

ORIGINAL

THE CITY OF SAN DIEGO

THE ZOOLOGICAL SOCIETY OF SAN DIEGO

Percentage Lease

CITY ATTORNEY

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CIVIL DIVISION

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**CITY OF SAN DIEGO
PERCENTAGE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and THE ZOOLOGICAL SOCIETY OF SAN DIEGO, a California nonprofit corporation, hereinafter called "LESSEE."

SECTION 1. : USES

1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in Balboa Park, in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises."

1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of operation and maintenance of a miniature railroad, providing rides to the general public, sale of railroad-motif souvenir items, 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 thereon to produce the most gross income that can be reasonably expected. 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, lease renewal, change in permitted uses, incorporation of the premises into LESSEE'S adjacent leasehold, or any other governmental agency approvals which may be required for the development and operation of the leased premises. However, the terms and conditions of this lease shall not necessarily set a precedent for any other lease between CITY and LESSEE.

- 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 miniature railroad and related activities in a fiscally responsible manner.
- 1.7 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public as set forth in Section 9.4, 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. 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 for merchandise and services or facilities on said premises shall be in accordance with the schedule set forth in Section 9.3, Schedule of Rates and Charges, hereof. Any changes in said schedule are subject to prior written approval by the City Manager or his authorized representative.
- 1.9 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.
- 1.10 Public Use. The general public shall not be wholly or permanently excluded from any portion of the premises. LESSEE may develop reasonable restrictions for the facility use, including maintaining a fence around the premises, provided such restrictions are consistent with the rights of the general public and are designed to allow LESSEE to use the premises for the purposes specified herein. LESSEE agrees that all activities conducted on the premises will be as stated in Section 1.2, Uses, hereof.

LESSEE shall, at all times during the lease term, maintain a CITY-approved sign identifying the property as City-owned and available

for public use consistent with the terms of this lease. The sign shall be installed by LESSEE at a location agreeable to CITY.

SECTION 2. : TERM

- 2.1 Commencement. The term of this agreement shall be three (3) 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 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this 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.
- 2.3 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

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

SECTION 3. : RENT

- 3.1 Time and Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California, 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

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

3.2 Rent.

- a. Minimum Rent. The annual minimum rent established for the term of this lease is Thirty Thousand Dollars (\$30,000).

If the annual minimum rent is greater than the annual percentage rent on a lease year basis, then the annual minimum rent minus any percentage rent paid is required to be paid within thirty (30) days of the anniversary of that lease year.

It is the intent of this provision that LESSEE shall pay the annual minimum rent as a guarantee against the percentage rent requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

- b. Percentage Rents. Percentage rents will be calculated on a calendar month basis and will consist of the following percentages of the gross income resulting from the use of the premises:

Percentages

Business Activities

Twenty-five Percent (25%)

Train ticket sales

Ten Percent (10%)

Merchandise sales

Twenty-five Percent (25%)

Of commissions or any other compensation paid to LESSEE or sublessees for the right to install or operate coin-operated vending, game, or service machines or devices on the premises, including telephones, or 10% of the gross income from any such

coin-operated machines or devices owned, rented, or leased by LESSEE or sublessees for use on the premises.

Ten Percent (10%)

Of all other authorized activities

The City Manager, in his sole discretion, may approve another percentage rate or flat rate of rent for each other incidental service or operation supplementary to the permitted use(s) set forth under Section 1.2, Uses, hereof as may be approved in writing by the City Manager prior to commencement of such other service(s) or operation(s). Provided, however, any activity conducted on the premises without prior approval by the City Manager shall be subject to the requirements of Section 3.7, Unauthorized Use Charge, hereof.

3.3 Payment Procedure. On or before the last day of the calendar month following the calendar month in which the gross income subject to rents was earned, LESSEE shall provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected by CITY. The statement will be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

- a. Total gross receipts for the subject month, itemized as to business categories for which separate percentage rents are established. A gross receipts breakdown of each business conducted on the premises must be included when a reported category shows gross income to be from more than one business operation.
- b. The percentage rental due CITY, computed and totaled.
- c. The accumulated total of all rents previously paid for the current lease year.
- d. Payment in the amount of the total percentage rent due CITY computed as described in this section.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by CITY as required by this lease and whether or not a separate percentage rent was established by CITY):

- (1) Sublease commencement date.
- (2) Physical occupancy date.
- (3) Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

3.4 Gross Income. "Gross income" or "gross receipts", as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of LESSEE. The percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY, except as may be otherwise specified by or pursuant to this lease.

3.5 Inspection of Records.

- a. Records. LESSEE shall, at all times during the lease term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in

sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, LESSEE shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets.

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- b. Financial Statements. Within sixty (60) days after the end of each lease year as previously established herein, LESSEE will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE.
- c. Right to Inspect. All LESSEE'S books of account, records, and supporting documentation, as described under Section 3.5a. hereinabove, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires, and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this lease.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts and expenses.

- d. Audit Cost. The full cost of CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit(s):

- (1) The audit(s) reveal an underpayment of more than five percent (5%) or more than \$10,000, whichever is less, between the rent due as reported and paid by LESSEE pursuant to this lease and rent due as determined by the audit(s); or
- (2) LESSEE has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this section hereof.

LESSEE shall pay any deficiency determined by the audit(s) plus interest on such amount as defined in Section 3.6, Delinquent Rent and Audit Fees, hereof, within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- e. Default. LESSEE'S failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this lease, a breach of this lease and cause for termination.

- 3.6 Delinquent Rent and Audit Fees. If LESSEE fails to pay the rent when due, LESSEE will pay, in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent 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 hereto to be appropriate to compensate CITY for loss resulting from rental 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 payments of rent be less than Twenty-five Dollars (\$25).

