, LESSEE agrees to implement the program described herein to manage LESSEE'S activities in a manner which aids in the protection of land and water resources. LESSEE shall observe the Best Management Practices (BMP) listed below in order to control erosion and reduce the amount of pollutants and other sediments discharged from the leased premises into other areas of Colina Del Sol Community Park. LESSEE shall also inform its employees, contractors, subcontractors, sublessees, agents, and vendors of the BMP and shall include in each applicable contract the requirement for compliance with BMP for maintenance of land and water quality within the leasehold.

- a. Parking Lots. Cleaning and/or sweeping of parking lots and walkways shall be done on a daily basis. In addition, the use of water for cleaning and/or sweeping shall be minimized. The sweeping program shall include, but not be limited to, the removal of litter, oil, grease, and particulate matter before it enters storm drains located on or around the leased premises. Catch basin inserts such as stormceptors shall be installed at storm drains when any new construction is performed on the leased premises.
- b. Landscaping. To prevent an excess amount of water runoff into Colina Del Sol Community Park, grass filter strips or similar devices shall be utilized at all storm drain inlets that collect runoff from the existing landscaped areas of the parking lots. Drip irrigation shall be used in lieu of spray irrigation where practical. The irrigation system shall operate in a manner that ensures survival of plant materials. Inspection for damaged sprinkler heads and wear and tear shall be performed regularly.

Water-conserving plants and turf shall be used whenever feasible. Irrigation parts shall be replaced immediately upon detection of failure. Intentional disposal of landscape debris into storm drains is prohibited. Water used for irrigation shall not be allowed to run off the leased premises. Use of pesticides and fungicides that have been banned from manufacture by the U.S. EPA is prohibited.

- c. Erosion Control. Vegetation and other suitable ground cover on all slopes and other open areas shall be maintained to provide adequate long-term soil protection and erosion control to prevent the transport of sediment from the leased premises during rainfall and irrigation. Any erosion problems caused by rainfall, broken sprinkler heads, or irrigation shall be

corrected promptly, and any transported sediment shall be promptly removed before it reaches a storm drain or receiving water.

- d. Storm Drains. Hazardous material or waste, cleaning compounds or detergents (biodegradable or otherwise), runoff from cleaning operations of food containers or transport equipment, wash-down or wash-off containing organic matter either man-made or natural, liquid food products or grease, paint or paint cleaning materials, or anything else that is of a questionable nature shall not be discharged or disposed of into the storm drain system.
- e. Maintenance/Repairs. Complete washing of vehicles and equipment shall be done in a contained wash rack. Sandblasting or other heavy maintenance is prohibited within the leased premises. Any vehicle and equipment maintenance tasks that could cause a toxic discharge shall not be conducted on the leased premises.
- f. Recyclables/Hazardous Materials. Trash receptacles and containers for recyclables shall be provided and cleaned on a regular basis and clearly marked and sited so that they are convenient for patrons, guests, and staff on the premises. All hazardous materials shall be disposed of in a safe manner. Use of any pesticide that has a high risk of runoff or leaching shall be minimized and a suitable alternative utilized. A secure location shall be provided to store hazardous wastes with each container properly labeled.
- g. Other BMP. The foregoing BMP may be modified or new BMP required pursuant to Section 7.2, Compliance with Law, hereof.

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; 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 the 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 the CITY'S Equal Opportunity Contracting Program staff.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease 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) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
 - c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.
- 7.13 Disabled Access Compliance. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with the 1990 Americans with Disabilities Act and Title 24 of the California Code of Regulations (Building Code) as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.

- 7.14 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 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 Participation. Residents of the City of San Diego shall comprise at least fifty percent (50%) of the participants using the premises, which shall be subject to annual verification by CITY.
- 7.17 Program Review. CITY and LESSEE shall annually review the operation of LESSEE'S programs and activities on the premises with the goal of improving and coordinating public services in the park.

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 297001, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date _____

By _____

LESSEE: STAR/PAL CORPORATION, a
California nonprofit corporation

Date 3/5/02

By _____

By Rimberley Hayton

APPROVED as to form and legality this 16th day of September, 2002.

CASEY GWINN, CITY ATTORNEY

By _____

Deputy City Attorney

ACG:jmj

02/25/02

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SECTION 9: EXHIBITS

9.1 Parcel Map(s).

2
E
3

EXISTING PARKING

ACCESS
ROAD

54th STREET

LANDSCAPE
AREA

EXISTING
BLDG.

