



**CITY OF SAN DIEGO  
LEASE**

*BY AND BETWEEN*

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

*AND*

**FRIENDS OF BALBOA PARK,**  
A CALIFORNIA NONPROFIT 501(c)(3) PUBLIC BENEFIT CORPORATION

**CITY OF SAN DIEGO**  
**NONPROFIT PUBLIC BENEFIT LEASE**  
[1889 Zoo Place, San Diego, CA 92101]

THIS LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation, as lessor ("CITY"), and FRIENDS OF BALBOA PARK, a California nonprofit 501(c)(3) public benefit corporation, as lessee ("LESSEE"), to be effective when signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

R E C I T A L S

A. WHEREAS, CITY and BALBOA PARK CAROUSEL, INC. ("Balboa Park Carousel") are parties to that certain lease agreement ("Balboa Park Carousel Lease") to manage and operate the 1910 Herschell-Spillman menagerie carousel and kiddy airplane ride equipment and related personal property (collectively "Carousel") located within Balboa Park at 1889 Zoo Place, San Diego, California 92101 ("Premises"), as described in **Exhibit A: Balboa Park Carousel Lease Boundaries**, under which Balboa Park Carousel is currently on legal holdover status since January 1, 2015; and

B. WHEREAS, LESSEE is in the process of purchasing the Carousel from Balboa Park Carousel with an anticipated close of escrow date of June 15, 2017; and

C. WHEREAS, on May 15, 2017, Balboa Park Carousel provided the CITY its notice of termination of the Balboa Park Carousel Lease ("Notice of Termination") to be effective upon either: (i) thirty (30) days from the CITY's receipt of the Notice of Termination or (ii) the close of escrow of the sale of the Carousel, as evidenced by the effective date of the Bill of Sale for the Carousel, to be presented to the CITY ("Close of Escrow"); whichever occurs later; and

D. WHEREAS, LESSEE's mission is to preserve Balboa Park's legacy for future generations through park-wide projects, which includes the desire to keep and operate the historical Carousel within the boundaries of Balboa Park, and to use a portion of the proceeds for park-wide projects; and

E. WHEREAS, CITY and LESSEE are entering into this Lease with the understanding that the parties wish to negotiate a long-term nonprofit public benefit lease agreement; and

F. WHEREAS, in accordance with California Civil Code section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CASP).

NOW THEREFORE, based upon the forgoing Recitals, which are incorporated into this Lease by this reference, and for valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

1. Premises. Under the terms and conditions of this Lease, CITY leases the Premises to LESSEE and LESSEE leases the Premises from CITY.

2. Term. The term ("Term") of this Lease shall be three (3) years, commencing on the Commencement Date as defined below in Section 3.
3. Commencement Date. The Term shall commence on either: (i) thirty (30) days from the CITY's receipt of the Notice of Termination or (ii) the Close of Escrow; whichever occurs later (the "Commencement Date").
4. Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect.
5. Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender them to CITY 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 quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease provision, and the notice shall be deemed conclusive evidence of the termination of this Lease and of all of LESSEE's rights in and to the Premises.
6. Termination. LESSEE or CITY may terminate this Lease for any reason upon ninety (90) days prior written notice delivered to either party.
7. Allowed Uses. LESSEE shall use the Premises solely and exclusively for the purposes of operating and maintaining the Carousel and kiddy airplane rides and the sale of carousel-motif souvenir items, such as clothing and novelties, and similar items; and for such other related or incidental purposes as may be first approved in writing by CITY and for no other purpose whatsoever ("Allowed Uses"). All of the Allowed Uses shall be at LESSEE'S sole cost and expense. LESSEE covenants and agrees to use the Premises throughout the Term hereof for the Allowed Uses and to diligently, continuously, and regularly conduct the Allowed Uses and all business thereon. Lessee shall operate the Premises for the Allowed Purposes in accordance with the defined Schedule of Days and Hours of Operation as set forth in the attached Exhibit B.

LESSEE's failure to operate the Premises in accordance with this paragraph, , shall be grounds for termination by CITY. In case of a breakdown of the Carousel, LESSEE shall give CITY notice of such breakdown within ten (10) days thereof. LESSEE may terminate the Lease as of the date of the breakdown if LESSEE submits documentation to the City that establishes, to the reasonable satisfaction of the CITY, determined in the City's sole discretion, that the Carousel's repair is not feasible. If, in the determination of the City, the Carousel can be repaired, LESSEE shall, within thirty (30) days of breakdown, provide CITY with documentation regarding the nature of the breakdown and extent of repairs needed, included an estimated schedule for completing the repairs.

8. Competent Management. LESSEE shall provide competent management for operation of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all applicable local, state and federal laws, rules and regulations, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied, and absent financial malfeasance.
9. CITY's Consent, Discretion. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise required by law or expressly provided herein. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise required by law or expressly provided herein.
10. Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, 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 on the Effective Date, or if LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss, burden, or resulting damages, but there may be determined and stated in writing by CITY a proportionate reduction of the rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises.
11. Reservation of Rights.
  - a. Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
  - b. Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good, at no cost or liability to CITY.
  - c. Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and services.
  - d. Noninterference. CITY shall not substantially or unreasonably interfere with LESSEE's use of the Premises, and shall repair or reimburse LESSEE for reasonable costs incurred by LESSEE to repair any physical damages to the Premises or LESSEE's personal property directly caused by CITY's exercising of its rights reserved in this section. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
12. Public Purpose and Public Benefit. LESSEE shall use the Premises as allowed by this Lease to benefit the general public, to CITY's reasonable satisfaction.

