



THE CITY OF SAN DIEGO

April 27, 2004

VIA FIRST CLASS MAIL AND CERTIFIED MAIL

Mr. Terry Trout
1207 Upas Street
San Diego, CA 92103

Dear Mr. Trout:

On December 4, 2001, the City Council of the City of San Diego approved a lease between the City and the Boy Scouts America-Desert Pacific Council for roughly fifteen acres of park property located at 1207 Upas Street. The leased property is commonly referred to as Camp Balboa. When the City and the DPC entered into the Camp Balboa lease, the *Barnes-Wallace* case, (United States District Court Case No. 00cv1726J) was pending and the parties realized that the Camp Balboa lease could be invalidated by the District Court. The City and the DPC agreed to a provision in the lease that provided for early termination, if the District Court entered a final judgment in favor of Plaintiffs. Specifically, Section 2.5 of the Camp Balboa lease provides in relevant part:

LESSEE understands and acknowledges that CITY and LESSEE are currently involved in litigation challenging the legality of the existing lease between CITY and LESSEE, on file in the Office of the City Clerk as Document No. 550464 ("Existing Lease"). LESSEE agrees that if any court enters a final judgment ("Final Judgment") requiring the termination of the Existing Lease or this lease ("Lease"), this Lease shall terminate on the date of the Final Judgment.

On April 13, 2004, the District Court entered a final judgment invalidating the Camp Balboa lease. This letter serves as notice that the DPC's leasehold interest has terminated by operation of Section 2.5 of the Camp Balboa lease.

That does not mean that the DPC must vacate the property. Section 2.3 of the Camp Balboa lease provides in relevant part, "[t]he occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of the agreement shall continue in full force and effect; provided, however, CITY shall have the right to terminate the holdover tenancy at will." Consistent with its settlement agreement with Plaintiffs



Real Estate Assets

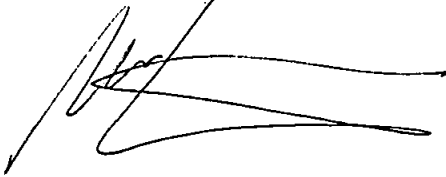
202 C Street, MS 98 • San Diego, CA 92101
Tel (619) 236-6144 Fax (619) 236-7003

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in *Barnes-Wallace*, the City will allow the DPC to retain possession of the Camp Balboa property until all appeals are finally resolved in favor of Plaintiffs. In the event the judgment is reserved, this termination notice shall no longer be effective.

If you have any questions about this notice, please have your legal counsel contact Deputy City Attorney John P. Mullen at (619) 533-5800.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'W. Griffith', with a long horizontal flourish extending to the right.

William T Griffith
Real Estate Assets Director

cc: George Davidson
Jordan Budd
William Donnell
John Mullen

CITY ATTORNEY

DUPLICATE

Mar 11 12 45 PM '02

THE CITY OF SAN DIEGO

**DESERT PACIFIC COUNCIL, BOY SCOUTS
OF AMERICA, INC.**

Nonprofit Lease

DOCUMENT NO. 22-295827
DEC 04 2001
FILED _____
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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CITY OF SAN DIEGO NONPROFIT LEASE

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and DESERT PACIFIC COUNCIL, BOY SCOUTS OF AMERICA, INC., a California nonprofit corporation, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described as "Camp Balboa" at 1207 Upas Street in Balboa Park and further described in Section 9.1, Legal Description, hereof. Said real property is hereinafter called the "premises" or "leased premises."
- 1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of a Boy Scout recreational facility and related administrative offices, in accordance with the General Development Plan referenced in Section 6.12 hereof, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

- 1.3 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the leased premises.

LESSEE shall be solely responsible for processing all land use, development, and construction approvals required for the use and occupancy of the premises. This

lease shall not be interpreted by any decision maker on any City-issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.

- 1.4 Quiet Possession. LESSEE, performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a nonprofit youth recreational facility and related activities in a fiscally responsible manner and in accordance with the Boy Scout Charter.

- 1.7 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public as set forth in Section 9.5, Schedule of Days and Hours of Operation, hereof. Any changes in this schedule shall be subject to the prior written approval of the City Manager or his authorized representative. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.