SHUFFLEBOARD
COURTS

CONCRETE
BANK

LANDSCAPE
AREA

EXHIBIT 1

EXHIBIT "A"
LEGAL DESCRIPTION
STAR PAL LEASE PROPERTY

THAT PORTION OF LOT 17 OF LEMON VILLA, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA ACCORDING TO THE MAP THEREOF NO. 734, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY ON DECEMBER 2, 1892; DESCRIBED AS FOLLOWS:

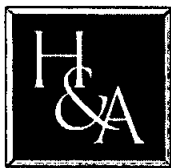
COMMENCING AT A POINT ON THE CENTERLINE OF 54TH STREET AS SHOWN ON PARCEL MAP NO. 14983 IN SAID CITY, COUNTY AND STATE, FILED IN SAID OFFICE OF THE SAN DIEGO COUNTY RECORDER ON SEPTEMBER 24, 1987 AS FILE NO. 87-541913 OF OFFICIAL RECORDS OF SAID COUNTY, SAID POINT BEING THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE SHOWN AND DELINEATED ON SAID PARCEL MAP AS "N 00°01'00" W 279.34' ", SAID POINT ALSO BEING SHOWN AND DESCRIBED ON SAID PARCEL MAP AS A "FOUND STREET SURVEY MONUMENT WITH BRASS CAP MARKED 'CITY ENG.' PER R.O.S. 4611"; THENCE ALONG SAID CENTERLINE SOUTH 01°08'00" WEST, 118.52 FEET (RECORD SOUTH 00°01'00" EAST, 118.56 FEET PER SAID PARCEL MAP) TO A POINT BEING SHOWN AND DESCRIBED ON SAID PARCEL MAP AS A "FOUND STREET SURVEY MONUMENT WITH BRASS CAP MARKED 'CITY ENG.' PER R.O.S. 4611"; THENCE LEAVING SAID CENTERLINE NORTH 88°52'00" WEST, 60.00 FEET TO A POINT ON THE WESTERLY SIDELINE OF 54TH STREET PER ORDINANCE 7097 (N.S.) ADOPTED AUGUST 9, 1952 ON FILE IN THE OFFICE OF THE CITY CLERK OF SAID CITY OF SAN DIEGO; THENCE ALONG SAID SIDELINE NORTH 01°08'00" EAST, 20.71 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE LEAVING SAID SIDELINE SOUTH 52°30'00" WEST, 21.09 FEET; THENCE NORTH 89°40'00" WEST, 8.00 FEET TO THE BEGINNING OF A NON-TANGENT 14.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 55°17'28" EAST; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 9.55 FEET THROUGH A CENTRAL ANGLE OF 39°05'15" TO THE BEGINNING OF A 20.00 FOOT RADIUS COMPOUND CURVE CONCAVE SOUTHERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 16°12'14" EAST; THENCE WESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 8.10 FEET THROUGH A CENTRAL ANGLE OF 23°12'14" TO THE BEGINNING OF A 16.00 FOOT RADIUS COMPOUND CURVE CONCAVE SOUTHEASTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 07°00'00" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 6.90 FEET THROUGH A CENTRAL ANGLE OF 24°43'31"; THENCE SOUTH 58°16'29" WEST, 6.21 FEET; THENCE SOUTH 54°48'00" WEST,

7.40 FEET TO THE BEGINNING OF A 50.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 6.14 FEET THROUGH A CENTRAL ANGLE OF 07°02'27" TO THE BEGINNING OF A 90.00 FOOT RADIUS REVERSE CURVE CONCAVE NORTHWESTERLY; A RADIAL LINE TO SAID POINT BEARS SOUTH 42°14'27" EAST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 20.65 FEET THROUGH A CENTRAL ANGLE OF 13°08'50"; THENCE SOUTH 60°54'23 WEST, 7.03 FEET TO THE BEGINNING OF A 15.50 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 5.90 FEET THROUGH A CENTRAL ANGLE OF 21°47'59" TO THE BEGINNING OF A 6.50 FOOT RADIUS COMPOUND CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 07°17'38" EAST; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 5.65 FEET THROUGH A CENTRAL ANGLE OF 49°48'30 TO THE BEGINNING OF A 4.00 FOOT RADIUS COMPOUND CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE TO SAID POINT BEARS SOUTH 42°30'52" WEST; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 1.47 FEET THROUGH A CENTRAL ANGLE OF 21°03'32; THENCE NORTH 26°25'36' WEST, 16.25 FEET; THENCE NORTH 02°20'00" WEST, 26.40 FEET; THENCE NORTH 88°50'00" WEST, 49.30 FEET; THENCE NORTH 01°15'00" EAST, 115.00 FEET; THENCE NORTH 89°35'00" EAST 155.05 FEET TO SAID WESTERLY SIDELINE OF 54TH STREET; THENCE ALONG SAID SIDELINE SOUTH 01°13'12" WEST 25.45 FEET; THENCE CONTINUING ALONG SAID SIDELINE SOUTH 01°08'00" WEST, 97.85 FEET TO THE TRUE POINT OF BEGINNING.

THE HERINABOVE DESCRIBED PARCEL OF LAND CONTAINS 20,614 SQUARE FEET (0.473 ACRES), MORE OR LESS.

 7/19/2007
DAVID W. AMBLER L.S. 7322
HUNSAKER & ASSOCIATES SAN DIEGO, INC.





