

CITY OF SAN DIEGO CONCESSION AGREEMENT

THIS CITY OF SAN DIEGO CONCESSION AGREEMENT ("Agreement") is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation ("CITY"), and **HOSPITALITY EVENTS, INC.**, a California Corporation ("CONCESSIONAIRE"), to be effective as of January 1, 2014 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. **Definitions.** As used in this Agreement, the following terms shall be defined as follows:

a. **Concession Locations.** "Concession Locations" shall mean the following spaces, buildings, and locations in CITY's Balboa Park:

- (1) The building identified as "Concession Stand" on the attached Exhibit "A," consisting of approximately 850 square feet.
- (2) The cart and equipment storage area inside and at the northeast corner of the Casa de Balboa, consisting of approximately 1,000 square feet, and further depicted on the attached Exhibit "A-1."
- (3) Mobile vending carts at locations near the Plaza de Panama, Organ Pavilion, and Zoro Garden, as shown on Exhibit "A-2."
- (4) Other buildings or mobile cart or booth locations in Balboa Park ("Locations") as may, from time to time, be designated and approved in writing by CITY.

For purposes of this Agreement, "Concession Area" shall refer to all Concession Locations, individually and collectively, and all portions thereof.

b. **Monthly Rent.** "Monthly Rent" shall mean:

For the period beginning January 1st, 2014 through May 31, 2014, Monthly Rent shall be five percent (5%) of CONCESSIONAIRE's Gross Revenue derived from its use of the Concession Area. "Gross Revenue" shall mean all revenue generated by CONCESSIONAIRE'S use of the Concession Area, less all sales taxes paid by CONCESSIONAIRE and directly resulting from CONCESSIONAIRE'S use of the Concession Area. For the period beginning June 1, 2014 and for the remaining term of the Agreement, Monthly Rent shall be twelve percent (12%) of Concessionaire's gross revenue derived from its use of the Concession Area.

c. **Concession Use.** "Concession Use" shall mean operating and maintaining concessions for the sale of refreshments, including food, candy confectionery, nonalcoholic beverages, and such other items as may be first approved by CITY, and for no other purpose whatsoever.

d. **"CONCESSIONAIRE's Address for Notices"** shall be:

Hospitality Events, Inc.
9558 Camino Ruiz
San Diego, CA 92126

e. **"Term"** shall mean three (3) years, commencing on January 1, 2014 and expiring on December 31, 2016.

2. Occupancy. Subject to the terms and conditions of this Agreement, CITY hereby grants permission to CONCESSIONAIRE and its officers, employees, agents, guests, licensees, and contractors to enter upon and occupy the Concession Area solely for the Concession Use.
3. Use of Concession Area. CONCESSIONAIRE shall use the Concession Area solely and exclusively for the Concession Use, and for no other purpose whatsoever without CITY's written consent in each instance. CONCESSIONAIRE shall continuously occupy and use the Concession Area throughout the Term, and shall diligently and regularly furnish service to CITY and the public by conducting the Concession Use in a creditable manner in conformity with this Agreement and all applicable rules and regulations of CITY.
4. Schedule of Operations. A regular schedule of days and hours of operation for the Concession Use shall be established by CONCESSIONAIRE to best serve the public as set forth in Exhibit "B" Schedule of Days and Hours of Operation, hereof. Any changes in this Schedule shall be subject to the prior written approval of CITY. CONCESSIONAIRE shall comply with said Schedule, and all terms and conditions stated therein.
5. Monthly Rent. CONCESSIONAIRE shall pay the Monthly Rent on or before the last day of the calendar month following the calendar month in which the Gross Revenue was earned. Concurrent with each payment of Monthly Rent, CONCESSIONAIRE shall at the same time provide CITY with an accurate and correct statement, in a form selected by CITY, of all gross receipts derived or resulting from the Concession Use and all Monthly Rent accordingly due for the subject month. The statement shall be signed by CONCESSIONAIRE or its authorized agent attesting and warranting to the accuracy thereof.
6. Place of Payment. All amounts due under this Agreement shall be made payable to "City Treasurer" and delivered to the Office of the City Treasurer, Civic Center Plaza Building, 1200 Third Avenue, First Floor, San Diego, CA 92101, or mailed with an invoice to:

THE CITY OF SAN DIEGO
Office of the City Treasurer
P.O. Box 129030
San Diego, CA 92112-9030