- a. Rates and Charges. LESSEE's rates and charges for the public's and sublessees', if any, uses of the facilities on the Premises shall not exceed those generally considered reasonable within LESSEE's industry for the management and operation of activities substantially similar to the Allowed Uses, as described in the attached **Exhibit B: Rates and Charges**.
  - b. Political Activities. LESSEE shall not use the Premises to promote, endorse, or ~~campaign for the nomination or election of any individual to any public office, be it~~ partisan or nonpartisan, or for the adoption or defeat of any ballot measure; however, LESSEE may allow the use of the Premises as a forum for open public debate by two or more candidates of different political parties, such as occurs at a candidate forum and similar events.
  - c. Public Use. The general public shall have access to the Premises for the Allowed Uses during LESSEE's Schedule of Days and Hours of Operation as set forth in the attached **Exhibit C: Schedule of Days and Hours of Operation**.
  - d. Operation of Facilities. LESSEE shall maintain a regular schedule of days and hours of operation to best serve the public, including both members and non-members, as described in the attached **Exhibit C: Schedule of Days and Hours of Operation**. All Hours of Operation and any changes to such shall be subject to the prior written approval of CITY.
  - e. CITY Use. Upon reasonable prior notice, CITY may use the Premises for civic events and special programs, free of charge, and only at times when LESSEE has no scheduled event or program. After each such use, CITY shall leave the Premises in the same condition found, reasonable wear and tear excepted. Such use by CITY shall be at CITY's sole cost and expense.
13. Signs. Signage that has received CITY's prior written approval and that is currently installed on the Premises may remain in place. LESSEE shall not erect or display any other banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at LESSEE's sole cost.
14. Administrative Rent. LESSEE shall pay to CITY administrative rent in the amount of Three Thousand Four Hundred Fifty Dollars (\$3,450) per year, paid annually in advance. LESSEE shall pay the rent for the first Lease year within thirty (30) days after the Effective Date, and thereafter on each anniversary of the Effective Date. The rent shall be adjusted annually, upward only, based on increases in the Consumer Price Index (CPI) as provided below.
- a. CPI Adjustments. On each anniversary of the Effective Date, the rent shall be adjusted, upward only, to reflect any increase in the Consumer Price Index for "All Urban

Consumers” for Los Angeles/ Riverside/Orange County, California (the “CPI”) based on the average of the three then-most recently published monthly indices just prior to each adjustment. If the CPI is no longer published, the index for adjustment shall be the U.S. Department of Labor’s “Comprehensive Official Index” most comparable to the CPI.

- i. If a rent 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 shall first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.
- ii. If the Department of Labor indices are no longer published, CITY may use another index deemed by CITY to be reasonably comparable to the CPI, which shall then be the “CPI” under this Lease.
- iii. CITY’s failure to deliver timely notice of any rent adjustment shall not constitute a waiver by CITY of its rights hereunder.

b. CPI Adjustment Computation. The rent shall be calculated as follows:

The “adjustment multiplier” shall be calculated by dividing the “current index” by the “base index” as defined below:

The “base index” denominator for the calculation is 178.5. This is a fixed number representing the three (3) month average of the CPI indices for the months of July, August and September 2001.

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

The “base figure” for purposes of calculating the annual adjustment shall be a fixed amount of two thousand five hundred dollars (\$2,500).

Example Calculation

|                                    |         |
|------------------------------------|---------|
| Current Index (Third Quarter 2015) | 246.275 |
|                                    | ÷       |
| Base Index (Third Quarter 2001)    | 178.5=  |
| Adjustment Multiplier              | 1.38    |

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

|            |                         |
|------------|-------------------------|
| \$2,500.00 | (Base Figure)           |
| X 1.38     | (Adjustment Multiplier) |

\$3,450 (Adjusted Rent)

(CURRENT INDEX ÷ BASE INDEX) X BASE FIGURE = NEW RENT AMOUNT

- c. Delinquent Payments. If LESSEE fails to pay rent when due, LESSEE shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If the rent is still unpaid after fifteen (15) days past due, LESSEE shall pay an additional five percent (5%) ~~[being a total of ten percent (10%)], which is agreed by the parties to be~~ appropriate to compensate CITY for the cost of servicing the delinquent account. In no event shall the charge for late payments of rent be less than Twenty-Five Dollars (\$25). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.
- d. Time and Place of Payment. All payments to be paid by LESSEE under this Lease shall be made payable to the City Treasurer and be mailed to:
- San Diego City Treasurer  
P.O. Box 129030  
San Diego, California 92112-9030
- or hand delivered to:*
- The Office of the City Treasurer  
Civic Center Plaza  
1200 Third Avenue, First Floor  
San Diego, California 92101
- CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.
- e. Invoicing Courtesy. CITY may invoice LESSEE for amounts due under this Lease. However, any such invoicing shall be deemed a courtesy only; LESSEE shall make all payments under this Lease on or before each applicable due date, regardless of being invoiced. No grace period shall apply to any amount due under this Lease.
15. Unauthorized Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not allowed under this Lease, and from any use which has not received prior written consent, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be treated as "rent" under this Lease, but shall not satisfy or supplant any rent otherwise due. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.