**HUNSAKER
& ASSOCIATES**
SAN DIEGO, INC

PLANNING 9707 Waples Street
ENGINEERING San Diego, Ca 92121
SURVEYING PH(858)558-4500 · FX(858)558-1414

ACCESSOR'S PARCEL NO.

472-390-21

BASIS OF BEARINGS:

BASIS OF BEARINGS FOR THIS SURVEY IS THE NAD'83 CALIFORNIA-COORDINATE SYSTEM ZONE 6, GRID BEARING BETWEEN STATION GPS 161 AND STATION GPS 213 AS SAID COORDINATES ARE PUBLISHED IN RECORD OF SURVEY MAP NO. 14492, I.E. N 49°36'42" W.

THE COMBINED SCALE FACTOR AT STATION GPS 213 IS
0.9999947 GRID DISTANCE = GROUND DISTANCE X COMBINED
SCALE FACTOR.

LEGEND:

P.O.C. INDICATES POINT OF COMMENCEMENT.

T.P.O.B. INDICATES TRUE POINT OF BEGINNING.

———— LEASE AGREEMENT BOUNDARY — 0.473 ACRES

(R) INDICATES RADIAL BEARING

INDICATES FOUND STREET SURVEY MONUMENT WITH
BRASS CAP MARKED "CITY ENG." PER R.O.S. 4611 &
P.M. 14983.

R:\0838\&Map\Star Pal - SD_bsheets.dwg[]Jul-18-2007:17:13

DAVID W. AMBLER 7/19/07 L.S. 7322

MAP PREPARED BY:
HUNSAKER & ASSOCIATES SAN DIEGO
9707 WAPLES STREET
SAN DIEGO, CA. 92121

LEASE AGREEMENT – STAR PAL SITE AT
COLINA DEL SOL PARK

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA SHEET 1 OF 1 SHEET	T.M. W.O. NO. _____	
ORIGINAL	H&A						
STATUS					_____ FOR CITY ENGINEER	_____ DATE	1852-6306 CCS B3 COORDINATES
							212-1745 LAMBERT COORDINATES
							-B

9.2 General Development Plan.

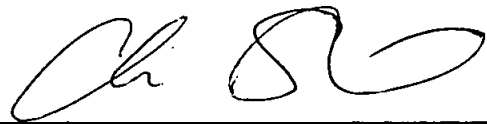
The General Development Plan consists of:

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

9.3 Corporate Name

STAR/PAL CORPORATION

I, Christopher Sichel, certify that I am the Executive Director of the corporation named in the attached agreement; that Tom Erickson, who signed this agreement on behalf of the corporation, was then Chairman 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 March 15, 2002 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  _____

CORPORATE SEAL

Tom Erickson - Chairman

Jerry Sanders - Vice Chairman

Terrence Moran - Treasurer

Kimberley Layton - Secretary

9.4 Schedule of Rates and Charges.

STAR/PAL services are currently free of charge to youth participants, limited to ages 5 through 17.

9.5 Schedule of Days and Hours of Operation.

STAR/PAL hours of operation will be Monday through Friday from 7:30 a.m. to 4:30 p.m., with the exception of City recognized holidays.

RESOLUTION NUMBER R-_____

ADOPTED ON _____

WHEREAS, the City and STAR/PAL Corporation [STAR/PAL] have negotiated a 25-year nonprofit lease agreement at the initial rental rate of \$1.00 per year, with STAR/PAL Corporation, a California 501(c)(3) nonprofit public benefit corporation; and

WHEREAS, City and STAR/PAL desire to inspire and aid the youth of Greater San Diego to make positive life choices through active participation in educational, athletic and recreational activities, which will benefit the general public; and

WHEREAS, STAR/PAL proposes to complement publicly owned recreational facilities by engaging in a \$450,000 capital campaign to finance, enhance, enlarge and operate the facilities at Colina Del Sol Community Park; and

WHEREAS, the purpose of the lease is for construction, operation, and maintenance of a STAR/PAL community center for recreational, educational, and athletic uses by STAR/PAL participants and the general public, and for such other related or incidental purposes as may be first approved in writing by the City Manager; and

WHEREAS, STAR/PAL agrees to develop the leased premises in accordance with a General Development Plan approved by the City Manager; and

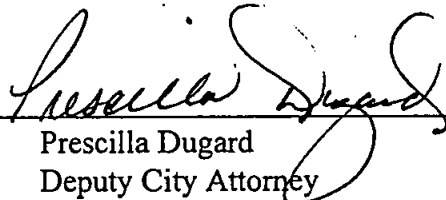
WHEREAS, the property to be leased is a one-half acre portion of Colina Del Sol Community Park, including an approximately 1800 square-foot building (Building 770) and a shuffleboard court, in the City of San Diego, County of San Diego, as more particularly described in Exhibit A to the lease; and

WHEREAS, the fair market value of the property is \$220,000 and the fair market rental

value is \$950 per month, as determined by City valuation 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 25-year lease agreement with STAR/PAL Corporation, a California 501(c)(3) nonprofit public benefit corporation, for a one-half acre portion of Colina del Sol Community Park, including an approximately 1800 square-foot building (Building 770) and a shuffleboard court, located west of 54th Street between Orange and University Avenues , San Diego, California, at an initial rent of \$ 1.00 per year, under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR-_____.

