

\$6,000,000
Variable Rate Demand Certificates of Participation
Evidencing Proportionate Interests of the Holders
Thereof in Installment Payments to be Paid by the
County of San Diego
From Purchase Payments to be Received From
the San Diego Museum of Art

CITY MANAGER CONSENT TO LEASE ASSIGNMENT
IN CONNECTION WITH PROPOSED FINANCING

The undersigned is delivering this Certificate in connection with the participation of the San Diego Museum of Art (the "Museum") in the issuance of the above captioned Variable Rate Demand Certificates of Participation ("Certificates") evidencing proportionate interests of the holders thereof in installment payments to be paid by the County of San Diego (the "County"). The Certificates will be sold to Bank of America Securities, LLC (the "Underwriter") pursuant to that certain Certificate Purchase Agreement (the "Certificate Purchase Agreement") dated March 29, 2000 by and among the Museum, the County, and Underwriter. The proceeds of sale of the Certificates will be used by the Museum to undertake the construction, renovation, remodeling and/or equipping of improvements to certain portions of the City's property in Balboa Park (the "Leasehold Estate") which are leased to the Museum pursuant to that certain San Diego Museum of Art Lease Agreement dated February 12, 1990 (the "Lease"), and filed on that same date with the City Clerk as Document No. RR-275126. In order to facilitate the issuance and sale of the Certificates by the County, the Museum desires to sell its Leasehold Estate to the County, and immediately purchase the Leasehold Estate back from the County.

Section 4.02 of the Lease prohibits assignment of the Lease or any interest therein without the prior written consent of the City Manager. The City Manager hereby consents to the Museum's sale of its Leasehold Estate to the County with simultaneous sell-back by the County to the Museum, all in connection with the issuance and sale of the Certificates. Entry into the Certificate financing transaction between the Museum and the County does not require any additional, separate approval by the City.

Further, we hereby confirm that to the best of our actual knowledge after reasonable investigation, there is no breach or default, nor state of facts or conditions which, with notice, the passage of time, or both, would result in a breach or default on the part of either of the City or the Museum under the Lease. To the best of our actual knowledge after reasonable investigation, there is no claim, controversy, dispute, quarrel or disagreement existing between the City and Museum with respect to the Lease and the City has no claim of any nature against the Museum with respect to the Lease or the Museum's possession and use of the Leasehold Estate. The Lease is in full force and effect in accordance with its terms and is a binding obligation of the City.

In relying upon this consent, the Museum represents that (1) the City shall have no obligation whatsoever, contingent or otherwise, for any monetary obligation or other dispute arising from the financing transaction or any Transaction Document (as defined below), (2) that the Museum shall defend, indemnify, protect, and hold the City, its agents, officers, and employees harmless from and against any and all claims arising from the financing transaction or any Transaction Documents, and (3) in accordance with Section 5.02(c) of the Lease, the Museum shall name the City as an additional insured on any insurance policy that is required to be obtained pursuant to the financing transaction or any Transaction Documents. The term "Transaction Documents" means every document or instrument delivered in connection with the Certificate financing transaction, including but not limited to, the Certificate Purchase Agreement,

Trust Agreement, Purchase Agreement, Sale Agreement, Letter of Credit, Reimbursement Agreement, Tax Agreement, and Official Statement (which capitalized terms are defined in the Certificate Purchase Agreement).

CITY OF SAN DIEGO

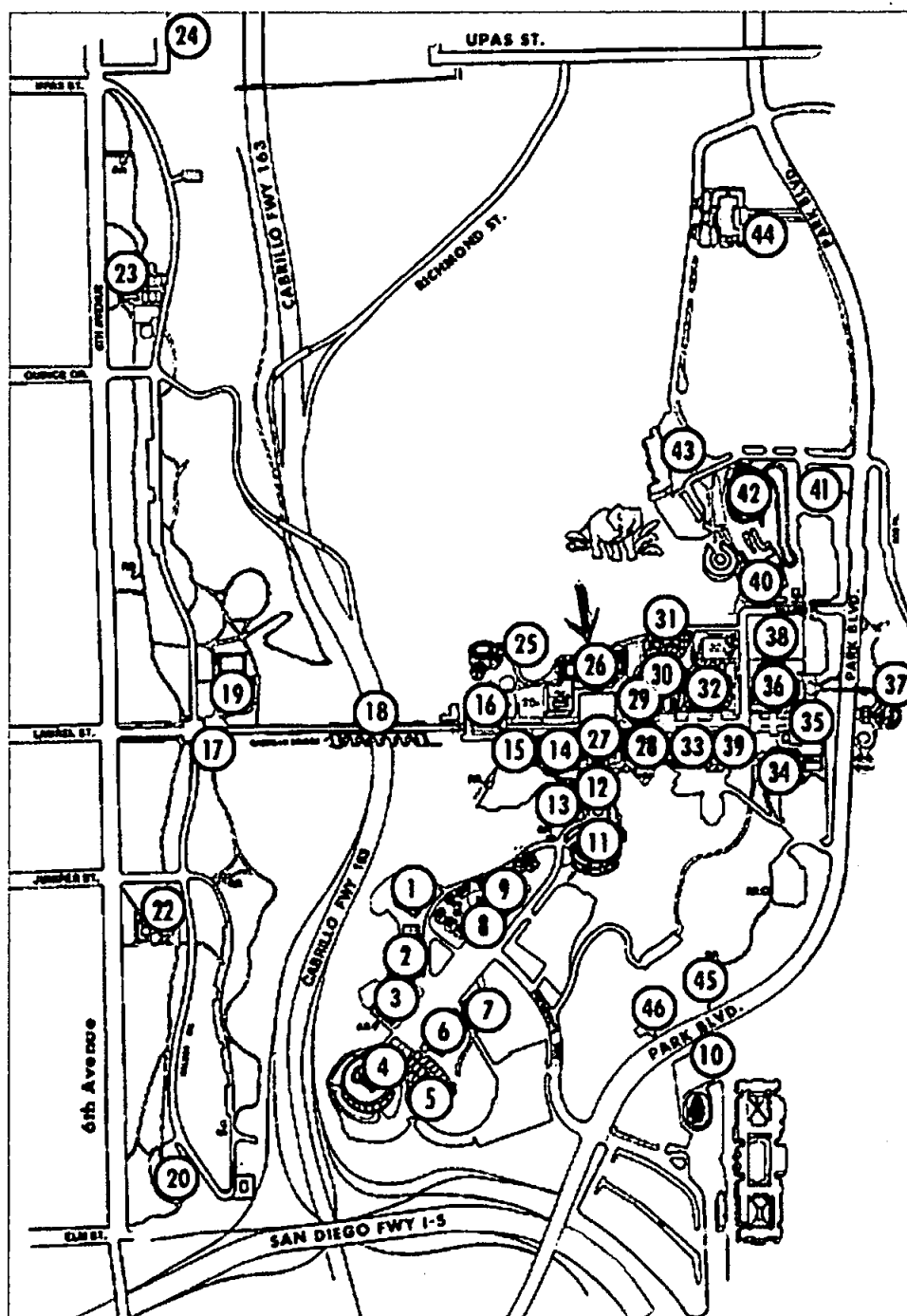
By: Joe E. Vuckasin
William T. Griffith
Director, Real Estate Assets Dept.