In the event CITY audit(s), if applicable, discloses that the rent for the audited period(s) has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY the cost of the audit(s) plus ten percent (10%) per year on the amount by which said

rent was underpaid, in addition to the unpaid rents as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as previously described herein. In the event CITY audit(s) discloses that the unpaid rent is less than five percent (5%) of the total rent, and should LESSEE fail to pay said unpaid rent within thirty (30) days after written notice from CITY, an additional fee of ten percent (10%) of said unpaid amount shall be added to the unpaid amount to compensate CITY for costs and losses due to such nonpayment. LESSEE agrees to pay such amounts and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

- 3.7 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 rental payments and the provision for delinquent rent. 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.

SECTION 4. : ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such

consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

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

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The City Manager shall require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment, that the LESSEE pay additional consideration to CITY, as set forth in Section 4.6, Additional Consideration to CITY, hereof, commencing on the effective date of such proposed sublease of the majority portion of the leasehold or assignment, and may further require that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee or assignee. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

- 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 plans approved by CITY. 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. Provided, however, after the premises are fully developed to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as LESSEE pays additional consideration to CITY as set forth in Section 4.6, Additional Consideration to CITY, hereof, and further that LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then-current rents and provisions.

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

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

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-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 Section 4.4a.(1), hereinabove 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-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-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. The minimum rent shall be equitably reduced to reflect the portion of the premises 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 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 Balboa 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 areas. Therefore, LESSEE and CITY agree that in the event of an assignment, in the event of a subletting of the majority portion of the leasehold, or in the event of a refinancing creating an encumbrance against the leasehold after the permanent improvements have been constructed, LESSEE shall pay to CITY two percent (2%) of the gross amount paid for the leasehold in connection with an approved assignment of the lease, two percent (2%) of any amount paid LESSEE in consideration of a sublease of all or a majority portion of the leasehold, or two percent (2%) of the amount of any increased loan or encumbrance needed to finance the improvements. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY'S consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this paragraph, together with an acknowledgment from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this paragraph shall be void. The provisions of this paragraph shall not apply to:

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

SECTION 5. INSURANCE RISKS/SECURITY

5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold 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 One Million Dollars (\$1,000,000) 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 100 percent 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 (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. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

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 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. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, 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 said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said 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. Except as hereinafter provided, LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will perform all such 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. All applicable codes and standards of CITY, state, and federal agencies shall be observed in all maintenance, repairs, and replacements on the premises. CITY shall be responsible for maintaining the landscaping on the premises.

- 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. Except as hereinafter provided, LESSEE agrees to order, obtain, and pay for all utilities necessary for operation of the premises. All utilities will be installed underground. CITY shall provide reasonable amounts of water for use on the leased premises. The City Manager shall have sole and absolute discretion to determine what constitutes a "reasonable amount" for purposes of this paragraph.
- 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 100 percent 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 attorney's 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 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. Fixtures and improvements which shall remain LESSEE'S property are itemized in Section 9.5 hereof.
- 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), items listed in Section 9.5, 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.
- 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 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 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.

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.

- ### **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.

- a. Equal Opportunity Contracting. 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.

- b. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

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 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 agrees to comply with the 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); and any 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, LESSEE shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.

e. 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.

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.

- 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 and all steps have been taken prior to the date hereof to qualify LESSEE to do business in the state where the premises are situated.
- 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 Supersedure. It is mutually agreed that this lease, upon its effective date, supersedes and annuls that certain lease executed on the 29th day of March, 1983, with David W. Weir and Lola L. Weir, City Clerk Document RR-258112, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