APPROVED: CASEY GWINN, City Attorney

By 
Prescilla Dugard
Deputy City Attorney

PD:cdk
08/21/02
Or.Dept:REA
R-2003-292
Form=leaser.frm

Articles of Incorporation

of

STAR/PAL

One: The name of this corporation is STAR/PAL.

Two: This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes. The specific purposes for which this corporation is organized are:

- (a) To provide healthy activities for youth through drug free athletics.
- (b) To help young people acquire good health practices, to help them become better citizens, and to acquaint them with career and educational opportunities related to sports instruction and administration.
- (c) To expand opportunities for youth to benefit from sports skills instruction, engage in sports competition and improve their physical fitness.
- (d) To acquire by request, gift, grant, purchase or otherwise any and all types of property or interests therein of every kind and description.
- (e) To exercise any and all rights and powers which a corporation of this type may now or hereafter exercise. The foregoing statement of purposes shall be construed as

a statement of both purposes and powers, and the purposes and powers stated in each clause shall, except where otherwise expressed, be in no way limited or restricted by reference to or inference from the terms or provisions of any other clause, but shall be regarded as independent purposes and powers.

Three: The name and address in the State of California of this corporations' initial agent for service of process is:

San Diego Police Athletic League
David Kruk, Executive Director
121 Broadway, Suite 339
San Diego, CA 92101

Four: This corporation is organized and operated exclusively for educational and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. Notwithstanding any other provision of these Articles, the corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or by a corporation contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code. No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate to intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

Five: (a) The number of directors of this corporation shall not exceed thirty-five (35).

(b) The names and addresses of the four (4) persons appointed to act as the initial

Directors of this corporation are:

Name	Address
W. B. Kolender Chief of Police	1401 Broadway, San Diego, CA 92101
Cecil Steppe Chief Probation Officer	P.O. Box 23596, San Diego, CA 92123
Michael Bruner Director of Youth Services	121 Broadway, San Diego, CA 92101
David Kruk Executive Director	121 Broadway, San Diego, CA 92101

Six: The property of this corporation is irrevocably dedicated to charitable (and/or educational) purposes meeting the requirements of Section 214 of the California Revenue and Taxation Code and no part of the net income or assets of the organization shall ever inure to the benefit of any Director, officer or member thereof or to the benefit of any private person.

On the dissolution or winding up of the corporation, its assets remaining after payment of, or provision for payment of, all debts and liabilities of this corporation, shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated exclusively for charitable (and/or educational) purposes and which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

Seven: Except as otherwise provided by law or these Articles, the affairs of this corporation shall be governed, and the qualifications, rights and obligations of its members determined in accordance with its By-Laws.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of California, the undersigned, constituting the incorporators of this corporation, including the persons named as the first directors of this corporation, have executed these Articles of Incorporation on _____ 1988.

W.B. Kolender, Director

Chief of Police

Cecil Steppe, Director

Chief Probation Officer

Dave Kruk, Director

Executive Director

Michael Brunker, Director

Youth Athletic Director

We, the above mentioned initial Directors of this corporation, hereby declare that we are the persons who executed the foregoing Articles of Incorporation, which execution is our act and deed.

W. B. Kolender, Director

Chief of Police

Cecil Steppe, Director

Chief Probation Officer

Dave Kruk, Director

Executive Director

Michael Brunker, Director

Youth Athletic Director

BY-LAWS

S.T.A.R./P.A.L.

**REVISED
August 12, 1998**

BY-LAWS

OF THE

S.T.A.R./P.A.L. PROGRAM

ARTICLE I

NAME

Section A - Name. The name of this nonprofit public benefit corporation shall be S.T.A.R./P.A.L.

ARTICLE II

GENERAL PURPOSE

The specific and primary mission of S.T.A.R./P.A.L. (a nonprofit corporation) is to promote a constructive relationship between young people and public agencies involved with youth, and citizens of the community, in order to develop them into responsible and mature adult/citizens.

In support of the mission, S.T.A.R./P.A.L. programs are designed to develop activities which act as a deterrent to delinquent behavior among "at-risk" as well as other young people, and to keep them occupied with constructive, organized activities. Programs will also serve to introduce new activities and teach new skills that could be used during each young person's leisure time. To achieve these objectives, S.T.A.R./P.A.L. will initiate and sponsor academic, amateur athletic, and recreational leisure time and provide an opportunity for young people and personnel from law enforcement and protective, recreational and educating agencies to develop a mutually satisfying, non-adversarial relationship through participation. S.T.A.R./P.A.L. activities include: educational opportunities; cultural, educational, as well as recreational field trips; physical development, and camping opportunities. This will be a drug free program.