7. Delinquent Payments. If CONCESSIONAIRE fails to pay Monthly Rent when due, CONCESSIONAIRE shall pay, in addition to the unpaid Monthly Rent, five percent (5%) of the delinquent Monthly Rent. If the Monthly Rent is still unpaid after fifteen (15) days past due, CONCESSIONAIRE shall pay an additional five percent (5%) (being a total ten percent (10%)), which is agreed by the parties to be appropriate to compensate CITY for the cost of servicing the delinquent account. In no event shall the charge for late payments of Monthly Rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Agreement may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. CONCESSIONAIRE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of CONCESSIONAIRE'S default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, CONCESSIONAIRE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.
8. Unauthorized-Use Charge. CONCESSIONAIRE shall pay CITY one hundred (100%) of the gross receipts from any use of the Concession Area that is not allowed by this Agreement, regardless of any related penalties charged CONCESSIONAIRE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after CONCESSIONAIRE receives such gross receipts. No unauthorized use charges shall satisfy or credit against any other rent obligations of CONCESSIONAIRE under this Agreement. The unauthorized use charge shall otherwise be considered "rent" under this Agreement, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Agreement.
9. Inspection of Records. CONCESSIONAIRE shall make all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine CONCESSIONAIRE's compliance with this Agreement. Said records and accounts shall be complete and accurate showing all income and receipts from CONCESSIONAIRE's and other approved parties' use of the Concession Area. CONCESSIONAIRE shall maintain all such records and accounts for a minimum period of five (5) years after the expiration or termination of this Agreement.

10. Change of Concession Locations. Mobile vending cart locations as shown on Exhibit "A-2" may be changed upon written request from CONCESSIONAIRE, subject to approval of CITY which may or may not be granted in CITY's reasonable discretion. Other Locations as designated and approved by CITY may be changed by CITY, at CITY's reasonable discretion, with thirty (30) days prior written notice to CONCESSIONAIRE.
11. Equipment. CONCESSIONAIRE shall be solely responsible, at CONCESSIONAIRE's sole cost, for furnishing and maintaining all equipment and other items necessary or desired for operation of the Concession Use.
12. Conduct of Concession. CONCESSIONAIRE and its employees shall at all times conduct themselves and the Concession Use in a professional, creditable, and competent manner. CONCESSIONAIRE shall thoroughly train all employees in their duties, all requirements of this Agreement, and all applicable rules and regulations of CITY.
13. Non-Exclusive Agreement and Unauthorized Vending. This Agreement confers no exclusive right to CONCESSIONAIRE for the selling of food, beverages, or concessions within Balboa Park. CITY makes no warranty that Balboa Park shall be free of other food, beverage, and concession vending by third parties.
14. Governmental Approvals. By entering into this Agreement, neither CITY nor CITY's City Council is obligating itself to CONCESSIONAIRE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to CONCESSIONAIRE's occupancy, use, development, maintenance or restoration of the Concession Area. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
15. CITY's Consent, Discretion. CITY's consent or approval under this Agreement shall mean the written consent or approval of CITY's Mayor, or his or her designee ("Mayor"), unless otherwise expressly provided herein or required by law. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided or required by law.
16. No Holdover. If CONCESSIONAIRE continues to occupy the Concession Area after the expiration or earlier termination of this Agreement, such occupancy shall neither constitute a renewal or extension of this Agreement, nor give CONCESSIONAIRE any rights in or to the Concession Area. If CONCESSIONAIRE continues to occupy the Concession Area after the expiration or earlier termination of this Agreement, CITY may demand and receive from CONCESSIONAIRE rent for the Concession Area calculated on a per diem basis using up to two (2) times the fair market rental rate to be determined as of the date of the expiration or termination of this Agreement by an appraisal prepared by a qualified appraiser selected by CITY in its sole discretion. CITY's acceptance of such rent shall neither constitute a renewal or extension of the license, nor give CONCESSIONAIRE any rights in or to the Concession Area.

17. Termination. This Agreement may be terminated at any time to the other party upon thirty (30) days written notice.
18. CONCESSIONAIRE's Waiver. CONCESSIONAIRE expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss, financial or otherwise, which CONCESSIONAIRE incurs as a result of CITY's revocation or termination of this Agreement.
19. Restoration of Concession Area. Except as otherwise provided in this Agreement, prior to the expiration or as soon as practicable after termination of this Agreement, CONCESSIONAIRE shall restore the Concession Area to its condition on the Effective Date, normal wear and tear excepted. Any restoration work requires CITY review and approval.
20. Superior Interests. This Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, agreements and licenses, easements and rights-of-way pertaining to the Concession Area, whether or not of record. CONCESSIONAIRE shall obtain all licenses and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Concession Area, relative to any such superior interest. If CONCESSIONAIRE's use of the Concession Area is or becomes inconsistent or incompatible with a preexisting, superior interest, CONCESSIONAIRE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
21. Maintenance of the Concession Area. CONCESSIONAIRE shall, at CONCESSIONAIRE's sole cost and expense and to CITY's satisfaction, maintain the Concession Area in good order and repair and in a safe, healthy and sanitary condition at all times during the Term. CITY shall not be required to make any improvements or repairs to the Concession Area. CONCESSIONAIRE shall keep the Concession Area free and clear of rubbish, debris and litter at all times. CONCESSIONAIRE shall keep the Concession Area free and clear of weeds and brush as reasonably directed by CITY and to CITY's reasonable satisfaction.
22. Inspection. CITY may at all times enter and inspect the Concession Area.
23. Utilities. CONCESSIONAIRE shall order, obtain and pay for all utilities and service and installation charges in connection with its use of the Concession Area.
24. Improvements/Alterations. CONCESSIONAIRE shall not construct any improvements, structures or installations on the Concession Area, and shall not alter the Concession Area without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Concession Area.