Date: March 24, 2000

APPROVED AS TO FORM AND LEGALITY:
Casey Gwinn, City Attorney

By: John W. Gwinn
Deputy City Attorney

Date: March 24, 2000



- | | |
|---|------------------------------------|
| 1) <u>Balboa Park Club</u> | 25) <u>Old Globe Theater</u> |
| 2) <u>Palisades Building</u> | 26) <u>San Diego Museum of Art</u> |
| 3) <u>San Diego Automotive Museum</u> | 27) <u>El Cid Statue</u> |
| 4) <u>San Diego Aerospace Museum and International Aerospace Hall of Fame</u> | 28) <u>House of Hospitality</u> |
| 5) <u>Starlight Bowl</u> | 29) <u>Timken Museum of Art</u> |
| 6) <u>Municipal Gymnasium</u> | 30) <u>Lily Pond</u> |
| 7) <u>Federal Building</u> | 31) <u>Botanical Building</u> |
| | 32) <u>Casa del Prado</u> |

- a) Hall of Champions Sports Museum
- 8) House of Pacific Relations
- 9) United Nations Building
- 10) Balboa Park Activity Center
- 11) Spreckels Organ Pavillion
- 12) Community Christmas Tree
- 13) Palm Canyon
- 14) House of Charm
 - a) Mingei International Museum
 - b) San Diego Art Institute
- 15) Alcazar Garden
- 16) Museum of Man
- 17) West Gate
- 18) Cabrillo Bridge
- 19) Lawn Bowling Greens
- 20) Marston Point
- 22) Balboa Club
- 23) Redwood Club
- 24) Marston House
- 33) Casa de Balboa
 - a) San Diego Historical Society and Research Archives
 - b) Model Railroad Museum
- 34) Reuben H. Fleet Science Center
- 35) Plaza de Balboa & Bea Evenson Fountain
- 36) San Diego Natural History Museum
- 37) Rose and Cactus Garden
- 38) Moreton Bay Fig
- 39) Photographic Arts Building
- 40) Spanish Village Art Center
- 41) Balboa Park Carousel
- 42) Miniature Railroad
- 43) San Diego Zoo
- 44) War Memorial Building
- 45) Centro Cultural de la Raza
- 46) Worldbeat Center

More information on Balboa Park

[Park & Recreation Home](#) | [General Park Information](#) | [Top of Page](#) |
[Recreation Centers & Pools](#) | [Parks & Open Space](#) | [Golf Courses](#) | [Recreation Activities & Programs](#) |
[Site Map](#) | [Privacy Notice](#) | [Disclaimers](#)
[Home](#) | [Business](#) | [City Hall](#) | [Community](#) | [Departments](#) | [Information](#) | [Leisure](#) | [Services A-Z](#) | [Visiting](#) |
[Search](#) | [Site Map](#) | [Contact the City](#) | [Privacy Notice](#) | [Disclaimers](#) |

ORIGINAL

THE CITY OF SAN DIEGO
SAN DIEGO MUSEUM OF ART
BALBOA PARK LEASE AGREEMENT

09/08/88

DOCUMENT NO. PR-275126
FILED FEB 12 1990
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

INDEX
CITY OF SAN DIEGO
AND
SAN DIEGO MUSEUM OF ART
AGREEMENT

<u>SECTION</u>	<u>Page</u>
SECTION 1: USES	
1.01 Premises	1
1.02 Uses	1
1.03 Related Council Actions	2
1.04 Quiet Possession	2
1.05 Easements and Reservations	3
1.06 Competent Management	3
1.07 Operation of Facilities	3
1.08 CITY Use	4
1.09 Political Activities	4
SECTION 2: TERM	
2.01 COMMENCEMENT	4
2.02 Right to Extend	4
2.03 Renegotiation	5
2.04 Holdover	5
2.05 Quitclaim and Surrender of LESSEE'S Interest.....	5
SECTION 3: CONSIDERATION	
3.01 Consideration	6
3.02 Inspection of Records	6
SECTION 4: ASSIGNMENT	
4.01 Time is of Essence; Provisions Binding on Successors...	7
4.02 Assignment and Subletting	7
4.03 Defaults and Remedies	8
4.04 Eminent Domain	9
SECTION 5: INSURANCE RISKS/SECURITY	
5.01 Indemnity	10
5.02 Insurance	11
5.03 Waste, Damage, or Destruction	13
SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS	
6.01 Acceptance of Premises	14
6.02 Entry and Inspection	14
6.03 Maintenance	14
6.04 Improvements/Alterations	15

6.05	Utilities	15
6.06	Construction Bond	15
6.07	Liens	16
6.08	Taxes	16
6.09	Signs	17
6.10	Ownership of Improvements and Personal Property	17
6.11	Unavoidable Delay	18