SECTION 8. : SIGNATURES

8.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 9-28-98

By Luella M. Good
Superior, Asset Marketing

LESSEE: THE ZOOLOGICAL SOCIETY
OF SAN DIEGO, a California
nonprofit corporation

Date Sept. 25, 1998

By Angela S. Myers
EXECUTIVE DIRECTOR

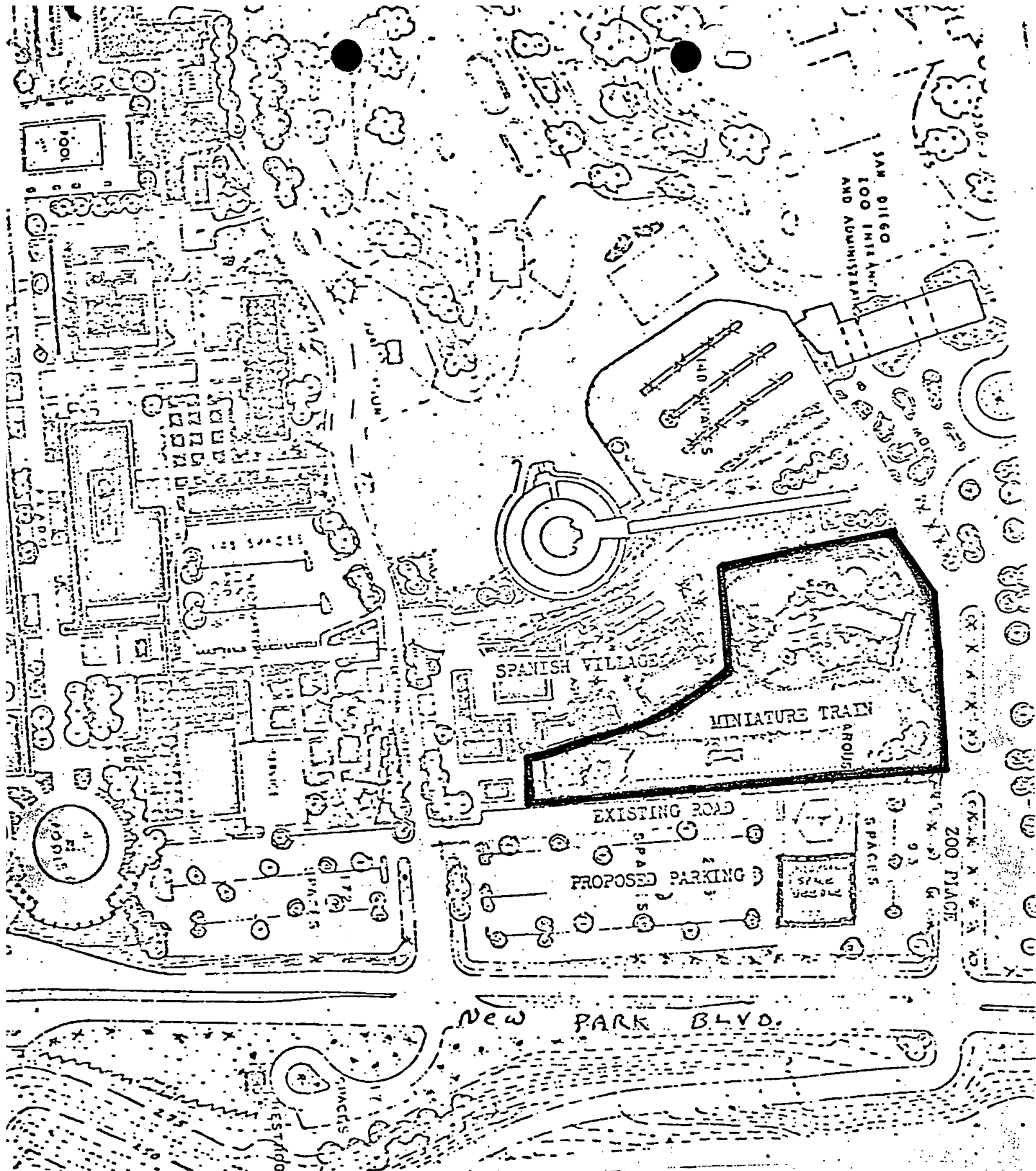
By Theresa J. [Signature]
SECRETARY

APPROVED as to form and legality this 28th day of September, 1998

CASEY GWINN, CITY ATTORNEY

By Paula Dwyer
Deputy City Attorney

PTC:csn
9/25/98
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SECTION 9.: EXHIBITS

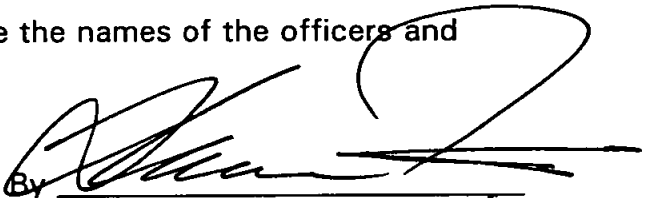
9.1 Parcel Map(s)

9.2 Corporate Name.

THE ZOOLOGICAL SOCIETY OF SAN DIEGO

CORPORATE NAME

I, Thompson Fetter, certify that I am the
Secretary of the corporation named in the attached
agreement; that Thompson Fetter, who signed this agreement on behalf
of the corporation, was then Secretary 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 July 28, 1998, 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 
SECRETARY

CORPORATE SEAL

Name Kurt Benirschke, M.D., President
Title

Name Lewis Silverberg, First Vice President
Title

Name Yvonne Larsen, Second Vice President
Title

Name Thompson Fetter, Secretary
Title

Berit Durler, Treasurer

9.3 Schedule of Rates and Charges.

\$1.25 per train ticket

9.4 Schedule of Days and Hours of Operation.

11 a.m. to 4:30 p.m., Saturday and Sunday and
all school holidays

9.5 Description and Listing of LESSEE-owned Improvements.

1. Miniature trains and all related railroad track and equipment
2. Ticket booth
3. Train shop
4. Train tunnel



THE CITY OF SAN DIEGO

September 28, 1998

David Weir
13154 Avenida del General
San Diego, CA 92129-2905

Dear Mr. Weir:

Re: Balboa Park Railroad Lease - City Clerk Document RR-258112

This office received a copy of an "Agreement for Purchase and Sale of Assets" in which you agreed to convey and assign your leasehold interest to The Zoological Society of San Diego. The City and Society have negotiated a new lease agreement with a 3-year term, which is in the process of being signed by both parties. The lease will take effect on or about October 1, 1998. The City consents to the termination of your lease and the waiver of the usual 30-day termination notice. If this letter meets with your understanding, please sign in the space below and on the enclosed two copies of this letter. Please return one of the copies to Paul Crawford of this office.

Sincerely,


LUCILLE M. GOODMAN
Supervisor
236-6720

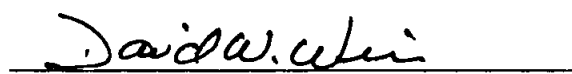
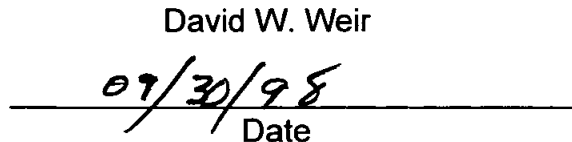
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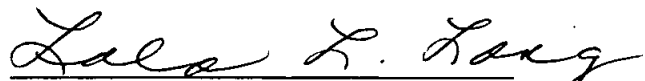
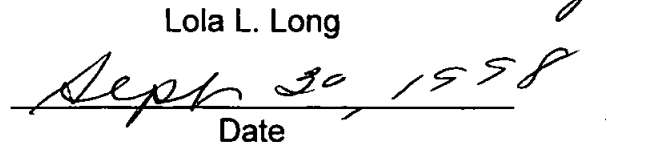
Enclosure

cc: Will Griffith, Acting Real Estate Assets Director
Jane Vickers, Real Estate Assets Deputy Director
Michael Behan, Park & Recreation Deputy Director

File: Lease - Weir, David W.