25. Improvements and Personal Property.

- 25.1 Improvements. Upon expiration or termination of this Agreement, CONCESSIONAIRE shall remove any and all improvements, fixtures, structures and installations or additions to the Concession Area that were solely constructed or installed on the Concession Area by CONCESSIONAIRE ("CONCESSIONAIRE Improvements"). Any restoration work requires CITY review and approval. CONCESSIONAIRE shall, at CONCESSIONAIRE's sole cost and expense, remove all CONCESSIONAIRE Improvements as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Agreement. CONCESSIONAIRE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of CONCESSIONAIRE Improvements as required by this Agreement. If CONCESSIONAIRE fails to remove CONCESSIONAIRE Improvements as required, CITY may, at its option, remove them at CONCESSIONAIRE's sole cost and expense. Notwithstanding the foregoing, CITY may, upon notice to CONCESSIONAIRE at termination or at any time prior to the expiration of the Term, elect to assume ownership of all or any CONCESSIONAIRE Improvements as of the expiration or earlier termination of this Agreement, at no cost to CITY. If CITY elects to assume ownership of all or any CONCESSIONAIRE Improvements, CONCESSIONAIRE shall honor such assumption and execute and deliver all necessary and appropriate documents, materials and other items reasonably needed to effect such transfer of ownership to CITY.
- 25.2 Personal Property. CONCESSIONAIRE shall remove from the Concession Area all CONCESSIONAIRE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Agreement. Any such items which CONCESSIONAIRE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at CONCESSIONAIRE's sole cost and expense. CONCESSIONAIRE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Concession Area.
- 25.3 Post-Agreement License. CITY grants permission to CONCESSIONAIRE to enter upon and occupy the Concession Area after the expiration or earlier termination of this Agreement solely for the purpose of removing CONCESSIONAIRE Improvements and CONCESSIONAIRE's personal property as provided by this Agreement. This provision shall survive the expiration or earlier termination of this Agreement.
- 25.4 Late Removal. Notwithstanding any provision of this Agreement to the contrary, CONCESSIONAIRE shall pay rent to CITY for any period of time after the expiration or termination of this Agreement needed to remove CONCESSIONAIRE Improvements or personal property as required by this Agreement, whether by

CITY or CONCESSIONAIRE. Such rent shall be calculated on a per diem basis using the rental rate in effect just prior to the expiration or termination of this Agreement.

- 25.5 CITY's Right to Acquire Personal Property. If CONCESSIONAIRE wants to dispose of any of its personal property used in its operations on the Concession Area upon expiration or termination of this Agreement, CITY shall have the first right to acquire such personal property.
26. Insurance. CONCESSIONAIRE shall obtain and maintain throughout the Term, at its sole cost and expense, all insurance required by this Agreement. CONCESSIONAIRE's liabilities under this Agreement, including without limitation CONCESSIONAIRE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. CONCESSIONAIRE's maintenance of the required insurance coverage is a material consideration for this Agreement. Notwithstanding any provision of this Agreement to the contrary, if CONCESSIONAIRE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, CONCESSIONAIRE shall be in default of this Agreement. CONCESSIONAIRE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. CONCESSIONAIRE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to CITY's written approval of same):
- (1) Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy;
 - (2) Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Agreement; and
 - (3) Workers' Compensation Insurance, as required by applicable laws, for all of CONCESSIONAIRE's employees who are subject to this Agreement, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.

- 26.1 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by CONCESSIONAIRE or on CONCESSIONAIRE's behalf; (b) CONCESSIONAIRE's products; (c) CONCESSIONAIRE's work, including without limitation CONCESSIONAIRE's completed operations performed by CONCESSIONAIRE or on CONCESSIONAIRE's behalf; or (d) the Concession Area.
- 26.2 Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of CONCESSIONAIRE's insurance and shall not contribute to it.
- 26.3 Severability of Interest. Each policy must be endorsed to provide that CONCESSIONAIRE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- 26.4 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Agreement shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.
- 26.5 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 26.6 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained

which meets the requirements of this Agreement. CONCESSIONAIRE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, CONCESSIONAIRE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.