ARTICLE III

MEMBERSHIP

Section A - Members Prohibited. This corporation shall have no voting members as that term is defined in section 5056 of the California Nonprofit Corporation Law. Pursuant to section 5310(b) of the California Nonprofit Corporation Law, any action which would otherwise require approval by all or a majority of all members shall only require the approval of the Board of Directors. All rights which would otherwise require approval by all or a majority of all members shall only require the approval of the Board of Directors. All rights which would otherwise vest under the California Nonprofit Corporation Law in such members shall vest in the Board of Directors.

Section B - Affiliates. Nothing in this Article III shall be construed as limiting the right of the corporation and these By-Laws to refer to interested persons or entities associated with the corporation who participate in any activities of the corporation as "Members," even though such persons and entities are not voting members as defined in Section 5056 of the California Nonprofit Corporation Law. Such persons or entities shall be deemed to be "affiliated persons" as defined in Section 5332 of the California Nonprofit Corporation Law, and no such reference to "Members" or "membership" in these By-Laws shall constitute any such person or entity a voting member within the meaning of Section 5056 of the California Nonprofit Corporation Law.

Section C - Classes of Membership. The corporation shall have such classes of membership, if any, as may be established by the Board of Directors from time to time. In establishing classes of membership, the Board of Directors shall provide for the payment of annual or periodic dues by the Members and the term(s) of membership.

Section D - Dues. Each Member must pay, within the time and under the conditions set by the Board of Directors, annual or periodic dues in amounts to be fixed, from time to time, by the Board of Directors. The amount of the dues shall be equal for all Members of each particular class of membership, but the Board of Directors may, in its discretion, set different dues for each class of membership.

Section E - In Good Standing. Those Members who have paid the required dues in accordance with these By-Laws, and who are not suspended, shall be Members in good standing.

Section F - Termination and Suspension of Membership. A membership shall be terminated or, in the sole and absolute discretion of the Board, suspended, on occurrence of any of the following events:

1. Resignation of the Member;
2. Expiration of the period of membership, unless the membership is renewed on the renewal terms fixed by the Board;
3. Failure of the Member to pay annual dues as set by the Board within thirty (30) days after they become due and payable;
4. In the discretion of the Board of Directors or a committee, or person authorized by the Board to make such a determination that the member has failed in a material and serious degree to observe the corporation's rules of conduct or is engaged in conduct materially and seriously prejudicial to the purposes and interest of the corporation.

Section G - Meetings. Unless otherwise determined, from time to time, by the Board of Directors, there shall be no meetings of the general membership of the Corporation.

ARTICLE IV

DIRECTORS

Section A - Powers. Subject to the limitations of the Articles of Incorporation, the By-Laws, and the California Nonprofit Corporation Law, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be controlled by, the Board of Directors. Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Directors shall have the following powers to wit:

1. To appoint an Executive Director selected by the Funding Authority. The Executive Director shall be responsible for the planning, organizing, and directing of the corporation in accordance with the overall policies of the Board of Directors. The Executive Director shall be an ex-officio (non-voting) member of the Board of Directors.
2. To conduct, manage and control the affairs and business of the corporation and to make such rules and regulations therefore not inconsistent with law or with the Articles of Incorporation or the By-Laws, as they may deem best.
3. To borrow money and incur indebtedness on behalf of the corporation and to cause to be executed and delivered for corporation purposes in the corporation name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges and other evidence and securities.
4. To elect Executive Officers, to include a Chairperson, 1st Vice Chairperson, 2nd Vice Chairperson, Treasurer and Secretary. To approve or appoint committees and members as may be needed and/or proposed by the Chairperson of the Board.

Section B - Number of Directors. The authorized number of Directors of the corporation shall be no less than seventeen (17) and no more than thirty-five (35), not including any ex-officio directors, until changed by amendment of the By-Laws.

Section C - Election and Term of Office. Directors will be elected to a one, two or three year term or the unexpired term of a former member so as to enjoy approximately 1/3 of the Board members' terms ending each year. Directors elected should demonstrate or possess genuine interest and personal, financial or community support for S.T.A.R./P.A.L. A Director may be re-elected at the end of the term. The end of the term shall be June 30th of the fiscal year in which the term expires. The beginning shall be July 1st.

Section D - Removal of Directors. Any individual Director may be removed from office by a majority vote of the Directors, at any full Directors meeting. In addition, any Director who has three (3) unexcused absences from Directors meetings during his/her term can be removed from the Board. Such unexcused absence shall be determined by a majority of the Board attending the meeting in which the absence occurs.

Section E - Vacancies. Vacancies on the Board of Directors may be filled by a vote of the majority of the remaining Directors, and each Director so elected shall hold office until resignation, removal, or until his/her successor is elected at an annual or a special meeting of the Directors.