ACKNOWLEDGED AND ACCEPTED:


David W. Weir

Date


Lola L. Long

Date



I:\WPO\1998\CRAWFORD\L-WEIR.WPD

Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199

Tel (619) 236-6020 Fax (619) 236-6706

BILL OF SALE

This Bill of Sale is made this 30th day of September, 1998, by DAVID W. WEIR AND LOLA L. LONG (collectively, "Seller"), in favor of THE ZOOLOGICAL SOCIETY OF SAN DIEGO, a California nonprofit corporation ("Buyer"). This Bill of Sale is executed and delivered pursuant to that certain Agreement For Purchase and Sale of Assets dated November ____, 1997 ("Purchase Agreement"), executed by Seller and Buyer.

For valuable consideration, the receipt and adequacy of which are hereby acknowledged by Seller, Seller agrees, effective upon the Closing Date (as defined in the Purchase Agreement), as follows:

1. Sale. Seller hereby absolutely and unconditionally sells, transfers, assigns and conveys to Buyer: all of Seller's interest in the Assets (as defined in the Purchase Agreement) including without limitation that certain Train #510, manufactured by the Miniature Train Company, which is a replica of the Southern Pacific Coast daylight passenger train pulled by an A-B unit General Motors F3 diesel locomotive set, and Train #554, along with all related railroad track and equipment. The Assets also shall include all those items listed in that certain letter from David Weir to Doug Myers dated September 24, 1998 and attached hereto.

2. Further Assurances. Seller agrees to execute such other documents and perform such other acts as may be reasonably necessary or desirable to effectuate this Bill of Sale.

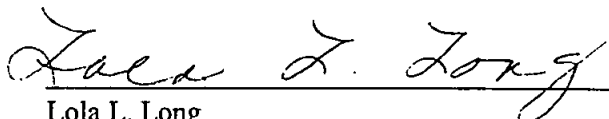
3. Successors and Assigns. This Bill of Sale shall be binding upon, enforceable by and shall inure to the benefit of the heirs, executors, successors and assigns of Seller and Buyer.

4. Condition. Except as provided in Section 2 of the Purchase Agreement, the Assets are conveyed to Buyer in their "as is" condition. Seller makes no representation or warranty regarding the condition of the Assets except as provided in Section 2 of the Purchase Agreement.

IN WITNESS WHEREOF, this Bill of Sale has been executed by Seller on the day and year first above written.

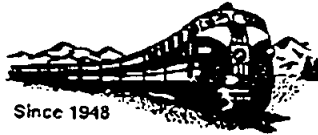


David W. Weir



Lola L. Long

Park Office:
Phone: (619) 239-4748



Business Office:
13154 Avenida Del General
San Diego, CA 92129-2905
Phone: (619) 484-7424

Balboa Park Railroad

September 24, 1998

Mr. Doug Myers
Zoological Society of San Diego
P. O. Box 551
San Diego, Ca 92112-0551

Dear Mr. Myers:

Regarding the sale agreement for the purchase of the Balboa Park Railroad by the Zoological Society dated November 25, 1997, and specifically page 1, para 1.1.1, Property and Equipment, following is a listing of property and equipment included in the sale.

1. Trains; two complete Miniature Train Company model G-16 trains, train number 510 consists of one each "A" unit and "B" unit locomotives and four passenger cars. A complete major mechanical overhaul of both locomotives was completed in 1996, with approx. 20 hours of running time since. The locomotives and passenger cars were painted in 1991. Train number 554 consists of one each "A" unit locomotive and three passenger cars. The locomotive and one passenger car were refurbished and returned to service in 1996. The two remaining passenger cars have not been refurbished and require extensive body work and painting, along with complete rebuilding of the truck assemblies.

2. Track; approx 1/2 mile of track, consisting of 12 pound rail (12 lbs per 30" weight), 4 by 4 redwood pressure treated cross ties, and appropriate splice bars, spikes, and lag bolts. Most of the rail is original from it's 1948 installation. All cross ties have been replaced at various times through the years as needed.

3. Buildings; one each car barn/train shop, tunnel structure, and train station/ticket booth. All buildings are original from 1948.

4. Tools, equipment, furniture, and accessories; one lot miscellaneous items used in the operation of the train business, consisting of but not limited to repair parts , repair tools, ticket booth furniture, and operating supplies such as grease and oil for the locomotives.

A handwritten signature in dark ink, appearing to read "David Weir".

David Weir
Balboa Park Railroad

AGREEMENT FOR PURCHASE AND SALE OF ASSETS

by and between

DAVID W. WEIR AND LOLA L. LONG
("Seller")

and

THE ZOOLOGICAL SOCIETY OF SAN DIEGO
("Buyer")

dated as of November ____, 1997

AGREEMENT FOR PURCHASE AND SALE OF ASSETS

This Agreement For Purchase and Sale of Assets (the "Agreement") is made as of November ___, 1997 by and among DAVID W. WEIR AND LOLA L. LONG (collectively, "Seller"), and THE ZOOLOGICAL SOCIETY OF SAN DIEGO, a California nonprofit corporation ("Buyer"), with respect to the following facts:

A. Seller owns certain assets (the "Assets") which are utilized in its business of operating the Balboa Park Railroad (the "Business") in Balboa Park, San Diego, California.