SECTION 7: GENERAL PROVISIONS

7.01	Notices	18
7.02	Compliance with Law	19
7.03	CITY Approval	19
7.04	Nondiscrimination	20
7.05	Equal Opportunity	20
7.06	Partial Invalidity	20
7.07	Legal Fees	20
7.08	Number and Gender	21
7.09	Captions	21
7.10	Entire Understanding	21
7.11	CITY Employee Participation Policy	21
7.12	Bylaws	22
7.13	Standard Conduct of Employees	22

SECTION 8: SPECIFIC PROVISIONS

8.01	CITY Funds	22
8.02	Payments	22
8.03	Covenants by LESSEE	22
8.04	Board of Trustees	23
8.05	Admission Fees	23
8.06	Use of CITY Funds	23
8.07	Use of Proceeds	24
8.08	Annual Report	24
8.09	Financial Records	24
8.10	Accounting Procedures	24
8.11	Inspection of Records and Audit	25
8.12	Proposed Budget	25
8.13	Activities and Inventory	25
8.14	Personnel	25

SECTION 9: SIGNATURES

9.01	Signature Page	26
------	----------------------	----

SECTION 10: EXHIBITS

10.01	Schedule of Rates and Charges	27
10.02	Schedule of Days and Hours of Operation	27
10.03	Museum of Art Maintenance Repairs	28
10.04	Exhibit A	31

ADDENDUM TO LEASE AGREEMENT: ASBESTOS REMOVAL

1.1	Repair	1
1.2	Improvements	1
1.3	General Guidelines	2

SAN DIEGO MUSEUM OF ART

LEASE AGREEMENT

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and SAN DIEGO MUSEUM OF ART, hereinafter called "LESSEE."

SECTION 1: USES

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated 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."

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of operation and maintenance of an art museum, including gift shop, Sculpture Garden Restaurant, and incidental purposes as may be approved in writing by the City Manager. LESSEE shall not exclude the general public or interfere with the public's right to the use and enjoyment of Balboa Park and its facilities; provided, however, that reasonable restrictions and regulations may be made in order to carry on art museum and related activities in an orderly and proper manner.

LESSEE may operate a gift shop on the premises and sell to the general public non-alcoholic beverages, light refreshments, packaged food items and articles which primarily relate to subjects on display or activities conducted in the Museum, including, but not limited to books, periodicals and related artifacts.

LESSEE may sell, or engage a concessionaire to sell food, light refreshments and non-alcoholic beverages and packaged food items to the public on the premises. Such operation shall be considered an accessory use. No sign, displays or advertising related to the accessory use shall be visible from any non-lease area without prior written approval of the City Manager. Such approval shall not be unreasonably withheld. The City Manager has approved the sale of selected alcoholic beverages in conjunction with food sales at the Sculpture Garden Cafe. Upon receipt of a written request from LESSEE detailing any changes in the prior approval for the type of beverages to be sold, the time, and the conditions of sale, LESSEE may modify such activities. In addition, the LESSEE may serve alcoholic beverages in conjunction with special events and special functions taking place on the premises. Approval by the City Manager of such changes or events shall not be unreasonably withheld. All sales of alcoholic beverages on the premises shall be subject to the regulation and approval of the California Department of Alcoholic Beverage Control.

1.03 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 the development or operation of the premises. Discretionary action includes, but is not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.04 Quiet Possession. LESSEE, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom.

1.05 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, along and across the 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 premises resulting from CITY exercising the rights reserved in this section. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.06 Competent Management. Throughout the term of this Lease Agreement, LESSEE shall provide competent management of the 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 an art museum and related activities in a fiscally responsible manner.

1.07 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 10.02; 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. Such approval shall not be unreasonably withheld. 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.

1.08 CITY Use. The premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs and subject to the approval of LESSEE. Such approval shall not be unreasonably withheld. After every CITY use, the premises shall be left in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use.

1.09 Political Activities. The premises shall be used exclusively for the purposes specified in Section 1.02, USES, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual of 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.

SECTION 2: TERM

2.01 Commencement. The term of this agreement shall be twenty-five (25) 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.

2.02 Right to Extend. CITY hereby grants to LESSEE an option to renew this agreement for an additional period of twenty-five (25) years upon the expiration of the term of this agreement. Said renewal shall be made on the same terms, covenants, and

conditions as expressed herein and subject to the same exceptions and reservations as contained herein.

This option shall be exercised only by written notice, duly given and delivered, setting forth LESSEE'S election to exercise said option. Said notice of LESSEE'S exercise of this option to renew shall be given no more than one hundred eighty (180) days and no less than one hundred fifty (150) days prior to expiration of the term hereof.

2.03 Renegotiation. The provisions of this lease shall be subject to renegotiation every five (5) years during the term of the lease, including any extensions thereof. These renegotiation opportunities shall be referred to as "renegotiation intervals." Renegotiation shall be initiated upon written notice given by CITY or LESSEE to the other not less than one (1) year prior to the particular renegotiation interval. Renegotiation shall be directed toward effecting alterations in the terms and conditions of this lease solely to reflect any significant changes which have occurred during the interim period and shall not operate to increase the consideration, terminate the lease or shorten the term thereof.

2.04 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this lease constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect.

2.05 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a Quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its

successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which exist on the date of execution hereof, and in a decent, safe and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

SECTION 3: CONSIDERATION

3.01 Consideration. In consideration of CITY entering into this agreement with LESSEE, LESSEE agrees to operate, for the public benefit, an art museum and related services under the terms, covenants and conditions contained herein. Said museum shall be open to the general public a minimum of six (6) days per week, 10:00 a.m. to 4:30 p.m. including weekends but excluding legal holidays. A board of directors or trustees shall be elected by LESSEE to establish policy and govern the corporation.

3.02 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times, so that CITY can determine LESSEE'S compliance with this lease. These records and accounts will be made available by LESSEE at the leased premises and will be complete and accurate showing all income and receipts from use of the premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

SECTION 4: ASSIGNMENT

4.01 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.