- 26.7 Modification. To assure protection from and against the kind and extent of risk existing with the Concession Use or the Concession Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances or CITY's reasonable re-evaluation of risk levels related to the Concession Use or the Concession Area.
- 26.8 Accident Reports. CONCESSIONAIRE shall immediately report to CITY any accident causing property damage or injury to persons on the Concession Area or otherwise related to the Concession Use. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 26.9 Causes of Loss - Special Form Property Insurance. CONCESSIONAIRE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of CONCESSIONAIRE's insurable property related to the Concession Use or the Concession Area in an amount to cover 100 percent (100%) of the replacement cost. CONCESSIONAIRE shall deliver to CITY a certificate of such insurance.
27. Indemnification & Hold Harmless. CONCESSIONAIRE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy, use, development, maintenance or restoration of the Concession Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE's duty to indemnify and hold harmless shall not include any established liability arising from the gross negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives and agents.
28. Compliance with Laws. CONCESSIONAIRE shall at all times in its use, occupancy, and maintenance of the Concession Area comply with all applicable laws, rules and regulations and direction by competent governmental authorities, and all at CONCESSIONAIRE's sole cost and expense. At least annually, CONCESSIONAIRE shall deliver to City copies of all documentary evidence of such compliance received by or otherwise available to

CONCESSIONAIRE (e.g., validation of periodic inspection of CONCESSIONAIRE's fire-suppression equipment in the Concession Area.)

29. California Public Records Act. CITY shall determine, in its sole discretion, whether this Agreement or any information provided by CONCESSIONAIRE pursuant to this Agreement is or is not a public record subject to disclosure under the California Public Records Act. CONCESSIONAIRE shall hold CITY and its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
30. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status or disability in CONCESSIONAIRE's use of the Concession Area, including without limitation the provision of goods, services, facilities, privileges, advantages and accommodations, and the hiring and retention of employees and contractors.
31. Equal Opportunity. CONCESSIONAIRE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. CONCESSIONAIRE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. CONCESSIONAIRE shall cause the foregoing provisions to be inserted in all of CONCESSIONAIRE's contracts for work related to this Agreement so that such provisions will be binding upon each of CONCESSIONAIRE's contractors. CONCESSIONAIRE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request CONCESSIONAIRE shall submit a current Workforce Report. CONCESSIONAIRE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.
32. Equal Benefits. CONCESSIONAIRE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. CONCESSIONAIRE shall certify that it will maintain such equal benefits throughout the term of this Agreement. CONCESSIONAIRE's failure to maintain equal benefits shall be a material breach of this Agreement.
33. Disabled Access Compliance. CONCESSIONAIRE shall comply with Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Americans with Disabilities Act of 1990 ("ADA"); and any other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. CONCESSIONAIRE's compliance shall include without limitation the following:

- a. CONCESSIONAIRE 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 CONCESSIONAIRE;
- c. CONCESSIONAIRE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
- d. Where required by law, CONCESSIONAIRE shall, at CONCESSIONAIRE's sole cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the Concession Area which deny access to disabled persons; and
- e. CONCESSIONAIRE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.

CONCESSIONAIRE and each of its sublicensees shall be individually responsible for their own ADA compliance program. CONCESSIONAIRE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Agreement.

- 34. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Agreement if CONCESSIONAIRE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of CONCESSIONAIRE for this Agreement. It is not the intent of this policy that these provisions apply to members of the City Council.
- 35. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Agreement and to the extent legally possible, CONCESSIONAIRE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. CONCESSIONAIRE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- 36. CONCESSIONAIRE's Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE's use or occupancy of the Concessionaire Area and any damages to the improvements on, under or in the vicinity of the Concessionaire Area resulting directly or indirectly thereby.



37. No Nuisance. CONCESSIONAIRE shall not use the Concessionaire Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
38. Assignment and Sublicense. CONCESSIONAIRE shall not assign or sublicense any rights granted by this Agreement or any interest in this Agreement without CITY's written consent in each instance. Any assignment by operation of law shall automatically terminate this Agreement.
39. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Concession Area or anywhere within Balboa Park, CONCESSIONAIRE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may summarily thereafter remove the item at CONCESSIONAIRE's cost.
40. Encumbrances. CONCESSIONAIRE shall keep the Concessionaire Area and the property of which it is a part (the "Property"), free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with CONCESSIONAIRE'S use or occupancy of the Concession Area. CONCESSIONAIRE shall protect, defend, indemnify and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Property, including without limitation CONCESSIONAIRE'S failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons entitled to lien or encumber the Property pursuant to the California Civil Code.
41. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon CONCESSIONAIRE or the Concession Area during the Term, including the land and any buildings, structures, machinery, equipment, appliances or other improvements or property of any nature whatsoever erected, installed or maintained by CONCESSIONAIRE, or levied by reason of CONCESSIONAIRE's occupancy, use, development, maintenance or restoration of the Concession Area, including without limitation licensing and Agreement costs and fees. CONCESSIONAIRE acknowledges that this Agreement may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall pay all such possessory interest taxes. CONCESSIONAIRE's payment for such taxes, fees and assessments shall not reduce any payment due CITY.
42. Hazardous Substances. CONCESSIONAIRE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substance or otherwise regulated substances in, on, under or from the Concession Area. CONCESSIONAIRE and CONCESSIONAIRE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Concession Area without CITY's prior written consent. CONCESSIONAIRE shall, prior to initiating any operations, obtain all required agreements from applicable regulatory agencies, including without limitation the San

Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- 42.1 Release. For all purposes of this Agreement, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a hazardous substance.
- 42.2 Hazardous Substance. For all purposes of this Agreement, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- 42.3 Remediation. If CONCESSIONAIRE's occupancy, use, development, maintenance or restoration of the Concession Area ("CONCESSIONAIRE's Operations") results in a release of a Hazardous Substance, CONCESSIONAIRE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Concession Area, and in accordance with all applicable laws, rules and regulations of governmental authorities.
- 42.4 Removal. If CONCESSIONAIRE or CONCESSIONAIRE's contractor or agent has received approval and agreements to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Concession Area, CONCESSIONAIRE and/or CONCESSIONAIRE's contractor or agent shall remove all Hazardous Substances in any type of container, equipment or device from the Concession Area immediately upon or prior to the expiration or earlier termination of this Agreement. CITY reserves the right to conduct inspections of the Concession Area and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Concession Area. CONCESSIONAIRE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- 42.5 Indemnity. CONCESSIONAIRE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from CONCESSIONAIRE's Operations, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, CONCESSIONAIRE's officers,

employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

42.6 Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Concession Area, CONCESSIONAIRE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. CONCESSIONAIRE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, CONCESSIONAIRE shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Concession Area.

42.7 Environmental Assessment. Upon reasonable cause to believe that CONCESSIONAIRE's Operations resulted in any Hazardous Substance being released on, from or beneath the Concession Area, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by CONCESSIONAIRE's Operations on, in, from or under the Concession Area, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Concession Area, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause, or if CONCESSIONAIRE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Concession Area and compliance with environmental laws and regulations are achieved, and CONCESSIONAIRE shall pay all costs and expenses therefor.

43. Water Quality Assurances. CONCESSIONAIRE shall, at its sole cost and expense, comply with all laws, rules, regulations and direction of competent governmental authority (including the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water

management. CONCESSIONAIRE acknowledges and agrees that such legal requirements may change at any time and from time to time.

- 43.1 NPDES. CONCESSIONAIRE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") Agreement in force on the Effective Date of this Lease (i.e., Agreement No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES Agreements.
- 43.2 Stormwater Management. CONCESSIONAIRE shall comply with all applicable requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices," as that term is defined by the Stormwater Code, and as approved by the City of San Diego, in its governmental capacity, under its Stormwater Management Program.
44. Waiver. The property constituting the Concession Area is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of CONCESSIONAIRE's obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Agreement, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
45. Cumulative Remedies. CITY's rights and remedies under this Agreement are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
46. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
47. Joint and Several Liability. If CONCESSIONAIRE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of CONCESSIONAIRE under this Agreement.
48. No Affiliation. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and CONCESSIONAIRE or between CITY and any other entity or party, or cause CITY to be

responsible in any way for the debts or obligations of CONCESSIONAIRE or any other party or entity.

49. Supersedure. This Agreement, upon the Effective Date, supersedes that certain "THE CITY OF SAN DIEGO, HOSPITALITY, INC., Concession Agreement, Balboa Park," between CITY and CONCESSIONAIRE, filed with the Office of the City Clerk as Document No. RR-291510 on April 19, 1999, as amended, which is hereafter terminated and of no effect except as to any rentals and fees which may have accrued and any rights, indemnities, and remedies accrued or granted to CITY under said agreement.
50. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Agreement and CONCESSIONAIRE's occupancy, use, development, maintenance and restoration of the Concession Area. Any modification, alteration or amendment of this Agreement shall be in writing and signed by all the parties hereto.
51. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
52. Notices. Any notice required or Agreement to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CONCESSIONAIRE at CONCESSIONAIRE's Address for Notices, and to CITY as follows:
- THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020
53. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
54. Acceptance of Concession Area. By signing this Agreement, CONCESSIONAIRE represents and warrants that it has independently inspected the Concession Area and made all tests, investigations and observations necessary to satisfy itself as to the condition of the

Concession Area and its suitability for the Concession Use. CONCESSIONAIRE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Concession Area or its suitability for the Concession Use, and that CONCESSIONAIRE is relying solely on its own and independent inspections, tests, investigations and observations of the Concession Area in entering into this Agreement. CONCESSIONAIRE accepts the Concession Area in its current condition. CONCESSIONAIRE acknowledges and agrees that unless set forth in this Agreement, CITY has no obligation to improve, modify, repair, replace, alter, secure, or otherwise develop the Concession Area at any time either prior to, on or after the Effective Date. CONCESSIONAIRE shall not hold CITY responsible for any defects in the Concession Area. CONCESSIONAIRE accepts and assumes all risk of harm to all persons and property, including without limitation CONCESSIONAIRE's employees, from any defects in the Concession Area, and shall be solely responsible therefor.