B. Seller has operated the Business in Balboa Park pursuant to terms of that certain Percentage Lease between The City of San Diego ("City") as lessor and Seller as lessee, Document No. RR-258112, filed March 21, 1983 in the office of the City Clerk of City and amended by that certain First Amendment To Lease Agreement, Document No. RR-255592, filed January 4, 1982 in the office of the City Clerk of City (collectively, the "Lease").

C. The term of the Lease has expired.

D. Buyer desires to purchase the Assets, the Business and enter into a lease with City to operate the Business ("Society Lease"), subject to City approval of the Society Lease as set forth herein.

E. Seller desires to sell and Buyer desires to purchase the Assets and Business pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual agreements set forth herein, and subject to the terms and provisions set forth herein, Seller and Buyer agree as follows:

1. THE TRANSACTION

1.1. Purchase and Sale of Assets. For the purchase price and on the terms and conditions hereinafter set forth, Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer at the Closing (defined in section 1.8 herein), all of Seller's right, title and interest in and to all of the Assets listed on Exhibit A and which are described below:

1.1.1. Property and Equipment. All of Seller's right, title and interest in and to the personal property and equipment used by Seller in the Business. A listing of such property and equipment shall be prepared by Seller and delivered to Buyer for its review. Such listing shall be subject to the approval of both parties prior to the Closing;

1.1.2. Goodwill. All of Seller's goodwill in, and the going concern value of, the Business, including the name "Balboa Park Railroad"; and

1.1.3. Other. All trade names, trademarks, and trademark rights (and all goodwill of the Business attendant thereto), logos, service contracts, customer lists and contracts, sales records, transferable licenses and permits; and normal business records associated with the Business.

1.2. Excluded Assets. The Assets shall not include, and Seller shall not sell to Buyer, any of the following (collectively, the "Excluded Assets"):

1.2.1. Cash. Any cash on hand or in bank accounts, or any other cash equivalents, including without limitation certificates of deposit, commercial paper, treasury bills, asset or money market accounts and all such similar accounts or investments;

1.2.2. Personal Property Consumed. Any tangible personal property consumed by Seller in the operation of the Business in the ordinary course of business between the date hereof and the Closing Date;

1.2.3. Landlord Property. Any real or personal property, or fixtures which is the property of any landlord of premises heretofore or presently occupied by the Business;

1.3. Assumption of Liabilities. As further consideration for the sale, transfer and assignment of the Assets, Buyer shall assume and hold Seller harmless from the following liabilities (the "Assumed Liabilities"):

1.3.1. Any liabilities and obligations relating to the Assets or the Business incurred on and after the Closing.

The foregoing liabilities shall be the only liabilities assumed by Buyer. Without limiting the generality of the foregoing, Buyer shall not assume and shall be held harmless by Seller from the following obligations (the "Excluded Liabilities"):

(a) Any liabilities incurred by the Seller prior to the Closing; (b) any contracts, understandings and agreements, whether written or oral, which were entered into or undertaken by Seller (i) in connection with the Excluded Assets or (ii) prior to the Closing; (c) any sales, use, transfer, recording, income and similar taxes arising out of the sale and transfer of the Assets; (d) any obligation of Seller relating to the operation of the Business prior to the Closing or arising from, or incident to, the sale, assignment, transfer and delivery of the Assets, or any delinquent sales, payroll or other delinquent tax obligation; (e) any workers' compensation liabilities with respect to employees of the Business relating to illnesses or injuries occurring prior to the Closing; (f) any liability or obligation of Seller arising out of or relating to any pension, retirement or profit-sharing plan or trust; (g) any other liabilities or obligations or Seller not expressly assumed by Buyer hereunder; and (h) any liabilities or obligations arising out of or relating to dissolution of the marriage of David W. Weir and Lola L. Long.

1.4. Covenant Not To Compete. Seller agrees that it shall not at any time within the five year period immediately following the Closing Date, directly or indirectly, engage in, or have any interest in any firm, corporation, person or business (whether as an employee, officer, director, agent, security holder, creditor, consultant, investor, owner, shareholder, partner, or otherwise) that engages in any activity within a radius of ten (10) miles from Balboa Park, San Diego, which is the same as, similar to, or competitive with the business of operating a miniature railroad. Within a radius of ten (10) miles from Balboa Park, San Diego, Seller further agrees not to divulge, communicate, use to the detriment of Buyer or for the benefit of any other person, or misuse in any way, any confidential information or trade secrets of Seller relating to the Assets including without limitation, trade secrets, know-how, customer lists, technical data or other such items.

1.5. Purchase Price.

1.5.1. Amount of Purchase Price. The total purchase price for the Assets shall be Three Hundred Sixty Thousand Dollars (\$360,000) (the "Purchase Price").

1.5.2. Allocation of Purchase Price. The Purchase Price shall be allocated as follows: \$100,000 to the property and equipment; \$200,000 to goodwill; and \$60,000 to the covenant not to compete.

1.5.3. Payment of Purchase Price. Buyer shall pay the Purchase Price to Seller in cash at Closing. Payments to Seller shall be paid fifty percent (50%) to David W. Weir and fifty percent (50%) to Lola L. Long.

1.6. Indemnity. Seller shall indemnify, defend and hold Buyer harmless from and against any and all liabilities or obligations arising with respect to the Assets or the business of Seller up to the Closing. Further, Seller shall indemnify, defend and hold harmless Buyer from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and reasonable attorney's fees, that Buyer may incur or suffer, which arise, result from, or relate to any breach of or failure by Seller to perform any of the representations, warranties, covenants or agreements contained in this Agreement.