4.02 Assignment and Subletting. LESSEE shall not assign this lease, or any interest therein; shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, for a period exceeding 24 hours; and shall not 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.

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 the agreement which are applicable to the rights acquired. The City Manager may require, as

a condition to approval of any sublease or assignment, that the proposed sublessee or assignee comply with standard CITY lease requirements that are then current.

4.03 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, 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 4.03a(1) hereof, 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.

4.04 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 remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken.
- d. 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 or to relocation expense. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

In the event of a partial taking under Subsection 4.04(c), all monies awarded shall be placed in a separate fund and shall be utilized, subject to the joint approval of CITY and LESSEE, for the repair and/or improvement of the remaining portion of the premises.

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.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. Each party shall at all times relieve, indemnify, protect, and save the other and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgements, civil fines, and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including but not limited to expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:

a. any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by the party;

b. any operation, use or occupation conducted on the premises by a party or under its auspices;

- c. any act, omission, or negligence on the part of a party, its employees, agents, sublessees, invitees, licensees; or
- d. any failure by a party to comply with any of the lease terms or conditions.

5.02 Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- a. Comprehensive general 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.
- b. Fire, extended coverage, and vandalism insurance on all insurable property of LESSEE, except fine arts and collections, located on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable to LESSEE. The proceeds shall be reinvested in rebuilding, repairing or improving the damaged property.
- c. 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 comple-

tion 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.

- d. 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.
- e. 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.
- f. 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 f., 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.

5.03 Waste, Damage, or Destruction. 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.

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.

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 and CITY shall discuss procedures and funding sources in order 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, to 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. LESSEE and CITY agree that these preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIR

6.01 Acceptance of Premises. By signing this lease, neither LESSEE nor CITY make any representation or warranty as to the condition of the premises.

6.02 Entry and Inspection. CITY reserves and shall always have the right 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 due to the breach of a duty of LESSEE under this lease, 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 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 due to the breach of a duty of LESSEE under this lease, 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.

6.03 Maintenance. LESSEE and CITY agree to assume responsibility and cost for the operation and maintenance of the premises pursuant to Section 10.03, Maintenance Repairs hereof.

LESSEE and CITY 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. Appropriate codes and standards of CITY, state and federal agencies shall be observed in all maintenance, repairs and replacements on the premises.

6.04 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 of its obligations under Section 10.03 of this lease to maintain the premises in a decent, safe, healthy and sanitary condition. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

6.05 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.

6.06 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.

6.07 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.

6.08 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.

6.09 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 the City Manager. Such approval shall not be unreasonably withheld. 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

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property, free of all liens and claims except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.

- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- e. 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. 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.

SECTION 7: GENERAL PROVISIONS

7.01 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 Deputy Director
Park and Recreation/Central Division
1970 "B" Street, Suite C
San Diego, CA 92102

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.

7.02 Compliance with Law. LESSEE agrees to and shall, at its sole cost and expense, comply, maintain and secure compliance with all the requirements of all municipal, state, county and federal authorities now in force or which may hereafter be in force pertaining to the said premises or the operations conducted thereon, and shall faithfully observe and secure observance with, in the use of the premises, all municipal ordinances and state and federal statutes now in force or which may hereafter be in force. The judgement of any court of competent jurisdiction or the admission of LESSEE or any sublessee or permittee in any action or proceeding against them or any of them, whether CITY be a party thereto or not, that LESSEE, sublessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of the fact as between CITY and LESSEE.

7.03 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.

7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap 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.

7.05 Equal Opportunity. LESSEE agrees to and shall take affirmative action to improve employment opportunities of minorities and women. When applicable, LESSEE agrees to abide by the CITY'S Equal Opportunity Program as it now or hereafter exists. A copy of the program, effective as the date of this agreement, is on file in the Office of the City Clerk and by this reference is incorporated herein. Minorities are presently defined as Hispanic, Black, Filipino, American Indian and Asian/Pacific Islander. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage approximately equal to the total level of minority and women employment as established by the CITY for its Equal Opportunity Program each year.

7.06 Partial Invalidity. If any term, covenant, condition, or provisions 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.

7.07 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 attorney's fees.

7.08 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.

7.09 Captions. The lease Index, 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, advise 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 shall 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 Bylaws. Membership in LESSEE'S organization shall be open to anyone meeting the requirements of its rules and bylaws. All restrictions, rules, bylaws, and fees, if any, and changes thereto proposed by LESSEE'S organization and relating to qualifications for membership, other than dues, or to the operation of the Museum, shall, before being put into effect, be submitted to and receive the written approval of the City Manager. Bylaws shall be on file in the office of the Park and Recreation Department prior to CITY'S execution of this lease.

7.13 Standard Conduct of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

SECTION 8: SPECIFIC PROVISIONS

8.01 CITY Funds. During the term of this lease, CITY shall provide funds to help defray the cost of operation of the premises and the museum in amounts to be determined annually by the City Council.

8.02 Payments. Funds provided to LESSEE by CITY for the operation of the premises shall be paid to LESSEE in twelve (12) equal monthly installments during each fiscal year.

8.03 Covenants by LESSEE. The policies established by LESSEE for the operation of the premises shall conform to the general

policies established by CITY for the use and operation of its cultural and educational facilities.