Section F - Resignation. Except as provided in this paragraph, any Director may resign, which resignation shall be effective on giving written notice to the Chairperson, the Secretary or the Board of Directors, unless the notice specifies a later date for resignation to become effective. If the resignation of a Director shall be effective at a date subsequent to the date of notice of resignation, a successor may be named or elected pursuant to these By-Laws to take office when the resignation becomes effective.

Section G - Events Causing Vacancy. A vacancy or vacancies on the Board of Directors shall be deemed to exist in the case of death, resignation or removal of any Director or if the authorized number of Directors shall be increased.

Section H - Member Substitution. Notwithstanding any other term or provision of the By-Laws, a designated government officer, when elected or appointed, or any recognized corporate, non-profit or company officer, when elected to the Board, may name a person to represent said official as a non-voting Board member. This person need not be a regular member but shall be included in meeting quorum requirements.

ARTICLE V

MEETINGS OF DIRECTORS

Section A - Place of Meetings. Regular meetings of the Board of Directors shall be held at any place in or out of the State, which has been designated from time to time by resolution of the Board or by written consent of all the members of the Board. Special meetings of the Board may be held at a place so designated. Any meeting, regular or special, may be held by conference telephone or similar communication service or equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at such meeting.

Section B - Organizational Meeting. The Board of Directors shall hold a regular annual meeting for the purpose of organization, assumption of office by officers and the transaction of other business. The annual meeting may be one of the quarterly meetings.

Section C - Other Regular Meetings. Other regular meetings of the Board of Directors shall be held at least quarterly at such time as the Board of Directors may designate; except should said day fall upon a legal holiday.

Section D - Special Meetings. Special meetings of the Board of Directors for any purpose may be called at any time by the Chairperson, or, if s/he is absent or unable or refuses to act, by the Secretary, or by any five (5) Directors.

Section E - Notice of Special Meetings. Notice of the time and place of special meetings shall be delivered personally to each Director, telephoned to each Director or sent to each Director by mail or by other form of written or electronic communication, charges prepaid, addressed to him/her at his/her address as it is shown on the records of the corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meeting of the Directors is usually held. In each case such notice is mailed, telephoned, facsimiled, or telegraphed, it shall be telephoned, facsimiled, or deposited in the United States mail or delivered to the telegram company in the place in which the principal office of S.T.A.R./P.A.L. is located at least forty-eight (48) hours prior to the time of the holding of the meeting. Such mailing, telegraphing, telephoning, facsimiling or personal delivery as above provided shall be due, legal and personal notice to such Director.

Section F - Failure of Board to Determine Date.

1. Record Date for Notices of Voting. Unless fixed by the Board of Directors, the record date for determining those Board Members entitled to receive notice of, or to vote at, a meeting of these members, shall be the next business day preceding the day on which notice is given, or, if notice is waived, the next business day preceding the day on which the meeting is held.
2. Record Date for Written Consent of Action Without Meeting. Unless fixed by the Board of Directors, the record date for determining those Board Members entitled to vote by ballot on corporate action without a meeting, when no prior action by the Board has been taken, shall be the day on which the first written ballot is mailed or solicited. When prior action of the Board has been taken, it shall be the day on which the Board adopts the resolution relating to that action.
3. Record Date for Other Actions. Unless fixed by the Board, the record date for determining those Board Members entitled to take any other action shall be the date the Board adopts the resolution relating thereto, or the 60th day prior to the date of such other action.
4. "Record Date" Means as of Close of Business. For purposes of this Section F, 2 above, a person holding Board membership as of the close of business on the record date shall be deemed a member of record.

Section G - Notice of Certain Agenda Items. If action is proposed to be taken at any meeting for approval of any of the following proposals, the notice shall also state the general nature of the proposal. Board Members' action on such items is invalid unless the notice of written waiver of notice states the general nature of the proposal.

1. Removing a Director with or without cause;
2. Filling vacancies on the Board of Directors by the members;
3. Amending the By-Laws;
4. Amending the Articles of Incorporation; and
5. Voluntarily dissolving the corporation.

Section H - Quorum. A majority of the authorized number of Directors shall be necessary to constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors.

Section I - Proxy. Should a member of the Board of Directors be absent from any noticed meeting, s/he may submit a written proxy to any member of the Board who will attend the meeting. Such written proxy will entitle the Board Member present to vote both the written proxy and his/her own vote. Such written proxy presented to the Secretary prior to the meeting shall be counted toward a quorum for the purpose of conducting the business of the Board. The grant of written proxy shall not constitute attendance as applied to the provisions of Article IV, Section D, "Removal of Directors."

Section J - Loss of Quorum. The members present at a duly called or duly held meeting at which a quorum is present may continue to transact business with adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum at the next scheduled meeting.

Section K - Adjournment. A quorum of Directors may adjourn any Directors meeting to meet again at a stated day and hour, provided, however, that in the absence of a quorum, a majority of the Directors at a Directors meeting, either regular or special, may adjourn from time to time until fixed for the next regular meeting of the Board.