1.7. Remediation Reimbursement. Buyer acknowledges that the premises upon which the Business has been operated has been identified as the site of Unauthorized Release No. 821193-002 by the County of San Diego Site Assessment and Mitigation Division of the Department of Health Services (the "Release"). The County of San Diego has issued a letter dated July 18, 1994 which states that no further action related to the underground tank release is required for the site at this time. The letter further states that if the present or proposed use of the site changes, it is the property owner's responsibility to notify the Site Assessment and Mitigation Division. Buyer hereby agrees that in the event the Site Assessment and Mitigation Division requires any remediation for the Release, Buyer shall pay the cost for such remediation. Buyer and Seller further agree that they will cooperate with each other in the event that either party incurs remediation costs for the Release and subsequently applies for reimbursement of such cost from the State of California Underground Storage Tank Reimbursement Fund. In the event that only one of the parties hereto qualifies for reimbursement from such fund, the qualifying party shall apply for remediation costs expended by the other party and shall deliver such reimbursement funds to the party that actually incurred the expenses upon receipt from the state.

1.8. The Closing. Subject to the satisfaction of all conditions precedent in Section 4, consummation of the transactions contemplated by this Agreement (the "Closing") shall take place on July 1, 1998. The Closing shall take place at the offices of Gray Cary Ware & Freidenrich, 401 B Street, Suite 1700, San Diego, CA 92101-4297, or at such other time and place as the parties may agree. The time and date of the Closing are herein called the "Closing Date." The transfer of the Assets to Buyer for the Purchase Price and the delivery of the documents, instruments and property required by the terms of this Agreement are sometimes called the "Consummation of the Transaction" or the "Closing." The procedures for the Closing shall be as set forth in Section 6 below. After satisfaction of all conditions precedent set forth in Section 4, Seller shall have the right to accelerate the Closing Date to any date selected by Seller one hundred twenty (120) days after delivering written notice to Buyer.

2. SELLER'S REPRESENTATIONS AND WARRANTIES

In order to induce Buyer to purchase the Assets, David W. Weir, individually, hereby represents and warrants as follows:

2.1. Debts, Obligations, Liabilities and Liens. Seller has no debts, liabilities, or obligations of any nature, whether accrued, absolute, contingent, or otherwise, and whether due or to become due, that encumber or affect the Assets.

2.2. Title to Assets. Seller has good and marketable title to all the Assets, free and clear of mortgages, liens, pledges, charges, encumbrances, equities, claims, leases, conditional sales contract, covenants, conditions, or restrictions.

2.3. Employees. Seller does not have any employment contracts or collective bargaining agreements with its employees. Buyer is not obligated to employ any of Seller's employees and Seller's employees are not obligated to work for Buyer.

2.4. Other Contracts. The Assets are not subject to or bound by any distributor's or manufacturer's representative or agency agreement, any sub-dealer's agreement, or any other agreement.

2.5. Compliance with Laws. Seller has complied in all material respects with, and has not been cited or threatened with a citation, for any violation of federal, state, or local laws and/or regulations with respect to the Assets or its business. Seller warrants that Seller has conducted the Business with all applicable licenses and in accord with applicable regulations.

2.6. Litigation. There is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or, to the best knowledge of Seller, threatened against or affecting Seller or any of its business or the Assets.

2.7. Seller's Authority and Consents. Seller has the right, power, legal capacity and authority to enter into, and perform Seller's obligations under this Agreement, and no approvals or consents of any person are necessary in connection with it.

2.8. Full Disclosure. None of the representations and warranties made by Seller contains or will contain any untrue statement of a material fact, or omit any material fact the omission of which would be misleading.

2.9. No Lien by Lola L. Long. Lola L. Long hereby represents and warrants that she has no debts, liabilities or obligations of any nature, whether accrued, absolute, contingent or otherwise, and whether due or to become due, that encumber or affect the Assets.

2.10. Representations as Covenants. All representations and warranties contained in this Agreement shall also be covenants by Seller.

2.11. Survival After Closing. All representations, warranties and covenants of Seller shall survive the Closing.

3. SELLER'S OBLIGATIONS BEFORE CLOSING

Seller covenants that from the date of this Agreement until the Closing:

3.1. Buyer's Access to Premises and Information. Buyer and Buyer's representatives shall have access during normal business hours to inspect and copy the books, accounts, records, contracts, and documents relating to the Assets, and to confer with Seller's employees.

3.2. Conduct of Business in Normal Course. Seller will carry on its business and activities diligently and in substantially the same manner as it previously has been carried on in the ordinary course of business and shall not make any unusual purchases or sales without Buyer's prior written consent. Seller shall be entitled to sell and buy any assets which are not listed in Exhibit A, outside the ordinary course of business.

3.3. Preservation of Business and Relationships. Seller will use its best efforts, without making any commitments on behalf of Buyer, to preserve its business organization intact, to keep available to Buyer its present dealers, and to preserve its present relationships with suppliers, customers, and others having business relationships with it.

3.4. Maintenance of Insurance. Seller will continue to carry its existing insurance and provide a list of such policies to Buyer upon Buyer's request.

3.5. Existing Agreements. Seller will not modify, amend, cancel, or terminate any of its existing contracts, agreements, or rights, except as may be approved in writing by Buyer.

3.6. Representations and Warranties True at Closing. All representations and warranties of Seller set forth in this Agreement will also be true and correct as of the Closing Date as if made on that date.

4. CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE

The obligation of Buyer to purchase the Assets under this Agreement is subject to the satisfaction, at or before the Closing of all the conditions set out below in this Section 4. Buyer may waive any or all of these conditions in whole or in part without prior notice; provided, however, that no such waiver of a condition shall constitute a waiver by Buyer of any of its other rights or remedies, at law or in equity, if Seller shall be in default of any of the representations, warranties, or covenants under this Agreement.

4.1. Accuracies of Seller's Representations and Warranties. Except as otherwise permitted by this Agreement, all representations and warranties by Seller in this Agreement or in any written statement that shall be delivered to Buyer under this Agreement shall be true on and as of the Closing Date as though made at that time.