- 8.04 Board of Trustees. A Board of Trustees (the "Board") shall be elected by LESSEE. The activities and affairs of LESSEE, the Museum and the Sculpture Garden shall be exercised by or under the direction of the Board. The Board may, however, hire an officer, known as the Director, to act as the general manager and chief executive officer of LESSEE and who shall be authorized by the Board to handle the day-to-day affairs and business of LESSEE.
- 8.05 Admission Fees. As specified in Section 10.01, Schedule of Rates and Charges, LESSEE shall have the right to charge reasonable admission fees; however, at least one day per month shall be designated by LESSEE as a day when no fees for general admission shall be charged, except for special showings, exhibitions and events on the premises. The schedule of admission fees, except admission fees for special showings, exhibitions and events on the premises, shall be subject to prior written approval by the City Manager.
- 8.06 Use of CITY Funds. CITY funds shall not be used for acquisition of exhibition objects, educational programs, scientific publications, field trips and research other than that which has as its object the preparation of exhibits. In accordance with CITY'S policies, CITY funds may be expended for utilities, custodial, demonstration and guard services, materials and personnel engaged in preparing Museum exhibits for public display in a scientific manner. CITY funds may also be used for administrative and office personnel and for salaries of curators and others engaged in the normal operation of the premises. LESSEE shall not use, directly or indirectly, any of the funds received from CITY under this lease for any political or religious activities whatsoever.

- 8.07 Use of Proceeds. LESSEE agrees that all income and proceeds received by LESSEE from the operation of the leased premises, the gift shop and restaurant, shall be utilized for purposes of the continued operation, maintenance and improvement of the leased premises and for purposes incidental thereto. Certification of LESSEE'S compliance with the requirements of this section shall be specifically set forth in LESSEE'S audited financial statements as provided for in Section 8.11 hereof.
- 8.08 Annual Report. On or before March 15th of each year of this lease, LESSEE shall submit to the City Manager a financial report certified by an independent certified public accountant for the previous fiscal year of LESSEE. Said financial report shall include an operating statement and a report of net worth, and shall be in a form satisfactory to CITY and be subject to review and audit by the City Auditor of CITY. The final report shall be submitted within ninety (90) days of the expiration date of this lease and shall cover the period between the last report and the said expiration date.
- 8.09 Financial Records. LESSEE shall keep or cause to be kept true, accurate and complete records, including double entry books, a profit and loss statement and a balance sheet, making it possible at all times to determine the nature and amount of revenue and expenditures. All of the LESSEE'S expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices and receipts. Documents supporting a profit and loss statement shall be retained by LESSEE until an audit of LESSEE'S records is conducted by CITY, or until a period of three (3) years has elapsed, whichever occurs first.
- 8.10 Accounting Procedures. LESSEE shall use such accounting procedures as shall be recommended by the American Association of Museums. Revisions or changes in LESSEE'S accounting procedures not in accord with the procedures recommended by the American Association of Museums shall be approved by CITY Auditor and Comptroller.

8.11 Inspection of Records and Audit. All books, statements, documents, records and financial data of LESSEE shall be open at all times for inspection and audit by CITY upon reasonable notice. Further, CITY may conduct an audit of all books, statements, documents, records and financial data of LESSEE, on demand and receive from LESSEE the results of a complete audit as conducted by a certified public accountant in the event that (i) LESSEE'S executive director, or other managing agent, resigns, retires or is discharged; (ii) a majority in the membership of LESSEE'S Board of Trustees changes; or (iii) the purposes for which LESSEE was created are materially or substantially changed.

8.12 Proposed Budget. LESSEE shall have deposited with the City Manager by March 15 of each year copies of documents evidencing the proposed programs and financial status of LESSEE for the year for which support is required. Without limiting the generality of the foregoing, such documents shall include (i) a copy of LESSEE'S proposed programs, and (ii) a copy of a detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures.

8.13 Activities and Inventory. LESSEE shall submit to the City Manager at the close of each fiscal year (i) a report of LESSEE'S activities, and if requested by the City Manager; (ii) an inventory of furnishings and other property of CITY which are in the custody of LESSEE, in a form reasonably required by and satisfactory to CITY. The filing of the LESSEE'S annual funding report shall satisfy the requirements of this Section.

8.14 Personnel. All personnel provided for in the annual budget for operating the premises shall be employed by, and be the employees of, LESSEE. Said personnel shall not be subject in any way to the control of CITY.

SECTION 9: SIGNATURES

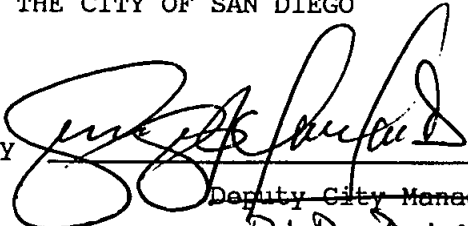
9.01 Signature Page

IN WITNESS WHEREOF, this lease 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 FEB 12 1990

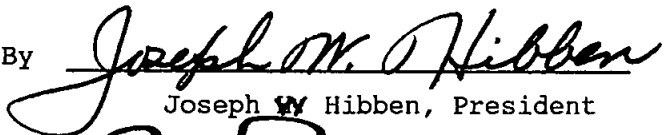
By


Deputy City Manager
P & R Director

SAN DIEGO MUSEUM OF ART

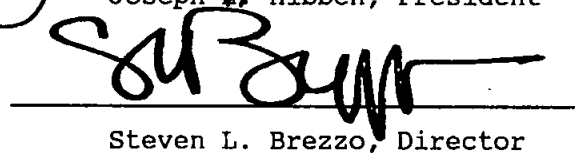
Date 9/29/88

By


Joseph W. Hibben, President

Date 9/29/88

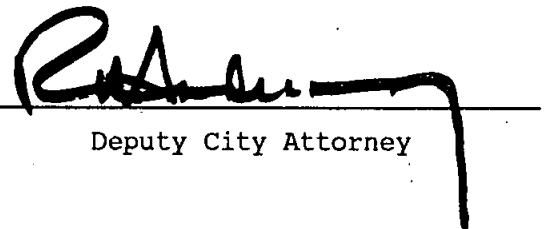
By


Steven L. Brezzo, Director

APPROVED as to form and legality this 27 day of Feb,
1990

JOHN W. WITT, City Attorney

By


Deputy City Attorney

09/08/88

artmuse.doc

SECTION: 10.01 - SCHEDULE OF RATES AND CHARGES

Adults	\$5.00
Seniors	\$4.00
Students	\$2.00
Children (6-12)	\$2.00
Under Five	FREE
Military w/I.D.	\$3.00

SECTION: 10.02 - HOURS OF OPERATION

Open to the public Tuesday through Sunday
10:00 a.m. - 4:30 p.m.