16. Maintenance. Throughout the Term, LESSEE shall assume full responsibility and cost for the operation and maintenance of the Premises and all improvements located thereon. LESSEE shall, at LESSEE's sole cost, make or cause 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 laws.
- a. Prevailing Wage. In the event that LESSEE initiates work or procures services in ~~qualifying amounts and which constitute a "public works contract" or a "maintenance contract"~~ pursuant to CITY's "Compliance with State Prevailing Wage Laws" Ordinance (SDMC section 22.3019, which may be amended from time to time), LESSEE shall ensure, including by providing for such in all agreement(s) for such work or services, that the contractor for such services shall comply with said Ordinance and all applicable California Labor Code provisions regarding prevailing wages. LESSEE shall obtain from CITY, prior to entering into any agreements for or otherwise authorizing commencement of any such public works or maintenance contract, the most current version of CITY's standard contract provisions regarding said Ordinance and applicable California Labor Code provisions, for use by LESSEE in ensuring that such services contractors comply with these provisions.
17. Time of the Essence. Time is of the essence of each term, covenant, and condition of this Lease.
18. Successors. Each term, covenant, and condition of this Lease shall jointly and severally apply to, benefit, and bind the successors and assigns of the respective parties.
19. Assignment and Subletting.
- a. LESSEE shall not assign this Lease or any interest therein and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part thereof, without CITY's prior written consent in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without CITY's consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE by operation of law, without the written consent of CITY. LESSEE shall pay all reasonable fees required by CITY for processing requests for consents to assignments and subleases. Assignment for the purposes of this section shall include any transfer of any ownership interest in LESSEE by any partners, principals, or stockholders, as the case may be, from the original partners, principals, or stockholders of LESSEE. As a condition to such consent by CITY in each instance, CITY may require that the Lease be revised to comply with current standard CITY lease requirements.
- b. Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and

provisions of this Lease which are applicable to the rights acquired. Further, each sublessee shall agree that its sublease shall be subject and subordinate to each and every provision of this Lease. Pursuant to City Charter section 225, any prospective assignee or subtenant shall make full and complete disclosure of the name and identity of each and every person or entity directly or indirectly involved in this Lease, and the precise nature of all interests of all such persons. Each and every person or entity proposed to have an interest in this Lease shall be subject to CITY's review and approval, in CITY's sole discretion.

20. Encumbrance. LESSEE shall not encumber this Lease, its leasehold estate, or any improvements on the Premises, by deed of trust, mortgage, chattel mortgage, or other security instrument without CITY's prior written consent.

21. Default and Remedies.

a. Default. LESSEE shall be in default of this Lease if any of the following occurs:

- i. LESSEE fails to make any payment required under this Lease when due and fails to cure the default within five (5) days following written notice thereof from CITY;
- ii. LESSEE defaults in the performance of any covenant, term or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice thereof from CITY, or if any such default is not curable within thirty (30) days, fails to commence to cure the default(s) within thirty (30) days and diligently pursue the cure to completion;
- iii. LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- iv. LESSEE is adjudicated as bankrupt;
- v. LESSEE makes a general assignment for the benefit of creditors.

b. Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written "Three Day Notice to Pay or Quit," or CITY may terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- i. the worth at the time of award of any unpaid rent that was due at the time of termination;

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

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

- c. Default if Leasehold is Encumbered. If there is a CITY-approved deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:
  - i. CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE and to mortgagee or beneficiary;
  - ii. CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and
  - iii. CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries,

trustees or mortgagees as a condition of such early payoff of the related obligations. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is incurable by LESSEE, then any lender holding a beneficial interest in ~~the Premises, 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 the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY 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 the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

- d. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.
  - e. Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for any default shall not waive any other right or remedy for the same default, or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. LESSEE acknowledges that the Premises are publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a 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. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.
22. 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. Full Taking. If 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, and any advance rents paid to CITY shall be prorated based upon the actual number of calendar days the Premises was held by LESSEE.

- b. Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises 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. Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and 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. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
  - d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. However, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
  - e. Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
  - f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.
23. Indemnification and Hold Harmless. LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease or LESSEE's occupancy, use, development, maintenance, restoration, or improvement of the Premises, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the CITY elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay the CITY for all costs related thereto, including, without limitation, attorneys' fees and costs.

24. Insurance. Prior to the Effective Date LESSEE shall not begin operating under this Lease until it has: (a) obtained, and upon CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance as set forth herein; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, ~~including but not limited to LESSEE's indemnity obligations, under this Lease, shall not be~~ deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of the Lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Lease may be treated as a material breach of contract by CITY.