ARTICLE VI

COMMITTEES

Section A - Committees of Directors. The Board of Directors may designate one or more committees, each consisting of one or more Directors and such non-Board members as may be deemed appropriate, to serve at the pleasure of the Board.

Any committee, to the extent provided in the resolution of the Board, shall have all the authority of the Board, except that no committee, regardless of the Board resolution may:

1. Take any final action on matters which, under the California Nonprofit Corporation Law, also requires approval or disapproval of a majority of all the members;
2. Fill vacancies on the Board of Directors or on any committee which has the authority of the Board;
3. Amend, repeal or adopt new By-Laws;
4. Amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repeal able;
5. Appoint any other committees of Board of Directors or the members of these committees; and
6. Approve any transaction (i) to which the corporation is a party and one or more Directors have a material financial interest; or (ii) between the corporation or any person in which one or more of its Directors have a material financial interest.

Section B - Meetings and Action of Committees. Meetings and actions of all committees shall be governed by, and held in accordance with, these By-laws, except that the time for regular meetings may be determined by a resolution of either the Board of Directors or the committee itself. Minutes of all committee meetings will be kept, and filed with the S.T.A.R./P.A.L. office. The Board of Directors may adopt rules for the governance of any committee not inconsistent with any provision of these By-Laws.

Section C - Executive Committee.

1. Members. There shall be an Executive Committee, elected by the Board, composed of a Chairperson, First Vice-Chairperson, Second Vice-Chairperson, Secretary, Treasurer, and as many as, but not required, five at-large Board Members or their designees who shall be elected annually. The Executive Director shall be an ex-officio, non-voting member of the Executive Committee.
2. Quorum. A majority of the authorized number of Executive Committee members (excluding the ex-officio members), shall be necessary to constitute a quorum for the transaction of business by the Executive Committee. No member shall have more than one vote at any time.
3. Meetings. Meetings of the Executive Committee shall be held monthly and shall be otherwise governed by, held and taken in accordance with the provisions of this Article VI, Section B.

4. **Specific Powers.** The Executive Committee shall have all the authority of the Board and shall exercise each and every power of the Board except (i) the selection, removal and appointment of officers of the corporation and (ii) as otherwise prohibited by this Article VI, Section A.

Section D - Community Advisory Board. In addition to the appointment of committees of directors, the Board of Directors may, from time to time, establish one or more "community advisory board(s)", to be composed of influential and/or concerned citizens who are interested in donating their time, energy and efforts in support of the purposes of the corporation by overseeing its operations and providing recommendations and input to the Board of Directors and the Executive Committee. The community advisory board shall have no voting authority, but serve in an advisory capacity only.

Section E - Auxiliary. The Board may approve an Auxiliary of men and women from the community who are interested in, and supportive of, the activities approved by the Board of Directors. The auxiliary may formulate and use its own By-laws for organizational and operational purposes, subject to the approval of the Board of Directors of S.T.A.R./P.A.L.

ARTICLE VII

OFFICERS

Section A - Officers. The officers of the corporation shall be a Chairperson, First Vice-Chairperson, Second Vice-Chairperson, Secretary, Treasurer, and the Immediate Past Chairperson. The corporation may also have, at the direction of the Board of Directors, such other officers as may be appointed by a majority vote of the Board. One person may hold two or more offices, except that neither the Secretary nor the Treasurer may serve concurrently as Chairperson of the S.T.A.R./P.A.L. Board.

Section B - Election. The officers of the corporation shall be chosen every year by the Board of Directors at a fourth quarter (April-June) Board meeting, and shall serve their term beginning on July 1. Each shall hold office for a term of one year, or until s/he resigns, is removed, or otherwise disqualified to serve, or his/her successor shall be elected.

Section C - Subordinate Officers, Etc. The Board of Directors may appoint such other officers as the business of the corporation may require, each of whom shall have the authority and perform such duties as are provided in these By-Laws, or as the Board of Directors may from time to time specify, and shall hold office until they shall resign or shall be removed or otherwise disqualified to serve.

Section D - Removal and Resignation. Any officer may be removed, either with or without cause, by a majority of the Directors at the time in office, at any regular or special meeting of the Board or except in case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors.

Section E - Resignation of Officers. Any officer may resign at any time by giving written notice to the Board of Directors or to the Chairperson or to the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section F - Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the By-laws for regular appointments to such office.

Section G - Chairperson. The Chairperson of the Board shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and office of the corporation. S/He will, as part of his/her duties, receive periodic updates from the Executive Director concerning the day to day operation of the corporation. S/He shall preside at all meetings of the Board of Directors and The Executive Committee. S/He shall have the general powers and duties of management usually vested in the office of president of a corporation, and s/he shall have such other powers and duties as may be prescribed by the Board of Directors or these By-Laws.