Closed to the public on Thanksgiving Day,
Christmas Day and New Year's Day

Sculpture Garden Cafe open to the public

7:00 a.m. - 1:00 a.m.

or determined within such period by LESSEE.

LEASE AGREEMENT
SAN DIEGO MUSEUM OF ART
MAINTENANCE REPAIRS

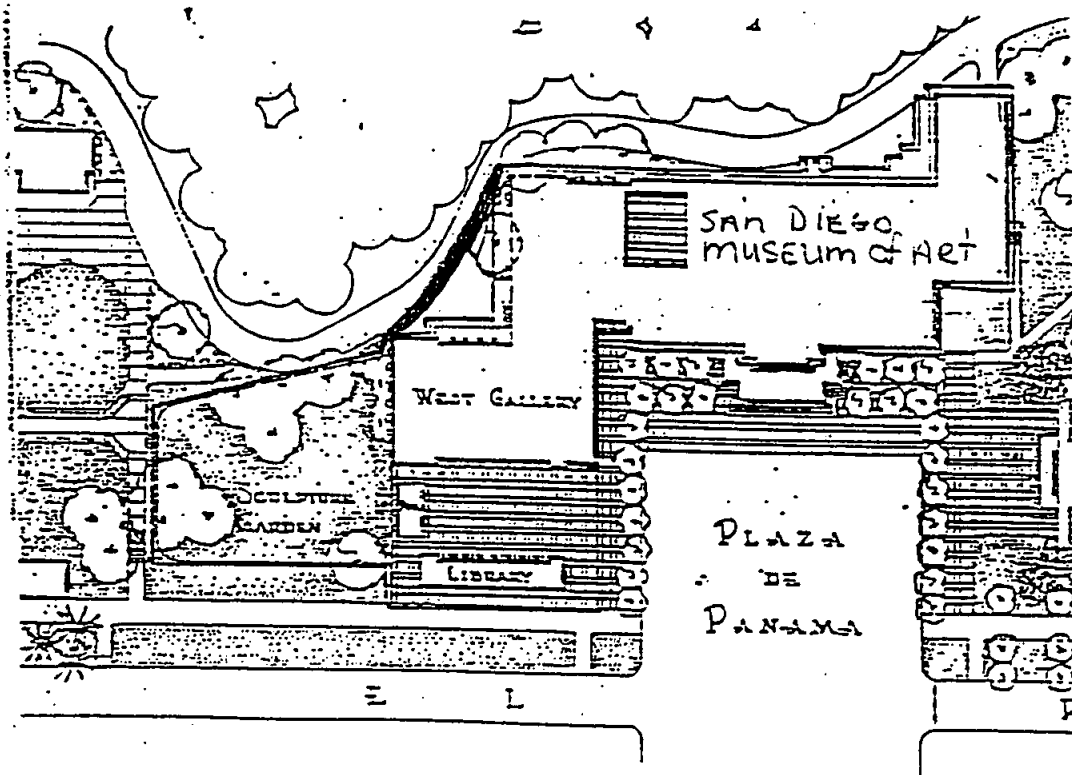
<u>System/Area</u>	<u>CITY'S Responsibilities</u>	<u>LESSEE Responsibilities</u>
Electrical/Lighting and Power	All wiring, conduit, breakers, light fixtures (as a complete item). All exterior lighting including lamps, security lights and safety fixed lights. Replace bulbs and tubes over 12 feet above floor. All permanent exhibit lighting and service. Exterior decorative and movable lights. Conduct inspection of all equipment and perform preventative maintenance not less than annually.	Troubleshoot to identify problem as feasible. Replace switch and outlet plates, fixture lenses and bulbs and tubes less than 12 feet above the floor. All temporary exhibit lighting and service.
Emergency Electrical System and Lighting	Central circuit. Repair parts and/or system wiring, conduit, generator, fixtures, controls, batteries, etc. Periodic operational check-out and preventative maintenance. Conduct inspection of all equipment not less than quarterly.	Preventive maintenance of batteries. Check generator and emergency lighting system weekly.
Heating, Ventilation and Air Conditioning System	All equipment, controls, filters, water treatment, etc. City will provide a priority response for repairs in accordance with available resources. Inspect all equipment not less than annually. Perform preventive maintenance and conduct periodic operational checks.	Check and observe daily. Identify and report problems to the CITY and maintain operational log.
Plumbing	All pipes, valves, and plumbing fixtures, hot water heaters, etc., in the water service system. All waste and vent systems, roof drains, etc., including pipe replacement and the clearing of blockages. Conduct inspection of all equipment not less than annually.	Check and observe daily. Identify and report problems to the CITY. Clean leaves and other debris from roof drains.

<u>System/Area</u>	<u>CITY'S Responsibilities</u>	<u>LESSEE Responsibilities</u>
Fire Suppression System	All maintenance of Cardox system, library halon system, sprinkler systems and/or other permanently installed system for the protection of the building. Refilling tanks if discharge is beyond the control of LESSEE. Conduct inspection of all equipment not less than annually	Check and observe daily. Report problems to CITY. Maintain all portable and/or temporary systems, extinguishers, hoses and nozzles, sensors and alarms, etc. Refill tanks if discharged by LESSEE or guests.
Alarms	None.	All sensors, alarms, wiring, etc., for security and fire alarm systems. Including heat, smoke, motion, intrusion, etc.
Reflecting Pool	Repair and maintain the pool and all pool related equipment.	Identify and report problems to CITY.
Security	Exterior building envelope, including exterior locks, emergency boarding up and repair of doors and windows, and the fence and gates around the sculpture court and garden.	All other security including lock installations and maintenance.
Displays and Additions	Approval of hookups and modifications of all types.	All installation, removal and maintenance.
Elevators/Dumbwaiters	All maintenance. Obtain and maintain permits, inspections, etc.	Check and observe daily. Identify and report problems to the CITY.
Floors/Floor Coverings	All permanent floors.	Temporary floor coverings. Repairing floor when temporary floor coverings and carpet is removed.
Windows/Glass	All glass in permanent windows and doors.	All glass in temporary partitions, displays, etc. All tinting film on windows.