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

- 24.1 Types of Insurance. At all times during the term of this Lease, LESSEE shall maintain insurance coverage as follows:

- 24.1.1 Commercial General Liability. Commercial General Liability(CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- 24.1.2 Commercial Automobile Liability. For all of LESSEE's automobiles including owned, hired and non-owned automobiles, LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificates shall reflect coverage for any automobile.
- 24.1.3 Workers' Compensation. For all of LESSEE's employees who are subject to this Lease and to the extent required by the applicable state or federal law, LESSEE shall keep in full force and effect, a Workers' Compensation policy. The policy shall provide a minimum of \$1 million of employers' liability coverage, and LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.
- 24.1.4 Professional Liability. For all of LESSEE's employees who are subject to this Lease, LESSEE shall keep in full force and effect, Professional

Liability coverage for professional liability with a limit of \$2 million per claim and \$4 million annual aggregate. LESSEE shall ensure both that: (1) the policy retroactive date is on or before the Effective Date; and (2) the policy will be maintained in force for a period of three years or termination of this Lease whichever occurs last. LESSEE agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase CITY's exposure to loss.

24.2 Deductibles. All deductibles on any policy shall be the responsibility of LESSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.

24.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

24.4 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.

24.5 Required Endorsements. The following endorsements to the above policies of insurance are required:

24.5.1 Commercial General Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by LESSEE or on LESSEE's behalf, (b) LESSEE's products, (c) LESSEE's work, including but not limited to LESSEE's completed operations performed by LESSEE or on LESSEE's behalf, or (d) premises owned, leased, controlled or used by LESSEE.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any

insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

~~SEVERABILITY OF INTEREST. The policy or policies must be~~  
endorsed to provide that the LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

#### 24.5.2 Automobile Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of LESSEE.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

#### 24.5.3 Worker's Compensation and Employer's Liability Insurance Endorsements.

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of the policy or policies which arise from work performed by the Named Insured for CITY.

24.6 Additional Insurance. LESSEE may obtain additional insurance not required by this Lease.

24.7 Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.

24.8 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the

involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

24.9 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Premises under this Lease or the Premises in an amount to cover one hundred percent (100%) of the replacement cost. LESSEE shall deliver a certificate of said insurance to CITY's Real Estate Assets Department.

25. Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within two (2) 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 at the Premises, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of 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 Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications 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 proceeds from the insurance required by this Lease. In the event of flood damage and it becomes evident that the Allowed Use(s) will not be practicable, LESSEE may opt to return the affected portion of the Premises to the CITY and have the leasehold reduced accordingly.

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

26. 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 acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof. LESSEE further acknowledges that the Premises are in the condition called for by this Lease and that LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Premises, including the presence of any Hazardous Substances as defined this Lease. LESSEE acknowledges and agrees that unless set forth in this Lease, CITY has no obligation to improve, modify, repair, replace, alter or otherwise develop the Premises at any time either prior to, on, or after the Effective Date.

27. Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said 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. If 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 sole expense of LESSEE, and LESSEE shall pay promptly any and all costs incurred by CITY in having necessary maintenance work done in order to keep the Premises in a decent, safe, healthy, and sanitary condition. 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 a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.
28. Utilities. LESSEE shall order, obtain, and pay for all utilities, including service and installation charges, in connection with the operation of and activities on the Premises.
29. Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without the prior written approval of CITY's Real Estate Assets Department and all other required CITY departments. Additionally, once completed, LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the Premises without prior additional written approval of CITY's Real Estate Assets Department and all other required CITY Departments. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
30. Construction Bond. If LESSEE constructs improvements on the Premises, CITY may require LESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance and/or payment bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond(s) may be a corporate surety bond or other security satisfactory to CITY. The performance bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
31. Liens. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If LESSEE causes improvements, alterations,

or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises or any part thereof, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

~~32. Taxes.~~ LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the Premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.

33. Ownership of Improvements; Removal of Improvements and Personal Property.

- a. Improvements. During the Term of this Lease, or until earlier termination thereof, LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises by LESSEE as listed in **Exhibit D: Description and Listing of LESSEE-owned Personal Property and Improvements.** CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.
- b. Personal Property. Upon termination or expiration of the Lease, CITY shall have the right to make an offer to LESSEE to purchase LESSEE's personal property then being used to operate the carousel business as listed in **Exhibit D: Description and Listing of LESSEE-owned Personal Property and Improvements.** If the Lease is terminated by LESSEE or CITY (for cause), CITY shall have thirty (30) days from the notice of termination in which to give LESSEE written notice that CITY intends to make an offer to purchase all of said personal property. If CITY intends to make such an offer to LESSEE upon expiration of the lease, it shall give written notice of such intent not more than one hundred fifty (150) days nor less than one hundred twenty (120) days prior to the expiration of the lease. If CITY gives such notice, it shall have

ninety (90) days from the date such notice is given in which to submit said offer to LESSEE. CITY's offer shall be on behalf of a nonprofit foundation created by or on behalf of CITY to acquire and operate the carousel.