Section H - First Vice Chairperson. In the absence or disability of the Chairperson, the Vice-Chairperson of the Board of Directors shall have such duties or powers and shall perform such other duties as from time to time may be ascribed for him/her respectively by the Board of Directors or these By-Laws.

In the absence or disability of the Vice-Chairperson, the current officers of the corporation, in descending order, shall have such duties or powers and shall perform such other duties as from time to time may be ascribed for them respectively by the Board of Directors or these By-laws.

Section I - Second Vice Chairperson. In the absence of the Chairperson and the First Vice-Chairperson, the Second Vice-Chairperson shall assume such responsibilities as the Board of Directors may direct.

Section J - Secretary. The Secretary shall have the following duties: To keep or cause to be kept a book of minutes at the principal office or such other place as the Board of Directors required by these By-Laws or by law to be given, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these By-Laws. If for any reason the Secretary shall fail to give notice of any special meeting of the Board of Directors called by one or more of the persons identified as persons empowered to call for such meetings, then any such person or persons may give notice of any such special meeting.

Section K - Treasurer. The Treasurer shall have the following duties:

To keep and maintain, or cause to be kept or maintained, adequate and correct accounts of the properties and business transactions of the corporation including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and reserves. All records shall at all reasonable times be open to inspection by any Director.

To deposit or cause to be deposited all monies and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Directors. S/He shall disburse the funds of the corporation as may be ordered by the Board of Directors, shall render to the Chairperson and Directors, whenever they request it, an account of all his/her transactions as Treasurer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these By-Laws.

Section L - Immediate Past Chairperson. The Immediate Past Chairperson shall have the following duties:

To serve as advisor to the Chairperson, Executive Committee and Board of Directors, and to take on any other such assignments as may be requested by the Chairperson.

ARTICLE VIII

MISCELLANEOUS

Section A - Inspection of Corporate Records. The books of account and minutes of proceedings of the Board of Directors and the Executive Committee shall be open to inspection upon written demand of any Director, at any reasonable time and for a purpose reasonably related to his/her interests as a Director, and shall be exhibited at any time when required by the demand of any Director at any Directors meetings. Such inspection may be made in person and shall include the right to make copies. Demand of inspection other than at a Directors meeting shall be made in writing to the Chairperson or Secretary of the corporation.

Section B - Checks, Drafts, Etc. All checks, drafts or other orders for payment of money, notes or otherwise evidence of indebtedness issued in the name or payable to the corporation, shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the Board of Directors.

Section C - Annual Report. The Board of Directors shall cause an Annual Report as required by California Nonprofit Corporation Code 6321, to be sent to the Directors of the Corporation not later than one hundred twenty (120) days after the close of the fiscal year, June 30th. The corporation shall also include any written materials used to solicit

contributions and a written statement that its latest annual report will be mailed upon request and that such request may be sent to the corporation at a name and address which is set forth in the statement. The corporation shall promptly mail a copy of its latest annual report to any person who requests a copy thereof.

Section D - Contract, Etc. The Board of Directors, except in these By-Laws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of, and on behalf of, the corporation and such authority may be general or confined to a specific instance; unless so authorized by the Board of Directors. No officer, agent or employee shall have any power or authority to bind the corporation by a contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

Section E - Inspection of Articles and By-Laws. The corporation shall keep in its principal office for the transaction of business the original or a copy of its Articles of Incorporation and these By-Laws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection at all reasonable times during office hours.

Section F - Remuneration of Directors, Officers, and Employees. Any remuneration of Directors, officers and employees shall be commensurate with the reasonable value of services performed on behalf of the corporation as agreed by a majority of the Board of Directors.

Section G - Construction and Definition. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the California Nonprofit Corporation Law shall govern the construction of these By-Laws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular and the term "person" includes both a corporation and natural person.

Section H - Effect of Headings. All captions and headings contained in these By-Laws are for convenience only and shall not be deemed to limit or extend the substantive content thereof.

ARTICLE IX

AMENDMENTS

Section A - Power of Directors. New By-Laws may be adopted or these By-Laws may be amended or repealed by a majority vote of the members of the Board of Directors.

Any proposed amendment(s) to By-Laws must be sent to all Board members a minimum of thirty 30 days in advance of the meeting in which the proposed amendment(s) will be acted upon.

ARTICLE X

PARLIAMENTARY AUTHORITY

Section A - Rules. The rules contained in "Roberts" Rules of Order (Newly Revised) shall govern the corporation in all cases to which they are applicable and in which they are not inconsistent with these By-Laws.

ARTICLE XI

DISSOLUTION

Section A - Dissolution. In the event of the dissolution of the corporation, the corporation's debts and liabilities shall be paid or provided for, and the remaining assets shall be distributed to a non-profit fund, foundation or corporation organized and operated exclusively for charitable purposes, which non-profit fund, foundation or corporation has established its tax exempt status under the Internal Revenue Code 501(c)(3). In no event shall any part of the net income or assets of the Foundation inure to the benefit of any Director or officer of the corporation.