55. Restriction on Plastic Food Containers

- a. CONCESSIONAIRE shall not provide to its customers any prepared, takeout, or supplied/resale food in polystyrene foam packaging, nor shall CONCESSIONAIRE obtain or keep any such customer food packaging at or on the Concession Area. CONCESSIONAIRE's food packaging for all foods shall be recyclable plastic, and CONCESSIONAIRE shall deliver to CITY, upon request, evidence of such in the form of paid invoices for the purchase of biodegradable containers in amounts sufficient to indicate compliance with this section. Post-consumer recycled plastic is preferred for all customer food packing related to the Concession Use. No biodegradable or compostable packaging is to be used by CONCESSIONAIRE unless with the prior written approval of City's Environmental Services Department.. "Prepared food" means all food or beverage prepared on the Concession Area for immediate consumption on the Concession Area. "Takeout food" means all food or beverage to be consumed off of the Concession Area. "Supplied/Resale food" means foods or beverages which are supplied by a third party to the CONCESSIONAIRE for either preparing food or beverages on site or direct sell. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, and on or in which any prepared food or takeout food is provided on or from the Concession Area.

CONCESSIONAIRE should also limit its distribution of plastic bags to its customers.

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

HOSPITALITY EVENTS, INC., a California corporation

BY: 
Name: FRANK CHRISTIAN
Title: PRESIDENT

THE CITY OF SAN DIEGO, a California municipal corporation

BY: [Signature]

Name: Kristin Gerte

Title: Interim Director Real Estate Assets

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301 (Existing Facilities) and Section 15331 (Historical Resources Restoration/Rehabilitation). Approved by Environmental Analysis Section, Development Services Department.

Date: 5/6/14

BY: [Signature]

Name: Myra Herrmann

Title: Senior Planner

Approved as to form and legality this 6th day of May, 2014

JAN I. GOLDSMITH, City Attorney

BY: [Signature]

Name: Jeremy Fonseca

Title: Deputy City Attorney

I:\Support Staff Group\WPO\2014\PHILLIPS\CONCESSION AGREEMENT-HOSPITALITY EVENTS.docx

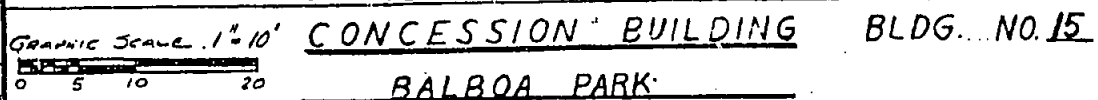
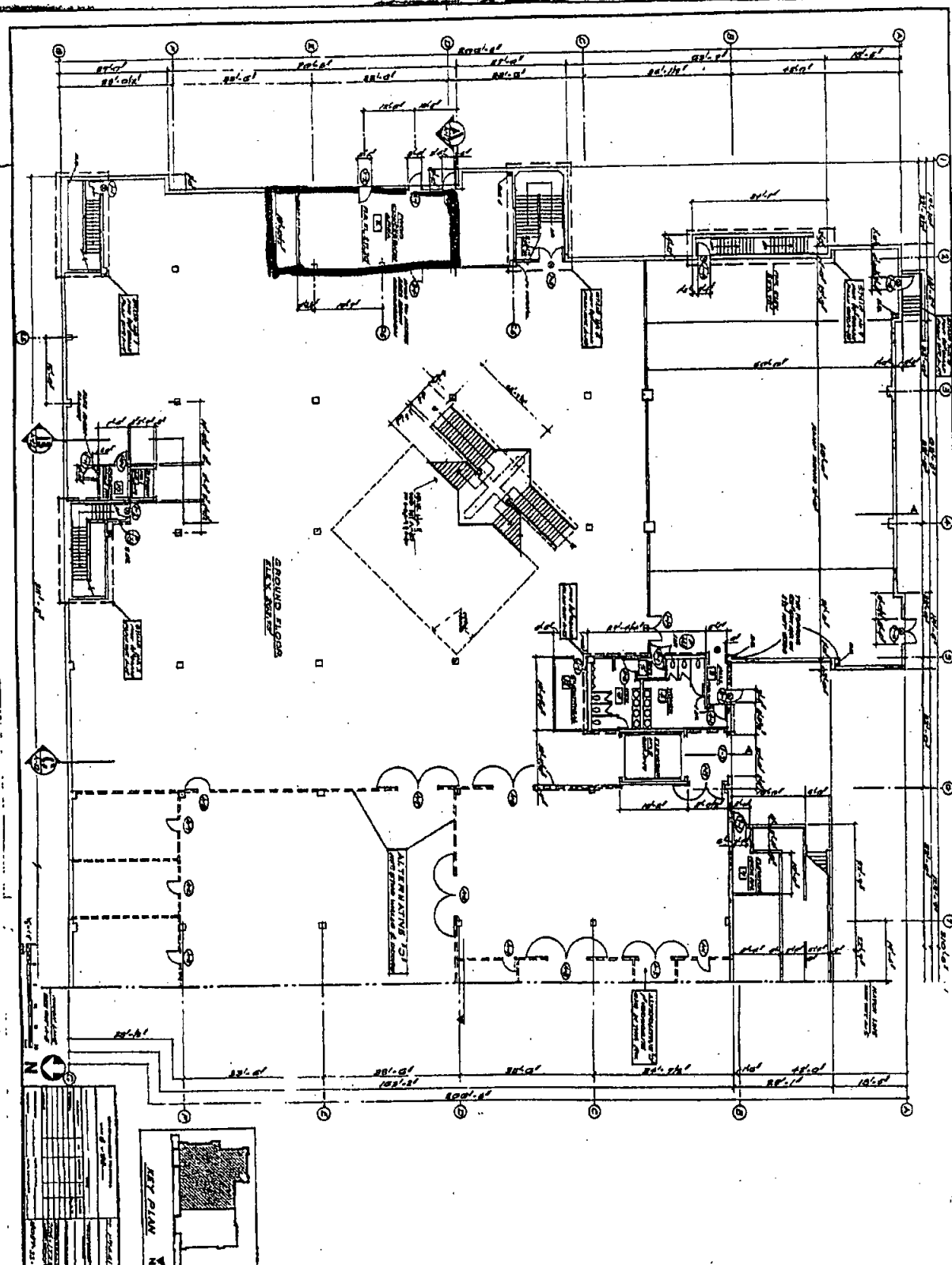