- 1.8 Rates and Charges. All charges associated with use of the facilities on the premises shall be in accordance with the schedule set forth in Section 9.4, Schedule of Rates and Charges, hereof. Any changes in said schedule are subject to prior written approval by the City Manager or his authorized representative. All charges for merchandise and services on the premises shall be consistent with those prescribed by the Boy Scouts of America, a nationally chartered scouting organization.
- 1.9 CITY Use. The premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, 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.
- 1.10 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1.2, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.11 Public Use. The general public shall not be wholly or permanently excluded from any portion of the premises. LESSEE may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public and are designed to allow LESSEE to use the premises for the purposes specified herein. LESSEE agrees that all activities conducted on the premises will be as stated in Section 1.2, Uses, hereof.
- 1.12 Public Signage. LESSEE shall, at all times during the lease term, maintain a prominent CITY-approved sign identifying the property as City-owned and available for public use consistent with the terms of this lease. The sign shall be installed by LESSEE at a location agreeable to CITY. LESSEE shall keep a reasonable schedule of times when facilities on the premises are available for public use. LESSEE shall also frequently publish the procedures for public use of the facilities on the premises in the Park and Recreation Department's "Balboa Park Facilities Guide" or similar publication.

SECTION 2: TERM

- 2.1 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 twelve (12)-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.

- 2.2 Right to Extend. Provided that LESSEE is not in default of this lease and is continuing to fulfill its mission of serving youth with a Scouting program, LESSEE has the right to extend this lease once for an additional term of fifteen (15) years, subject to all original agreements, considerations, covenants, and conditions hereof. To exercise this right, LESSEE must give CITY at least six (6) months written notice before the date on which this lease expires.
- 2.3 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to terminate the holdover tenancy at will.
- 2.4 Surrender of Premises. At termination of this lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written CITY demand, a valid and recordable quitclaim deed covering all of the premises. The premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

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

- 2.5 Early Termination. LESSEE understands and acknowledges that CITY and LESSEE are currently involved in litigation challenging the legality of the existing lease between CITY and LESSEE, on file in the Office of the City Clerk as Document No. 550464 ("Existing Lease"). LESSEE agrees that if any court enters a final judgment ("Final Judgment") requiring the termination of the Existing Lease or this lease ("Lease"), this Lease shall terminate on the date of the Final Judgment. If CITY determines, in its sole discretion, that CITY can comply with the Final Judgment without terminating this Lease, CITY and LESSEE shall negotiate in good faith to amend this Lease to comply with the Final Judgment. If CITY and LESSEE cannot reach agreement on an amended Lease within six (6) months of the date the Final Judgment is entered, this Lease shall terminate on the date that is six (6) months after the entry of the Final Judgment, to the extent not inconsistent with any applicable court order. In the event that a court enters a Final Judgment not requiring termination but which imposes modifications in the use of the premises which preclude LESSEE from complying with the requirements of the Boy Scouts of America, LESSEE may, in its sole discretion, terminate this lease. Upon termination of this Lease pursuant to this Section 2.4, LESSEE shall, within six (6) months thereafter or such earlier date as may be required in any Final Judgment, vacate the premises and remove all of its property from the premises as provided in Section 6.10, Ownership of Improvements and

Personal Property, hereof. CITY shall not be liable to LESSEE in any amount due to early termination of this Lease pursuant to this Section 2.4.

SECTION 3: RENT

- 3.1 Time and Place of Payment. The administrative fee is due annually in advance on or before the first day of each lease year. All annual administrative fees will be prorated during the first and final months of any lease year in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, Suite 100, San Diego, California.

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

3.2 Rent and Administrative Fee.

- a. Rent Amount. Rent during the term of this lease shall be One Dollar (\$1) per lease year, receipt of which is hereby acknowledged by CITY.
- b. Additional Consideration. LESSEE shall fully implement the General Development Plan as described in Sections 6.12 and 9.2 hereof. LESSEE, at its expense, during the term of this lease shall also perform the following park services outside the leased premises to the reasonable satisfaction of the City Manager:

LESSEE shall perform all maintenance to that adjacent portion of Balboa Park lying between Upas Street and the leasehold boundary, except for tree trimming and removal. LESSEE'S maintenance responsibilities shall include but not be limited to litter control, weed abatement, and walkway sweeping. LESSEE acknowledges that CITY has performed any necessary maintenance to said adjacent portion of Balboa Park to make this area safe and usable prior to LESSEE assuming maintenance responsibilities under this lease. This area shall not be construed as part of the leased premises, nor shall LESSEE move any fences or conduct activities, other than grounds maintenance, thereon.