<u>System/Area</u>	<u>CITY'S Responsibilities</u>	<u>LESSEE Responsibilities</u>
Doors, Walls, Ceilings, Roof and Metal Shades	All permanent items.	Any additions or modifications to existing equipment, structures or systems, displays and temporary installations, window coverings (film, shades, blinds, drapes).
Custodial	None.	All, including providing paper products, soap, light bulbs and tubes. Cleaning adjacent to structures.
Vandalism	All CITY owned items and permanent structures, including windows and courtyard.	All non-permanent structure, collection and equipment or display owned by LESSEE.
Paint	All exterior and interior painting, excluding only those areas for which LESSEE has responsibility. Surfaces shall be repainted every 7-10 years.	All interior painting of East Wing exhibit areas, office and basement areas.

EXHIBIT "A"

Description of Premises

SAN DIEGO MUSEUM OF ART

The approximate boundary of the premises is outlined on the graphic above. It is intended that the leasehold be concomitant with the exterior surface of all exterior walls and the exterior surface of the Sculpture Garden fence, plus stairs and stairwells, sunken courtyards, sculpture court, ventilation shafts, loading docks and related parking areas, and vehicle parking areas within the general limits shown.

ADDENDUM TO LEASE AGREEMENT

This Addendum to Lease Agreement between the City of San Diego, hereinafter referred to as Lessor, and the San Diego Museum of Art, hereinafter referred to as Lessee, is executed between the parties as an additional term and condition of that certain Lease Agreement between the parties authorized for execution pursuant to City Council Resolution No. R- 275126.

The parties agree that the following clause is hereby incorporated into such Lease Agreement in consonance with its terms and conditions as though fully set forth therein:

1. Asbestos Removal -

1.1. Repair. Lessor and Lessee acknowledge that portions of the structural components of the premises that are the subject of this Lease Agreement may contain asbestos. Due to the environmental issues associated with asbestos removal during structural repair, replacement or modification (collectively, "Repair"), Lessor and Lessee agree that the party who is responsible for the Repair of the premises, as outlined in sections 6.03 and 10.03 of the Lease Agreement, shall also be responsible for any asbestos removal, management or containment and all related costs, including any costs associated with the mitigation or containment of asbestos contamination of other areas ("Asbestos Costs") caused by such Repair

1.2. Improvements. Lessor and Lessee further acknowledge that similar asbestos concerns may arise if either

party undertakes improvements or remodeling (collectively, "Improvements") of the premises. Lessor and Lessee agree that the party who undertakes the Improvements, as provided in section 6.04 of the Lease Agreement, shall also be responsible for any asbestos removal, management or containment and all Asbestos Costs caused by such Improvements. The parties acknowledge that Improvements may be undertaken simultaneously with the Repair of the premises. If so, the parties shall allocate and pay the Asbestos Costs in an equitable manner in direct relation to the relative proportion of Repair and Improvements undertaken by each party on such project. If the parties are unable to reach agreement on the allocation, an independent arbitrator, acceptable to both parties, shall be appointed to determine the total Asbestos Costs and the allocation thereof. The parties shall divide the costs of the arbitration evenly.

1.3. General Guidelines. Such asbestos removal or management shall be conducted in accordance with all applicable laws and in accordance with an asbestos removal or management plan approved by Lessor and Lessee. Only contractors who are qualified and licensed in accordance with state law to engage in asbestos material removal shall be used. All asbestos material removed shall be lawfully disposed of, and a certificate of lawful removal shall be furnished when requested.

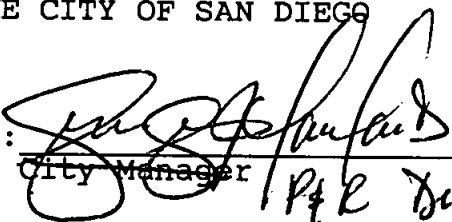
Lessor reserves the right to inspect any work undertaken by Lessee pursuant to this Addendum and to station supervisory personnel at the work site, at Lessor's sole discretion, to ensure that Lessee's obligations are carried out. Both parties

shall coordinate any Repairs and Improvements with each other and, except in the event of an emergency, the party undertaking a Repair shall provide prior written notice to the other.

IN WITNESS WHEREOF, this Addendum to Lease Agreement is executed by The City of San Diego, acting by and through its City Manager, and by Lessee, acting by and through its lawfully authorized officers.

Dated this 12th day of Feb, 1990 3m

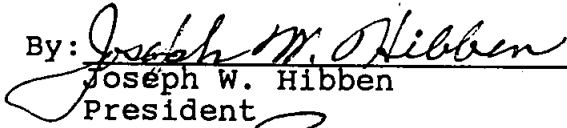
THE CITY OF SAN DIEGO

By: 

City Manager

P&E Director

SAN DIEGO MUSEUM OF ART

By: 

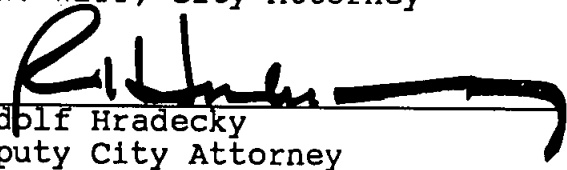
Joseph W. Hibben
President

By: 

Steven L. Brezzo
Director

I HEREBY APPROVE the form and legality of the foregoing Addendum to Lease Agreement this 27 day of Feb, 1990.