LESSEE agrees not to dispose of said personal property so long as CITY has any rights under this subparagraph. Without LESSEE's written consent, CITY's rights under this subparagraph are not assignable to any person or entity other than the nonprofit foundation as described above.

- c. Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements or personal property as required by this Lease, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by the Real Estate Assets Department, in its sole discretion.
- 34. Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, embargoes, or other causes beyond the reasonable control of the party required to perform the act that party shall be excused from performing the act for a period equal to the period of the prevention or delays. Provided, however this provision shall not apply to obligations to pay rent as required by this Lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming a delay shall notify the other party in writing within ten (10) calendar days after the beginning of any claimed delay.
- 35. Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substance or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any Hazardous Substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board, pertaining to Hazardous Substances. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a Hazardous Substance or hazardous waste.
  - a. Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of Hazardous Substances. "Hazardous Substance" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.

- b. Remediation. If LESSEE's occupancy, use, development, maintenance, or restoration of the Premises (collectively, "LESSEE's operations") results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- c. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances or hazardous wastes to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment, or device from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. Upon CITY's request, LESSEE shall deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.
- d. Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's Operations, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- e. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from, or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- f. Environmental Assessment. Upon reasonable cause to believe that LESSEE's Operations resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified

Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with ~~recommendations for remediation and removal necessary to effect unrestricted re-use~~ and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.

36. Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to LESSEE:

FRIENDS OF BALBOA PARK  
Attention: Executive Director  
2125 Park Blvd  
San Diego, California 92101

If to CITY:

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

Any party entitled or required to receive notice under this Lease may, by via notice, designate a different address to which notices shall be sent.

37. Compliance with Law. LESSEE shall at all times in the occupancy, use, development, maintenance, restoration and improvement of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE's sole cost and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE's fire-suppression equipment in the Premises). In addition, LESSEE shall comply with any and all notices issued by CITY under the authority of any law, statute, ordinance, or regulation.

38. New Construction. All new construction must comply with CITY design guidelines, regulations, California Building Code Title 24, and Americans with Disability Act standards. Any items that are not pre-approved or not to code will be rejected at the time of walk-through, and must be removed and/or corrected at LESSEE's expense. It is the responsibility of LESSEE to obtain the necessary permits prior to commencement of any work, to obtain any inspections required for the work involved and to ensure all work will adhere to all laws, rules, and regulations, including California Building Code Title 24, ~~ADA, the latest edition of the Park and Recreation Department's Consultant's Guide to~~ *Park Design and Development, San Diego Standard Drawings for Public Works Construction, the Standard Specifications for Public Works Construction* (Greenbook, 2009 edition), the 2012 City of San Diego "Whitebook" supplement to the Greenbook (Document No. PITS090110-1), City of San Diego regulations and other local agencies regulations. Additionally, all construction must be reviewed and approved by Park and Recreation staff and Historic Resources staff in the Planning Department for compliance with Balboa Park policies and the Secretary of the Interior's "Standards for the Treatment of Historic Properties" and "Guidelines for the Treatment of Cultural Landscapes."
39. Historic Use. LESSEE acknowledges that the Allowed Uses under this Lease shall be conducted in accordance with the historic setting of CITY's Balboa Park. Accordingly, aesthetics, "feel," and other components of the activities under this Lease shall, to the extent practicable, reflect 'period' and other cultural and historic details of Balboa Park, and all activity under this Lease shall conform to Balboa Park policies and the Secretary of the Interior's "Standards for the Treatment of Historic Properties" and "Guidelines for the Treatment of Cultural Landscapes."
40. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act (CPRA). LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
41. Equal Opportunity and Contracting. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the CITY, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

42. Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308 as amended from time to time, which require lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this Lease.
- 
43. Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); Title 24 of the California Code of Regulations (i.e., the "Building Code"), and all other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE's compliance shall include but not necessarily be limited to the following:
- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
  - b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
  - c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
  - d. Where required by law, any improvements made to the Premises by LESSEE shall comply with all applicable building codes and disabled-access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.
    - i. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.
    - ii. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.
44. Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Permit Area and specifying the actions that will be taken against employees for violations of the prohibition; and
  - b. Establish a drug-free awareness program to inform employees about all of the following:
    - i. The dangers of drug abuse in the workplace;
    - ii. LESSEE's policy of maintaining a drug-free workplace;
    - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
    - iv. The penalties that may be imposed upon employees for drug abuse violations.
  - c. LESSEE shall include in each of its sublicenses and contracts related to this Permit language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.
45. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.
46. Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
47. Storm Water Pollution Prevention Program. LESSEE shall comply with the CITY's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in the City's Jurisdictional Runoff Management Plan, in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of CITY regardless of location.

LESSEE shall comply with the CITY's Jurisdictional Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries as adopted by the CITY's City Council on July 1, 2015, via Resolution No. 309791, as may be amended.

LESSEE shall comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

48. Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use or occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.
49. Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
50. Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
51. Supersedure. As of the Effective Date, this Lease shall supersede and annul all prior leases, right of entry permits, or other agreements by and between CITY and LESSEE, and each such agreement shall be void and of no effect, except as to any rentals and fees that may have accrued or any rights and remedies accrued or granted to CITY under those agreements.
52. Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
53. No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
54. Entire Agreement and Understanding. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Lease. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto. 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 the 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.