- c. Administrative Fee. LESSEE shall pay a fee of Twenty-five Hundred Dollars (\$2,500) per lease year, payable annually, to compensate CITY for

the average costs of administering nonprofit leases. Said administrative fee ("fee") is subject to annual adjustments based on increases, if any, in the Consumer Price Index (CPI) as hereinafter provided.

- d. (1) CPI Index Adjustments. At the end of the first year following the effective date of the lease and at the end of each one (1)-year period thereafter during the lease term, the fee shall be adjusted to reflect increases in the Consumer Price Index (CPI).

The index used will be the CPI for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a fee adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

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

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

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

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

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

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

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

Example 1

Current Index 121

Base Figure 110 = 1.10 (Adjustment Figure)

Effective Fee x 1.10 = Adjusted Fee

Example 2

Current Index 138

Base Figure 121 = 1.14 (Adjustment Figure)

Effective Fee x 1.14 = Adjusted Fee

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

- e. Maximum Increase. Notwithstanding the foregoing, the fee adjustments will not increase the fee in excess of six percent (6%) per lease year.

- 3.3 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine LESSEE'S compliance with this lease. These records and accounts will be made available by LESSEE at the leased premises and will be complete and

accurate showing all income and receipts from use of the premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

- 3.4 Delinquent Administrative Fee. If LESSEE fails to pay the administrative fee ("fee") when due, LESSEE shall pay, in addition to the unpaid fee, five percent (5%) of the delinquent fee. If the fee is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from fee delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payment of the fee be less than Twenty-five Dollars (\$25).

In the event that the CITY audit, if applicable, discloses that the fee for the audited period has been underpaid in excess of five percent (5%) of the total required fee, then LESSEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the amount by which said fee was underpaid, in addition to the unpaid fee as shown to be due CITY, as compensation to CITY for administrative costs and loss of interest as previously described herein. LESSEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from LESSEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

- 3.5 Unauthorized Use Charge. LESSEE shall pay CITY twenty percent (20%) of the gross receipts for any service or use that is not permitted by this lease. This payment is subject to the due date provided in this lease for administrative fee payments and the provision for delinquent administrative fees. The existence of the twenty percent (20%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the leased premises.

- 3.6 Annual Budget. LESSEE shall submit to the City Manager by February 1 of each year copies of documents evidencing the proposed programs and financial status of LESSEE for the calendar year commencing January 1. Without limiting the generality of the foregoing, such documents shall include (i) a copy of LESSEE'S proposed programs; (ii) a copy of a detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures, including compensation for the director and staff of LESSEE; and (iii) an adequate reserve

account, in the reasonable opinion of the City Manager, for maintenance and capital improvements to the premises.

SECTION 4: ASSIGNMENT

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

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

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

Approval of any sublease shall be conditioned upon the sublessee agreeing in writing that it will assume the rights and obligations thereby subleased and that it will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any sublease of the majority portion of the leasehold, that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. The City Manager may also require, as a condition to approval of any sublease of a commercial nature (e.g., food vending or telecommunications installations), that LESSEE pay CITY market rents for such uses. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this lease as a sublessee.

4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of

LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises in accordance with Section 6.12, Development Plan, hereof. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. LESSEE further understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then-current provisions.

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

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

4.4 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty (30)-day period and diligently pursue such cure to completion; or

- (2) LESSEE shall voluntarily file any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, which petition is not dismissed within one hundred twenty (120) days of filing; or
- (4) LESSEE shall be adjudicated a bankrupt; or
- (5) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Subsection 4.4a.(1) above is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty (30)-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty (30)-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign

all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.5 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken.

- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to, LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

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

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance.