Exhibit "A"

F.C.

CASA DE BALBOA STORAGE AREA



GROUND FLOOR PLAN. RECONSTRUCTION OF ELECTRIC BUILDING BALBOA PARK SAN DIEGO, CALIF.		RICHARD GEORGE WHEELER AIA ASSOCIATES PLANNING & ARCHITECTURE 3276 ROSBOROUGH STREET SAN DIEGO CALIFORNIA 92110 TM 222 7101
PHASE IV REPLACEMENT BUILDING		

Exhibit "A-1"

FC

CULTURAL RECREATION AREA BALBOA PARK, CITY OF SAN DIEGO

1. ZOO ENTRANCE
2. PHOTOGRAPHIC ARTS BLDG
3. SPANISH VILLAGE
4. NATURAL HISTORY MUSEUM
5. CASA DEL PRADO
 - a. Casa del Prado Theatre
6. BOTANICAL BLDG
7. SAN DIEGO MUSEUM OF ART
 - a. West Gallery
 - b. Sculpture Garden Cafe
8. TIMKIN ART GALLERY
9. OLD GLOBE THEATRE
 - a. Coscius Carter Centre Stage
 - b. Lowell Davies Festival Theatre
10. MUSEUM OF MAN
11. HOUSE OF CHARMS
12. HOUSE OF HOSPITALITY

- a. Cafe del Rey Moro
- b. Information Center
13. CASA DE BALBOA
 - a. Hall of Chompone
 - b. Museum of Photographic Arts
 - c. Model Railroad Museum
 - d. San Diego Historical Research Archives
 - e. Balboa Art Conservation Center
 - f. Chocolate Lily Cafe
14. REUBEN M. FLEET SPACE THEATRE/SCIENCE CENTER
15. HALL OF NATIONS
16. UNITED NATIONS BLDG
17. HOUSE OF PACIFIC RELATIONS

18. BALBOA PARK CLUB
 - a. Park Development
 - b. Police Storefront
19. PALISADES BLDG
 - a. Maria Hachceet Puppet Theatre
 - b. Rectory Hall
 - c. BALBOA PARK MANAGEMENT CTR.
20. SAN DIEGO AUTOMOTIVE MUSEUM
 - a. Park and Recreation Management
21. AEROSPACE HISTORICAL CENTER
 - a. Aerospace Museum and Hall of Fame
22. STARLIGHT BOWL
23. MUNICIPAL GYM
24. FEDERAL BLDG
25. POLICE STABLES (New)
26. CENTRO CULTURAL DE LA RAZA
27. NAVAL EXCHANGE BLDGS
 - a. Bldg 1 (Entrance)
 - b. Bldg 8 (Library)
 - c. Bldg 149 (Chapel)