55. 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 shall remain in full force and effect.
56. Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner, as determined by CITY in its reasonable discretion.
57. Conformity. The policies established by LESSEE for the operation of the Premises shall conform to the general policies established by CITY for the use and operation of similar CITY-owned properties.
58. Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payments, "government project" related benefits, inverse condemnation damages, or any other compensation or award of damages whatsoever from CITY available in law or equity upon termination of this Lease or upon CITY's exercise of any right(s) stated in this Lease, unless expressly stated otherwise herein.
59. Use of Proceeds. LESSEE shall use all revenue received from the operation of the Premises in a fiscally responsible manner, consistent with other organizations reasonably similar to LESSEE, for the Allowed Uses and the operation, maintenance, and improvement of the Premises as set forth in this Lease. LESSEE's compliance with this requirement shall be certified in LESSEE's annual financial report as required herein.
- a. Annual Report. LESSEE shall deliver to CITY an annual financial report for each of LESSEE's fiscal years during the Term, certified by an independent certified public accountant. LESSEE shall deliver each such financial report within one hundred twenty (120) days after its fiscal year end. The financial report shall include an operating statement and a report of net worth, shall be in a form reasonably satisfactory to CITY, and shall be subject to CITY's review and audit. Within one hundred twenty (120) days after the expiration or earlier termination of this Lease, LESSEE shall deliver to CITY a final financial report that complies with the above requirements for an annual financial report, and covering the period between the last annual report and the expiration or termination date of this Lease.
- b. Financial Records. LESSEE shall keep or cause to be kept true, accurate, and complete accounting records using generally accepted accounting principles consistently applied, including double-entry books, a profit-and-loss statement, and a balance sheet, making it possible at all times to determine the nature and amount of revenue and expenditures. All of LESSEE's expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices, and receipts. LESSEE shall retain documents supporting its profit-

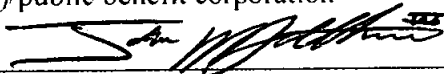
and-loss statements for a minimum period of five (5) years, including after termination or expiration of this Lease.

- c. Inspection of Records and Audit. LESSEE shall make all of its books, statements, documents, records, and financial data open at all reasonable times for CITY's inspection and audit upon reasonable notice at the Premises or other suitable location mutually agreed upon by the parties. LESSEE shall maintain all records and accounts ~~for a minimum period of five (5) years, including after termination or expiration of this~~ Lease. CITY may, at any time and without need for cause, conduct an audit of LESSEE's books, statements, documents, records, and financial data. CITY may also demand and receive from LESSEE the results of a complete audit as conducted by an independent certified public accountant in the event that: (i) LESSEE's chief executive officer, executive director, or other such manager resigns, retires, or is discharged; (ii) a majority in the membership of LESSEE's governing body changes; or (iii) the purposes for which LESSEE was created are materially or substantially changed.
  - d. Proposed Budget. No later than by the end of May of each Lease year during the Term, LESSEE shall deliver to CITY one (1) copy of documents evidencing LESSEE's proposed programs, business plan, and fiscal status of LESSEE for the next year. Without limiting the generality of the foregoing, these 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 each staff member of LESSEE; and (iii) an adequate reserve account for maintenance of the Premises. Such documents shall be in form and content reasonably satisfactory to CITY.
  - e. Activities and Inventory. LESSEE shall annually deliver to CITY, on each anniversary of the Effective Date of this Lease, an annual report of LESSEE's programs on the Premises.
60. Related Governmental Actions and Approvals. By entering into this Lease, CITY is not obligating itself to LESSEE or to any other government agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to, rezoning, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises. LESSEE shall be solely responsible for processing all land use, development, and construction approvals required for the use, development, or occupancy of the Premises. This Lease shall not be interpreted by any government decision-maker to override or dictate the outcome of any findings required for any permit or development approval.
61. Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such

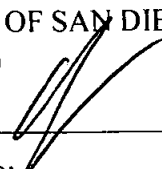
61. Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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

FRIENDS OF BALBOA PARK, a California nonprofit  
501(c)(3) public benefit corporation

BY:   
Name: JOHN BOLTHOUSE  
Title: EXECUTIVE DIRECTOR  
Date: MAY 15, 2017

THE CITY OF SAN DIEGO, a California municipal  
corporation

BY:   
Name: Cybele Thompson  
Title: Director, Real Estate Assets  
Date: 5/16/17

*Environmental Analysis Section Environmental Clearance:*

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities) and 15331 (Historical Resource Restoration/Rehabilitation).

BY: Tom Tomlinson

Name: Tom Tomlinson

Title: Assistant Director, Environment and

Policy Analysis, Planning Department

Date: 5/18/17

Approved as to form this 23<sup>rd</sup> day  
of May, 2017.