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

- (1) Public liability and property damage insurance in the amount of not less than Three Million Dollars (\$3,000,000) 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 or the work and operations to be performed under this lease.
- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss to improved real property or fixtures shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
- (3) Worker's Compensation. For all of LESSEE'S employees who are subject to this lease and to the extent required by the State of California, LESSEE shall keep in full force and effect a worker's compensation policy. That policy shall provide a minimum of One

Million Dollars (\$1,000,000) of employer's liability coverage, and LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Additional Insured. All insurance policies covering the premises shall name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY

shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection b.(4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

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

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.

6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter the premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. Inspections may be done annually or more frequently at CITY'S discretion. Except in emergencies, CITY shall notify LESSEE at least three (3) days in advance of any entry so that LESSEE personnel may escort CITY inspectors. In the event that such entry or inspection by CITY discloses that the premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep the premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that the premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE shall make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws. Any substantial trimming of trees on the premises, defined as the cutting or removing of main branches and limbs, shall be supervised by a Certified Arborist as designated by the International Society of Arboriculture. LESSEE shall also maintain the adjacent park area outside the leased premises described in Section 3.1b., Additional Consideration, hereof.

During the first two (2) years of this lease, LESSEE shall also complete all repairs and improvements required by CITY of a health and safety nature, as follows: resurface parking lot, repair/replace sidewalks as needed, rewire/replace interior electrical fixtures and wiring as needed, install new plumbing fixtures and waterlines as needed, install new floor coverings as needed, repair/install heating and air conditioning as needed, and other items as may be identified by CITY or LESSEE. All work shall be performed to the satisfaction of the City Manager and in compliance with all applicable laws.

6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written

approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

- 6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities shall be installed underground, and LESSEE shall always maintain a water sub-meter on the premises.
- 6.6 Construction Bond. Whenever there is any capital improvement to be constructed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY. This provision shall not apply to general maintenance and repairs which do not require a construction contract.
- 6.7 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorneys' fees.
- If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:
- a. take all actions necessary to record a valid release of lien, or
 - b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 6.8 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased

premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees, and assessments will not reduce any rent due CITY.

- 6.9 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within twenty-four (24) hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage at its expense.
- e. 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.
- 6.12 Development Plan. LESSEE agrees to expend at least One Million Seven Hundred Thousand Dollars (\$1.7 million) during the first seven (7) years of this lease for capital improvements to the leased premises. The \$1.7 million shall not include maintenance expenditures, other than the cost up to a maximum of \$350,000, for repairs and improvements of a health and safety nature required by CITY during the first two (2) years of this lease in Section 6.3, Maintenance, hereof. The fair market value of capital improvements may be funded in money or in kind, through contributed or discounted services and materials. The capital improvements shall be constructed by LESSEE in accordance with a General Development Plan, the general contents and provisions of which are described in Section 9.2a. hereof. LESSEE'S capital improvements shall be for the purpose of enhancing the programs and services offered on the premises. A Conceptual Development Plan listing possible improvements is set forth in Section 9.2b. hereof. LESSEE shall submit to CITY within the first two (2) years of this lease a complete General Development Plan that is reasonably consistent with the Conceptual Development Plan herein. The General Development Plan shall be subject to review and approval by the City Manager, including review for compliance with the California Environmental Quality Act. The General Development Plan, upon approval by the City Manager, shall be attached hereto and made part of this lease. The City Manager shall have the authority to authorize subsequent changes to the approved General Development Plan provided the changes are reasonably consistent with the Conceptual Development Plan herein. Failure by LESSEE to comply with the requirements of this section or with the approved General Development Plan shall constitute a major default and subject this lease to termination by CITY. The City Manager, in his sole discretion and without further City Council approval, may approve an extension of up to one (1) year to allow a maximum of eight (8) years for completion of the \$1.7 million in General Development Plan improvements.

At least six (6) months prior to the tenth anniversary of this lease and every ten (10) years thereafter, LESSEE shall submit a new General Development Plan to CITY describing the capital investment that LESSEE will make to construct new capital improvements and refurbish existing ones on the premises during the next ten (10) years. Each new General Development Plan shall be subject to review and approval by the City Manager as to sufficiency of investment to ensure that good quality improvements are maintained on the premises at all times to satisfy

LESSEE'S program requirements and the terms of this lease, including review for compliance with the California Environmental Quality Act.

- 6.13 Hazardous/Toxic Waste. LESSEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, under, or from the premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704-1 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or

under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

6.14 Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the leased premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the leased premises.