4.2. Performance by Seller. Seller shall have performed, satisfied, and complied with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by Seller on or before the Closing Date.

4.3. Inspection by Buyer. Buyer shall have inspected and approved the condition of the Assets.

4.4. Absence of Litigation. No action, suit, or proceeding before any court or any governmental body or authority, pertaining to the transaction contemplated by this Agreement or to its consummation, shall have been instituted or threatened on or before the Closing Date.

4.5. City Approvals. The City shall have approved the Society Lease, in a form approved by Buyer, which approval may be granted or withheld in Buyer's sole and absolute discretion, ~~with a term to the year 2035 under terms and conditions acceptable to Buyer, including the right to terminate operation of the Business or to incorporate the use of the Business and the Assets for Buyer's zoological purposes, without any rental payment to the City by Buyer.~~

5. CONDITIONS PRECEDENT TO SELLER'S PERFORMANCE

The obligation of Seller to consummate the transactions contemplated under this Agreement is subject to the satisfaction, at or before the Closing, of all the conditions set out below in this Section 5. Seller may waive any or all of these conditions in whole or in part without prior notice; provided, however, that no such waiver of a condition shall constitute a waiver by Seller of any of its other rights or remedies, at law or in equity, if Buyer shall be in default of any of the representations, warranties, or covenants under this Agreement.

5.1. Performance by Buyer. Buyer shall have performed, satisfied, and complied with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by Buyer on or before the Closing.

6. THE CLOSING

The transfer of the Assets to Buyer (the Closing) shall occur at the place and time as specified in Section 1.8 above.

6.1. Seller's Obligations at Closing. At the Closing, Seller shall deliver or cause to be delivered to Buyer:

6.1.1. A bill of sale for the Assets, in the form of Exhibit B attached hereto, executed by Seller.

6.1.2. Possession of the Assets.

6.2. Buyer's Obligations at Closing. At the Closing, Buyer shall deliver the following to Seller for the Seller's account in return for Seller's delivery of the items specified in Section 6.1:

6.2.1. Full payment of any outstanding portion of the Purchase Price as set forth in Section 1.5.3.

6.3. Possession. Simultaneously with the consummation of the transfer, Seller will put Buyer into full possession and enjoyment of the Assets.

6.4. Further Documents. Seller, at any time before or after the Closing Date, will execute, acknowledge, and deliver any further assignments, conveyances, and other assurances, documents, and instruments of transfer, reasonably requested by Buyer and will take any other action consistent with the terms of this Agreement that may reasonably be requested by Buyer for the purpose of assigning, transferring, granting, conveying, and confirming to Buyer, or reducing to possession, any of the Assets to be conveyed and transferred by this Agreement.

7. TERMINATION OF AGREEMENT

7.1. Grounds for Termination.

7.1.1. This Agreement and the transactions contemplated hereby may be terminated at any time prior to the First Payment:

(a) By mutual consent of Buyer and Seller;

(b) By either Buyer or Seller if, in the case of Buyer, there has been a material misrepresentation or breach of warranty in the representations and warranties of Seller set forth herein, or if, in the case of Seller, there has been a material misrepresentation or breach of warranty in the representations and warranties of Buyer set forth herein;

(c) By Seller if the City has not approved the Society Lease on or before July 1, 1998. Such termination date shall be extended if on July 1, 1998, (i) Buyer has been diligently and in good faith negotiating with City staff and seeking City approval of the Society Lease, (ii) City staff has indicated it will likely recommend approval of the Society Lease to the City Council, and (iii) it appears likely a hearing before the City Council will be scheduled within 90 days of July 1, 1998.

7.1.2. In the event a party elects to terminate this Agreement pursuant to section 7.1.1, then the electing party shall promptly notify the other party in writing of such election in accordance with Section 10.11 of this Agreement.

7.2. Return of Seller's Documents in Event of Termination. In the event of the termination of this Agreement for any reason, Buyer will deliver to Seller all documents, work papers and other materials obtained from it relating to the transactions contemplated hereby, whether so obtained before or after execution hereof, and will take all practicable steps to have any information so obtained kept confidential. Buyer shall not use such information for any purpose.

8. COSTS AND PRORATIONS

8.1. Finder's or Broker's Fees. Each of the parties represents and warrants that it has dealt with no broker or finder in connection with any of the transactions contemplated by this Agreement, and, insofar as it knows, no broker or other person is entitled to any commission or finder's fee in connection with any of these transactions.

8.2. Expenses. Each party shall pay its own costs and expenses incurred or to be incurred in negotiating and preparing this Agreement and related documents, and in Closing and carrying out the transactions contemplated by this Agreement.

8.3. Sales Tax. Any sales tax on the transfer of the Assets shall be paid by Seller. Seller shall remit the sales tax to the California Board of Equalization.

8.4. Prorations. All expenses of Seller's business and the Assets up to and as of the Closing shall be paid by Seller; and Buyer shall pay all expenses related to the Assets arising after the Closing. Buyer shall reimburse Seller for any pre-paid expenses, including, but not limited to, expenses paid by Seller in advance for advertising, insurance, and utilities. Buyer shall have the right to purchase its own insurance instead of reimbursing Seller for Seller's insurance premiums.

9. GENERAL PROVISIONS

9.1. Effect of Headings; Exhibits. The subject headings of the sections of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions. All exhibits to this Agreement are incorporated herein in their entirety.

9.2. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it, except for any other agreements referenced herein. This Agreement supersedes all prior and contemporaneous agreements (other than those

entered into in writing simultaneously with this Agreement), representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

9.3. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.4. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over against any party to this Agreement.