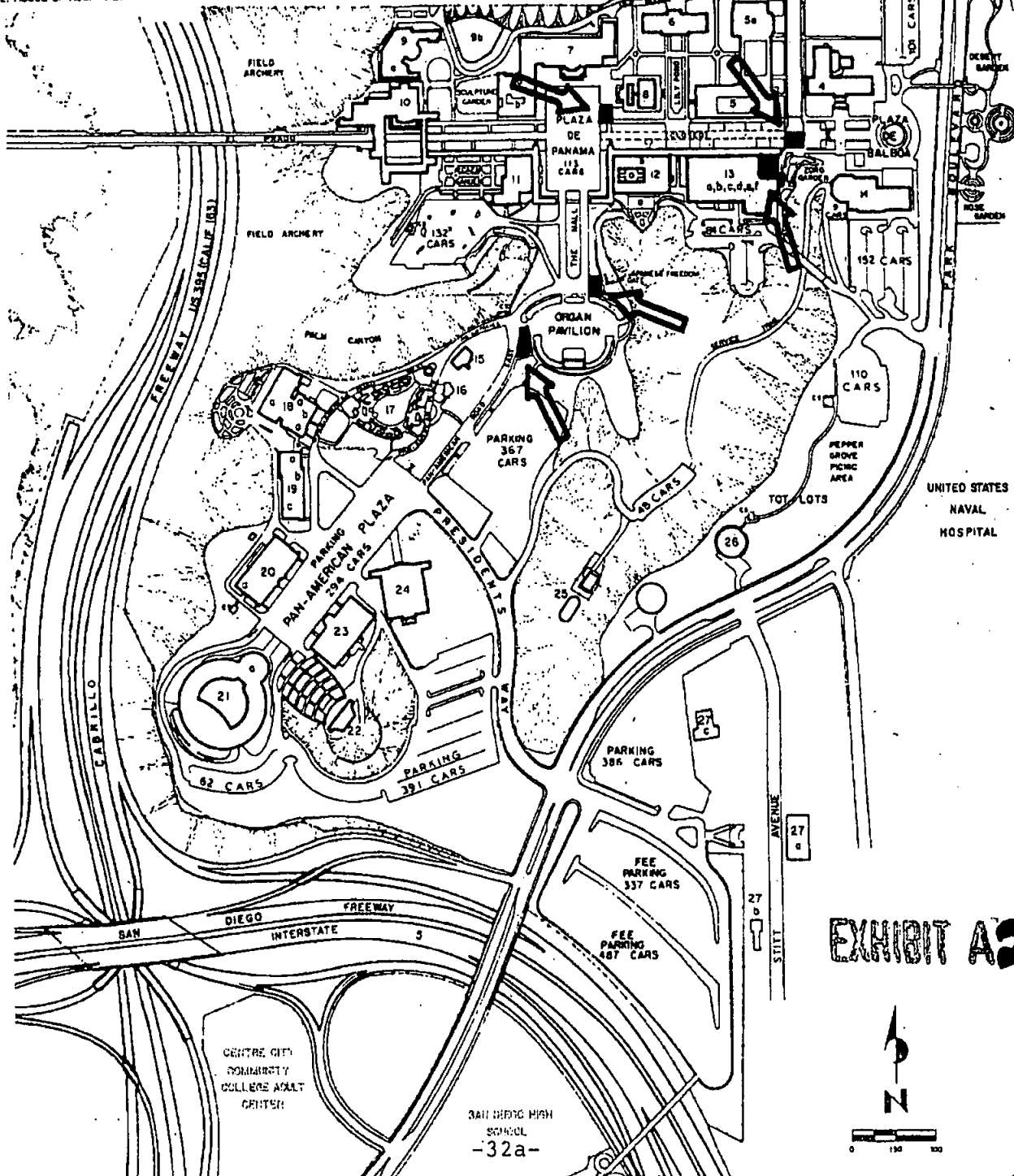


EXHIBIT A2



FC

Schedule of Days and Hours of Operation.

Concession Stand

The Concession Stand will be operated everyday except Thanksgiving and Christmas. There will be a summer schedule and a winter schedule, with the summer schedule in effect between Memorial Day weekend and Labor Day weekend.

Winter Hours	Weekdays	9:00 a.m. to 4:00 p.m.
	Weekends	8:00 a.m. to 5:00 p.m.

Summer Hours	Weekdays	8:00 a.m. to 5:00 p.m.
	Weekends	8:00 a.m. to 6:00 p.m.

Mobile Carts

A variety of mobile carts will be placed in operation at approved Locations in the park as the volume of business dictates. At least one set of carts will be placed out each day, as weather permits, during the summer schedule and each weekend day during the winter schedule.

Winter Hours	Weekdays	Weekends
10:00 a.m. to 4:00 p.m.	0 to 1 Cart Location	1 to 2 Cart Locations
	0 to 3 Carts Overall	3 to 6 Carts Overall

Summer Hours		
10:00 a.m. to 6:00 p.m.	3 Cart Locations	3 Cart Locations
	6 Carts Overall	8 Carts Overall

The above hours for mobile carts are approximate and will be adjusted with weather and business volume conditions.

Exhibit "B"

FC