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

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

survival of plant materials. Inspection for damaged sprinkler heads and wear and tear shall be performed regularly.

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

- c. Erosion Control. Vegetation and other suitable ground cover on all slopes and other open areas shall be maintained to provide adequate long-term soil protection and erosion control to prevent the transport of sediment from the leased premises during rainfall and irrigation. Any erosion problems caused by rainfall, broken sprinkler heads, or irrigation shall be corrected promptly, and any transported sediment shall be promptly removed before it reaches a storm drain or receiving water.
- d. Storm Drains. Hazardous material or waste, cleaning compounds or detergents (biodegradable or otherwise), runoff from cleaning operations of food containers or transport equipment, wash-down or wash-off containing organic matter either man-made or natural, liquid food products or grease, paint or paint cleaning materials, or anything else that is of a questionable nature shall not be discharged or disposed of into the storm drain system.
- e. Maintenance/Repairs. Complete washing of vehicles and equipment shall be done in a contained wash rack. Sandblasting or other heavy maintenance is prohibited within the leased premises. Any vehicle and equipment maintenance tasks that could cause a toxic discharge shall not be conducted on the leased premises. Oil changes shall be performed at a fuel dock.
- f. Recyclables/Hazardous Materials. Trash receptacles and containers for recyclables shall be provided and cleaned on a regular basis and clearly marked and sited so that they are convenient for patrons, guests, and staff on the premises. All hazardous materials shall be disposed of in a safe manner. Use of any pesticide that has a high risk of runoff or leaching shall be minimized and a suitable alternative utilized. A secure location shall be provided to store hazardous wastes with each container properly labeled.
- g. Other BMP. The foregoing BMP may be modified or new BMP required pursuant to Section 7.2, Compliance with Law, hereof.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
Attention: Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.
- c. Notice served pursuant to the terms of this Section 7.1 shall be effective upon personal service or two (2) days after service by mail.

- 7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

- 7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

- 7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment

- 7.5 Compliance with CITY'S Equal Opportunity Contracting Program. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through

22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.

- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or lessees shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

- 7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.

- (4) The penalties that may be imposed upon employees for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.
- 7.13 Disabled Access Compliance. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with the 1990 Americans with Disabilities Act and Title 24 of the California Code of Regulations (Building Code), as defined in Section 18910 of the California Health and Safety Code, and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.
- 7.14 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 shall, before being put into effect, be submitted to and receive written acceptance from the City Manager. Such accepted bylaws shall be on file in the office of the Real Estate Assets Department prior to CITY execution of this lease.
- 7.15 Corporate Authority. Each individual executing this lease on behalf of LESSEE represents and warrants that he/she is duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this lease is binding upon the corporation in accordance with its terms, and that LESSEE is a duly qualified corporation, as provided in Section 9.3, Corporate Name, hereof, and all steps have been taken prior to the date hereof to qualify LESSEE to do business in California.
- 7.16 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.17 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.
- 7.18 Building Setback. LESSEE shall not construct any building or structure within one hundred fifty (150) feet of the easterly line of Cabrillo Freeway.
- 7.19 Supersedure. It is mutually agreed that this lease, upon its effective date, supersedes and annuls that certain lease executed on March 28, 1957, with San Diego County Council, Boy Scouts of America, City Clerk Document 550464, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.

SECTION 8: SIGNATURES

8.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager pursuant to City Council Resolution No. R 295827, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 3-6-02

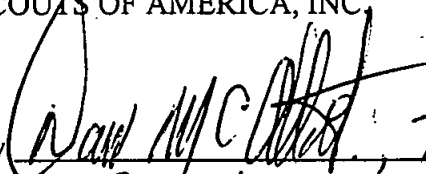
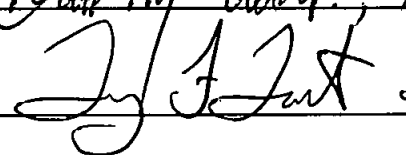
By


William T. Griffith
Real Estate Assets Director

LESSEE: DESERT PACIFIC COUNCIL, BOY
SCOUTS OF AMERICA, INC.