9.5. Assignment. This Agreement shall be binding on and shall inure to the benefit of the parties to it and their respective heirs, legal representatives, successors, and assigns; provided, however, that neither party may assign any of its rights under it, except to a wholly-owned subsidiary corporation of either party. No such assignment by either party to its wholly owned subsidiary shall relieve either party of any of its obligations or duties under this Agreement.

9.6. Recovery of Litigation Costs. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

9.7. Nature and Survival of Representations and Covenants. All representations, warranties, covenants, and agreements of the parties contained in this Agreement, or in any instrument, certificate, opinion, or other writing provided for in it, shall survive the Closing.

9.8. Severability. Each term, covenant, condition or provision of this Agreement shall be viewed as separate and distinct, and in the event that any such term, covenant, condition or provision shall be held by a court of competent jurisdiction to be invalid, the remaining provisions shall continue in full force and effect.

9.9. Necessary Acts. Each party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

9.10. Time of Essence. Time is of the essence in the performance of all obligations under this Agreement.

9.11. Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if sent by Federal Express or similar service, facsimile, personal service, certified or registered mail, postage prepaid, addressed as follows:

To Buyer:

The Zoological Society of San Diego
Attn: Mr. Douglas G. Myers
Post Office Box 551
San Diego, CA 92112-0551
Telephone: 619-685-3245

With copies to:

David E. Watson, Esq.
Gray Cary Ware & Freidenrich
401 B Street, Suite 1700
San Diego, CA 92101-4297
Telephone: 619-699-3608
Fax: 619-236-1048

To Seller:

David W. Weir
13154 Avenida del General
San Diego, CA 92129-2905
Telephone: 619-484-7424
Social Security No: 368-40-5646

and to:

Lola L. Long
12067 Alta Carmel Court #79
San Diego, CA 92128
Telephone: 619-673-2126
Social Security No: _____

or such other addresses as shall be furnished in writing by either party to the other party. Any such notice or communication shall be deemed to have been given as of the date mailed in the case of mail or receipt in the case of notice given by one of the other methods required in this section.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

Seller

David W. Weir

David W. Weir

Buyer:

THE ZOOLOGICAL SOCIETY OF SAN DIEGO,
a California nonprofit corporation

Lola L. Long

Lola L. Long

By:

Douglas G. Myers
Douglas G. Myers, Executive Director

I agree and consent to the above agreement:

Allison Weir

Allison Weir

EXHIBIT A

ASSETS PURCHASED

1. Equipment, consisting of:
 - (a) All machinery and equipment used by Seller in the Business, including without limitation Train #510, which is a replica of the Southern Pacific Coast daylight passenger train pulled by an A-B unit General Motors F3 diesel locomotive set, and Train #554, along with all related railroad track and equipment.
 - (b) All tools and accessories used by Seller in the business.
 - (c) All testing equipment and tools.
2. Furniture and accessories consisting of:
 - (a) All furniture used by Seller in the business.
 - (b) All supplies and materials used by Seller in the business.
3. Records and Contracts consisting of:
 - (a) Copies or originals of all books, records and files related to the Assets, including without limitation records concerning purchases and sales of Inventory, and records as to all vendors, suppliers and customers, but excluding all corporate minute books, and all checking books and records, and general financial accounts, files and records.
 - (b) All contracts or arrangements with any dealers.
 - (c) All sales orders and purchase orders made in the ordinary course of business related to the Assets or the business.
 - (d) All customer lists and customer account information.
 - (e) Any other beneficial contracts or rights related to the Assets.
4. Intangibles consisting of:
 - (a) The goodwill and going concern value of Seller's business related to the Assets.
 - (b) The name "Balboa Park Railroad" and the logo heretofore used by Seller with respect to said name.
 - (c) Any proprietary rights, patent claims, trademark rights, or trade secrets, related to the manufacturing process heretofore used by Seller in the business or relating to the Assets.
5. Improvements consisting of:
 - (a) Ticket booth
 - (b) Train Shop
 - (c) Train Tunnel

EXHIBIT B

BILL OF SALE

This Bill of Sale is made this _____ day of _____, 199__, by DAVID W. WEIR AND LOLA L. LONG (collectively, "Seller"), in favor of THE ZOOLOGICAL SOCIETY OF SAN DIEGO, a California nonprofit corporation ("Buyer"). This Bill of Sale is executed and delivered pursuant to that certain Agreement For Purchase and Sale of Assets dated November ____, 1997 ("Purchase Agreement"), executed by Seller and Buyer.

For valuable consideration, the receipt and adequacy of which are hereby acknowledged by Seller, Seller agrees, effective upon the Closing Date (as defined in the Purchase Agreement), as follows:

1. Sale. Seller hereby absolutely and unconditionally sells, transfers, assigns and conveys to Buyer: all of Seller's interest in the Assets (as defined in the Purchase Agreement) including without limitation that certain Train #510, manufactured by the Miniature Train Company, which is a replica of the Southern Pacific Coast daylight passenger train pulled by an A-B unit General Motors F3 diesel locomotive set, and Train #554, along with all related railroad track and equipment.

2. Further Assurances. Seller agrees to execute such other documents and perform such other acts as may be reasonably necessary or desirable to effectuate this Bill of Sale.

3. Successors and Assigns. This Bill of Sale shall be binding upon, enforceable by and shall inure to the benefit of the heirs, executors, successors and assigns of Seller and Buyer.

4. Condition. Except as provided in Section 2 of the Purchase Agreement, the Assets are conveyed to Buyer in their "as is" condition. Seller makes no representation or warranty regarding the condition of the Assets except as provided in Section 2 of the Purchase Agreement.

IN WITNESS WHEREOF, this Bill of Sale has been executed by Seller on the day and year first above written.

David W. Weir

Lola L. Long