MARA W. ELLIOTT City Attorney

BY: David Powell

Name: David Powell

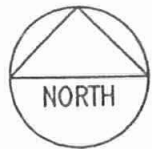
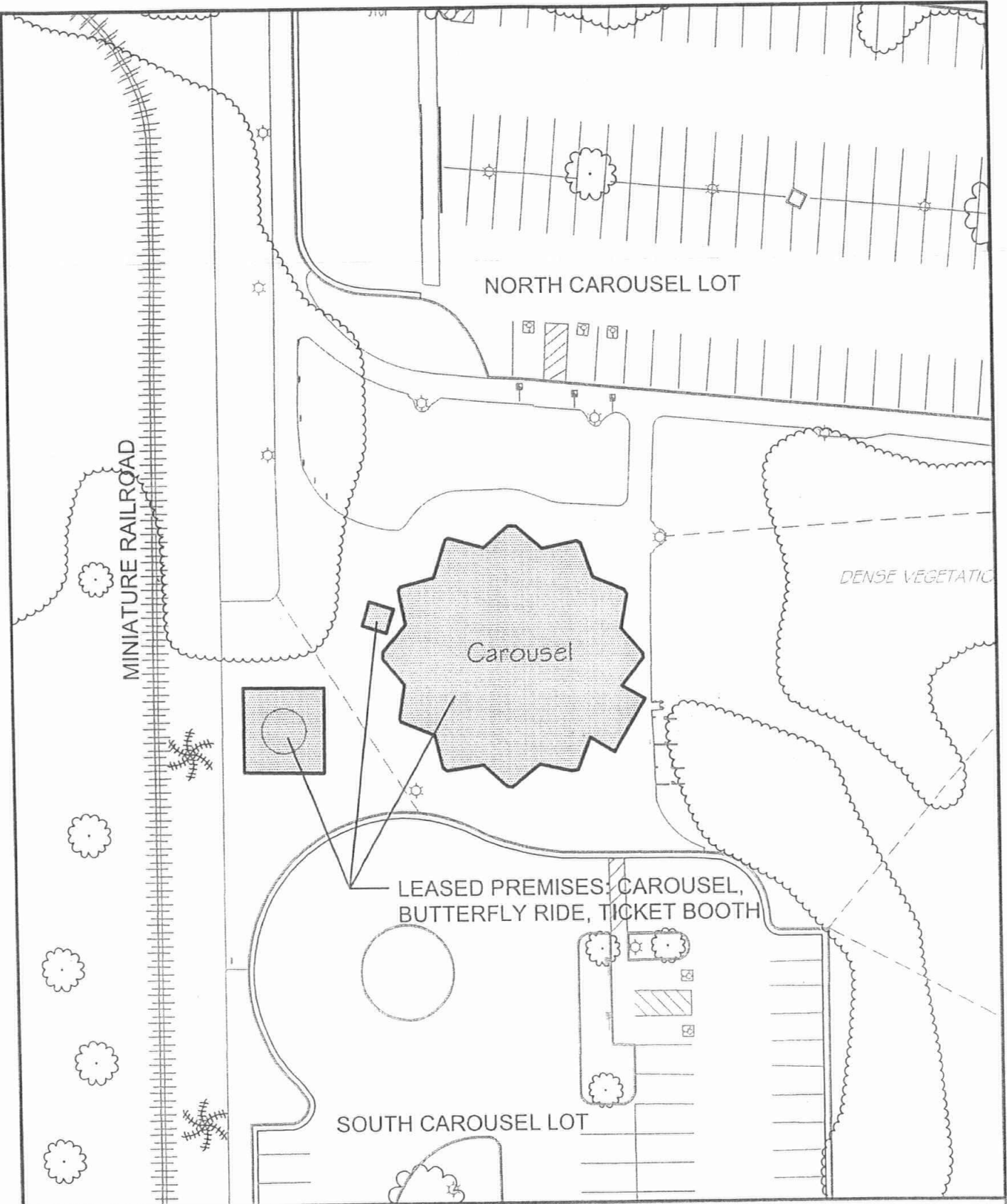
Title: Deputy City Attorney

**Exhibit A: Balboa Park Carousel Lease Boundaries**

**Exhibit B: Schedule of Days and Hours of Operations**

**Exhibit C: Rates and Charges**

**Exhibit D: Description and Listing of LESSEE-owned Improvements and Personal Property**



# BALBOA PARK CAROUSEL LEASE BOUNDARIES

## **Exhibit B: Rates and Charges**

\$3.00 per ride for the carousel and kiddy airplane.

All changes to the Rates and Charges schedule shall first be approved in writing by CITY.

---

### **Exhibit C: Schedule of Days and Hours of Operation**

The Balboa Park carousel shall be open to the public, in general, every day that schools of the City of San Diego Unified School District are closed, except for Thanksgiving Day and Christmas Day.

~~During winter months, the Balboa Park carousel shall be open Saturdays, Sundays and~~ holidays from approximately September 15 through June 15. Winter hours shall be 11:00 am to 5:30 pm. Holidays include New Year's Day; Presidents Day; Martin Luther King Day; Cesar Chavez Day; Easter week and Easter Sunday; Memorial Day; July 4<sup>th</sup>; Labor Day; Veterans Day; the Friday after Thanksgiving Day; and Christmas vacation days.