Date January 2, 2002

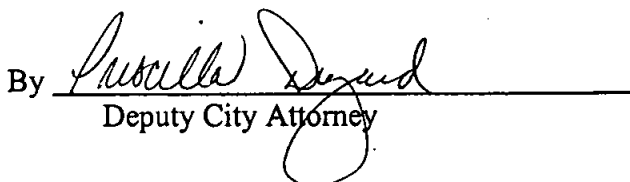
By

 PRESIDENT
By  SECRETARY

APPROVED as to form and legality this 13TH day of March, 2002

CASEY GWINN, CITY ATTORNEY

By


Deputy City Attorney

PTC:jmj
12/27/01

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SECTION 9: EXHIBITS

9.1 Legal Description.

That portion of Balboa Park in the City of San Diego, County of San Diego, State of California, according to Drawing No. 6453-L thereof made by the City Engineer of San Diego, being a portion of Pueblo Lot 1131 of the Pueblo Lands of San Diego, according to Miscellaneous Map No. 36 thereof filed in the Office of the San Diego County Recorder, described as follows:

Commencing at the intersection of the Southerly prolongation of the Easterly line of Vermont Street, as located and established as of the date of this instrument, and the Northerly line of said Pueblo Lot 1131; thence North 89°43'00" East, along said Northerly line of Pueblo Lot 1131, 98.80 feet; thence South 00°17'00" East 83.00 feet to the True Point of Beginning; thence continuing South 00°17'00" East 325.00 feet; thence South 28°09'00" West, 132.00 feet; thence South 03°31'00" West, 90.50 feet; thence South 58°47'30" West, 364.50 feet; thence South 34°59'12" West, 102.00 feet; thence South 44°23'42" West, 241.00 feet; thence due West to a point on a line parallel with and 25.00 feet Easterly, measured at right angles, from the Easterly right-of-way line of Cabrillo Freeway, as said Easterly line is located and established as of the date of this instrument; thence Northerly along said parallel line to an intersection with a line bearing South 89°43'00" West from the True Point of Beginning; thence North 89°43'00" East along said line to the True Point of Beginning.

9.2a. General Development Plan.

The General Development Plan will consist of:

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

and, upon approval by the City Manager, will be attached hereto and made part of this lease.

9.2b. Conceptual Development Plan.

(See attached pages 31a. and 31b.)

9.2b.

CONCEPTUAL DEVELOPMENT PLAN

FOR BALBOA PARK PROPERTY AND FACILITY

July 2001

The Desert Pacific Council seeks to extend its lease, which expires in 2007, for an additional fifty years. The council wishes to continue to occupy, manage, and provide services for the citizens of San Diego. For the past half century, Camp Balboa has been a focal point for family activity. Since the early 1920's, tens of thousands of San Diego residents have enjoyed and formed emotional attachments to the programming provided at Camp Balboa by the Boy Scouts.

Camp Balboa provides an experience and opportunity for all citizens in an urban environment "in the heart of the city" that is both unique and irreplaceable. With the assurance of a lease extension, the Scouts can move forward with plans to fund the capital improvements necessary to improve the property and facilitate increased usage of the Camp.

A study group meeting in 1999 determined that there is significant potential to increase camping and program usage at Camp Balboa. The Council has plans to increase its outreach program offerings to the inner city and disadvantaged youth. A special task force is being formed to promote current programs and establish collaborative and innovative programs with other community organizations to increase usage by youth, families, and the community at large.

Our study group, which met twice a month for over a year, has suggested possible improvements to Camp Balboa that should be made to better accommodate members of the community, which may include:

Upgrade the existing facilities, including internal electrical wiring and fixtures, installation of heating and air conditioning as needed and telephone data infrastructure. Interior improvements will also include new floor coverings in all offices, interior and exterior painting of all buildings, and replacement of plumbing fixtures as needed.

- Resurface parking lot
- Upgrade pool shower and changing facility to better accommodate families and the disabled.