JOHN W. WITT, City Attorney

By: 

Rudolf Hradecky
Deputy City Attorney

S/ADD03DSG

(R-90-1125)

RESOLUTION NUMBER R- 275126

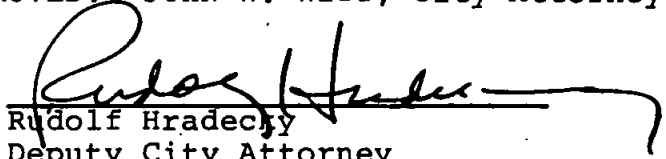
ADOPTED ON FEB 12 1990

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, an agreement with the San Diego Museum of Art to operate an art museum in Balboa Park, under the terms and conditions set forth in the Lease Agreement on file in the office of the City Clerk as Document No.

RR- 275126, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement.

APPROVED: JOHN W. WITT, City Attorney

By


Rudolf Hradecky
Deputy City Attorney

RH:mb
01/30/90
Or.Dept:Pk.&Rec.
R-90-1125
Form=r.auagr

Passed and adopted by the Council of The City of San Diego on
FEB 12 1990 by the following vote:

YEAS: Wolfsheimer, Roberts, Hartley, Pratt, Bernhardt, Henderson,
McCarty, Filner, O'Connor.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

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

(SEAL)

By: TENA M. MARTIN, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 275127, passed
and adopted by the Council of The City of San Diego, California
on FEB 12 1990.

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

(SEAL)

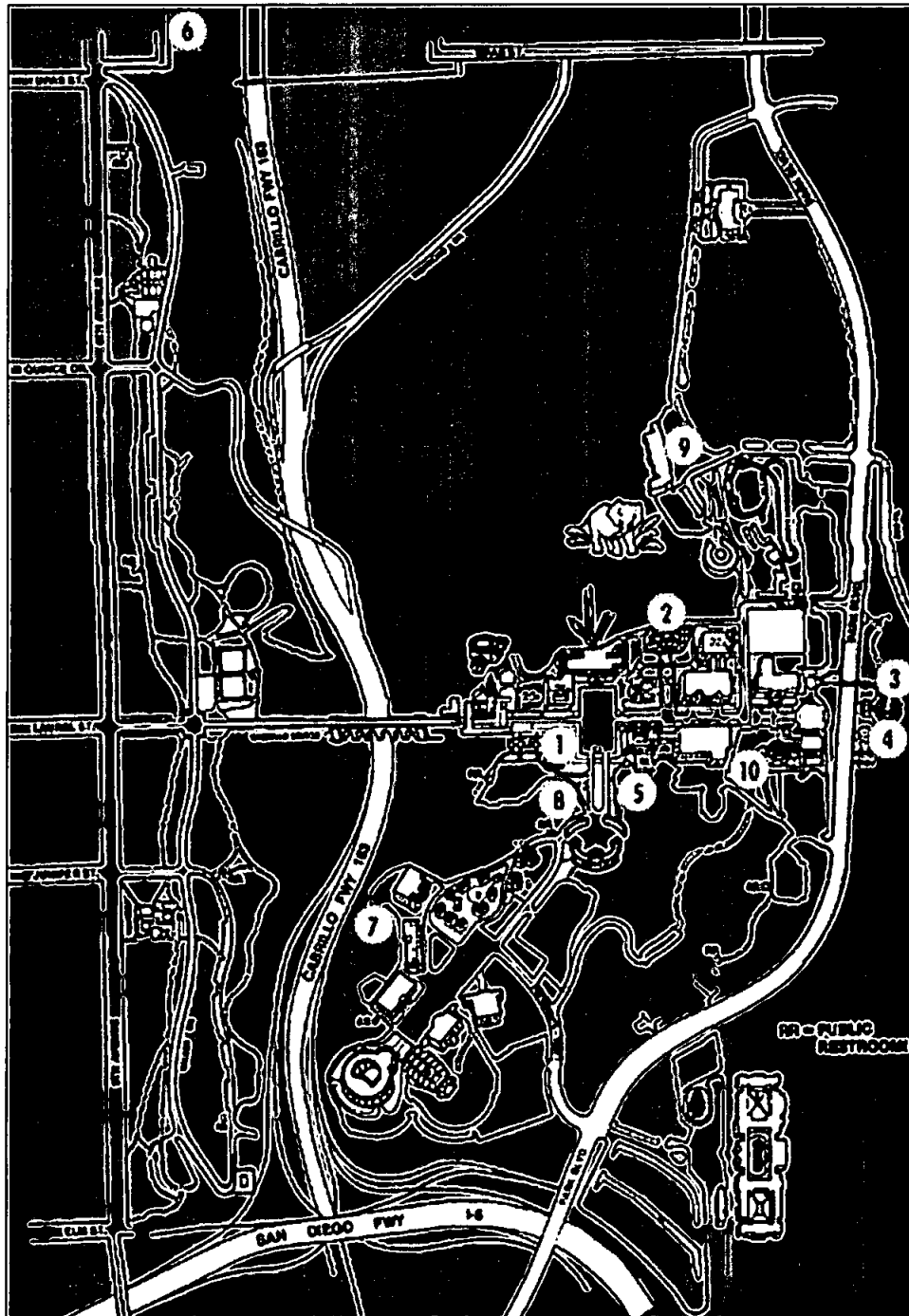
By: *Tena Martin*, Deputy

KK- 275/26
DOCUMENT NO. 275/26
FILED FEB. 12, 1990
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA #150

LEASE- SAN DIEGO MUSEUM OF ART
BALBOA PARK LEASE AGREEMENT

CC: AUDITOR MS#7-C
COUNTY ASSESSOR-MS#A4
PARK & REC-MS#39

MARCH 6, 1990 PR



- | | |
|--------------------------------------|--------------------------------|
| 1) <u>Alcazar Garden</u> | 6) <u>Marston House Garden</u> |
| 2) <u>Botanical Building</u> | 7) <u>Old Cactus Garden</u> |
| 3) <u>Desert Garden</u> | 8) <u>Palm Canyon</u> |
| 4) <u>Inez Grant Parker Memorial</u> | 9) <u>San Diego Zoo</u> |
| <u>Rose Garden</u> | <u>Botanical Collection</u> |
| 5) <u>Japanese Friendship Garden</u> | 10) <u>Zoro Garden</u> |