During the summer, the Balboa Park carousel shall be open seven days per week from approximately June 15 through September 15. Summer hours shall be 11:00 am to 6:00 pm.

The aforementioned hours of operations may vary according to number of patrons or weather conditions. The Balboa Park carousel will not operate during rain events. Accessibility and operation under such weather conditions shall be at the sole discretion of Friends of Balboa Park staff.

Due to the mechanical complexity and sensitivity of the carousel and kiddy airplane ride that require regular preventive and corrective maintenance, the Balboa Park carousel and kiddy airplane ride may have to occasionally close to the public. Accessibility and operation under such maintenance needs shall be at the sole discretion of Friends of Balboa Park staff.

All changes to the operating schedule shall first be approved in writing by CITY.

**Exhibit D: Description and Listing of LESSEE-owned  
Personal Property and Improvements**

**Personal Property**

1. Kiddy airplane ride including all fencing, mechanical and electrical systems.
2. Merry-go-round building and ticket booth.
3. Merry-go-round assembly, animals, mechanisms, mechanical and electrical systems, organ, sound system, tools, furniture and fixtures.
4. Flags, banners, signs and all other personal property.

**Real Estate Improvements**

Currently none.



**Date of Notice:** March 17, 2017

# **NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION**

## **PLANNING DEPARTMENT**

---

**PROJECT NAME/NUMBER:** Non-Profit Lease Agreement – Friends of Balboa Park for the Carousel Amusement Facility and Kiddie Airplane Ride

**COMMUNITY PLAN AREA:** Balboa Park

**COUNCIL DISTRICT:** 3

**LOCATION:** 2920 Zoo Drive, San Diego, CA 92101

**PROJECT DESCRIPTION:** Authorize the Mayor or his designee to enter into a new 3-year lease agreement with Friends of Balboa Park (Lessee), allowing Lessee to use an area of City-owned property south of the Zoo parking lot for the purpose of operating and maintaining a carousel amusement facility and kiddie airplane rides and the sale of carousel-motif souvenir items, such as clothing and novelties, and similar items in the area, and for such other related or incidental purposes as may be first approved in writing by City at Balboa Park in San Diego. The lease area is within the National Historic Landmark District and has been reviewed for consistency with the Historical Resources Regulations and the Secretary of the Interior's Standards for the Treatment of Historic Properties and Landscapes.

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

**ENVIRONMENTAL DETERMINATION:** CEQA Exemption Section 15301- Existing facilities

**ENTITY MAKING ENVIRONMENTAL DETERMINATION:** City of San Diego Mayor-Appointed Designee

**STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:** This activity has been determined to be exempt from CEQA pursuant to CEQA Section 15301 (Existing Facilities) which allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use; Section 15331 (Historical Resource Restoration/Rehabilitation) which allows for maintenance, repair, stabilization, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings, and as such, additional conditions have been added to the lease to ensure consistency with historic standards and regulations; and where the exceptions listed in CEQA Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway;

historical resources would not be affected by the action, and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

**PROJECT MANAGER:** Roswitha Sanchez, SR/WA, Supervising Property Agent  
Real Estate Assets Department  
**MAILING ADDRESS:** 1200 Third Avenue, Suite 1700, MS 51A  
San Diego, CA 92101  
**PHONE NUMBER:** (619) 236-6721

---

On March 17, 2017, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (**April 3, 2017**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

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

|                                    |
|------------------------------------|
| <b>POSTED IN THE OFFICE OF DSD</b> |
| <b>POSTED:</b> <u>3/17/2017</u>    |
| <b>REMOVED:</b> <u>4/6/2017</u>    |
| <b>POSTED:</b> <u>M. Hermann</u>   |

## BILL OF SALE

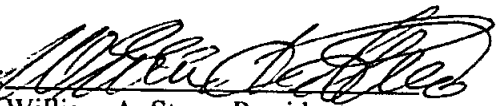
FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, BALBOA PARK CAROUSEL, INC., a California corporation ("Seller"), does hereby sell, assign, transfer, convey, and deliver unto FRIENDS OF BALBOA PARK, a California nonprofit corporation ("Buyer"), all of Seller's rights, title and interest in and to the Equipment as identified and defined in that certain Equipment Purchase and Sale Agreement by and between Seller and Buyer, dated May 12, 2017 (the "Purchase Agreement").

This Bill of Sale binds, and inures to the benefit of, the parties and their respective successors and permitted assigns.

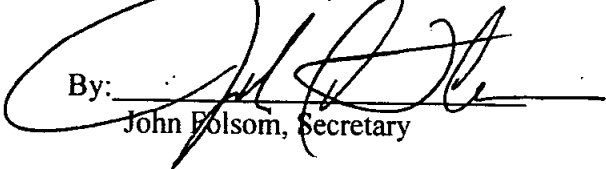
IN WITNESS WHEREOF, Seller has duly executed this Bill of Sale as of 5-12-17, 2017.

### SELLER:

Balboa Park Carousel, Inc.,  
a California corporation

By: 

William A. Steen, President

By: 

John Folsom, Secretary