- **Implement play areas such as**
 - **Indian Village**
 - **Pirate Ship**
 - **Gold Mine**
- **Upgrade existing rest room facilities to better accommodate families**
- **Design and install more efficient water-conserving irrigation system**
- **Upgrade amphitheater stage area**
- **Plant additional trees and improve ground covering**
- **Installation of solar heating for pool**
- **Upgrade youth archery and BB gun range**

The projected budget for possible improvements is \$1.7 Million, funded by cash or in kind, through contributed or discounted services and materials. The desired timeline is:

- **Conduct feasibility studies and design work: 1-2 years**
- **Submit General Development Plan to City: 2 years after lease extension approval**
- **Complete capital improvements contained in the approved General Development Plan within 7 years of lease extension approval.**

9.3 Corporate Name.

DESERT PACIFIC COUNCIL, BOY SCOUTS OF AMERICA, INC.
CORPORATE NAME

I, TERRY F. TROUT, certify that I am the SECRETARY
of the corporation named in the attached agreement; that DAN McALLISTER,
who signed this agreement on behalf of the corporation, was then PRESIDENT
of said corporation; that said agreement was duly signed for and on behalf of said corporation by
authority of its governing body, pursuant to a resolution duly adopted by its Board of Directors
on January 30, 2002 and is within the scope of its corporate powers; and that
set out below are the names of the officers and directors of said corporation.

By

J F Trout SECRETARY

CORPORATE SEAL

Name

Dan McAllister, PRESIDENT
Title

Name

J F Trout, SECRETARY
Title

Name

Title

Name

Title

9.4 Schedule of Rates and Charges.

Local Boy Scouts pay the following:

- \$4 per person per weekend for camping
- \$4 per person per night for midweek camping
- \$25-\$50 per day for building/facility use

Out-of-Council and non-Boy Scout groups pay the following:

- \$10 per person per weekend for camping
- \$5 per person per night for midweek camping
- \$25-\$50 per day for building/facility use

A \$20 deposit is required to reserve a campsite.

Camp Balboa Facility Rental Fees:*

	<u>Deposit</u>	<u>Weekend & Midweek Rate</u>
Scout Bowl (3 hours)	\$20	\$30
Scout Bowl (3 hours) with sound & lights	\$20	\$40
Conference/Training Room Key Deposit	\$20	-0-
Pool-Side Patio (2 hours)	\$20	\$25
Pool (1-4 people)	-0-	\$1 per person
Pool (5-50 people)	\$20	\$25 per hour
Pool (50-120 people)	\$20	\$40 per hour
Patio/Scout Bowl Package		
without sound and lights	\$20	\$40
Patio/Scout Bowl Package		
with sound and lights	\$20	\$50
"Hogan" Training Center	\$20	\$30

*Facility fees are the same for both Scouts, non-Scouts, and non-local users.

The Scout Shop sells uniforms, badges, and equipment. Prices are comparable to other retail establishments. The majority of items sell for between \$1 and \$25.

RESOLUTION NUMBER R-295827

ADOPTED ON DECEMBER 4, 2001

WHEREAS, since 1946, the Boy Scouts of America has leased approximately 15.61 acres of Balboa Park, located on Upas Street in the northwestern portion of the Park, for a Scout recreational facility and related administrative offices; and

WHEREAS, improvements constructed by the Boy Scouts over the years consist of an administrative headquarters, eight campsites, swimming pool, Scout store, amphitheater, program lodge, and picnic area; and

WHEREAS, the current 50-year lease expires in 2007 and the Boy Scouts requested an early renewal of the lease to engage in a capital campaign to further improve the leased premises; and

WHEREAS, the City and Desert Pacific Council, Boy Scouts of America, Inc., have negotiated a 25-year lease agreement with a 15-year option at the initial rental rate of \$1.00 per year, plus a \$2,500 per year administrative fee, to be adjusted annually, as directed by the City Council; and

WHEREAS, the new lease will require the Boy Scouts to raise and expend at least \$1.7 million during the next seven years to improve the leased premises, including upgrading and remodeling existing improvements and constructing new theme program and play areas; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is authorized to execute, for and on behalf of The City of San Diego, a 25-year lease agreement

with a 15-year option to renew, with Dessert Pacific Council, Boy Scouts of America, Inc., a California nonprofit corporation, for a Boy Scout recreational facility and related administrative offices on approximately 15.61 acres of Balboa Park at 1207 Upas Street, at an initial annual rent of \$1.00, provided that the Boy Scouts of America give the City written notice of intention to extend the lease and include a new general development plan describing their capitol investments for the following 10 years., as more particularly described under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No.

RR- 295826.

APPROVED: CASEY GWINN, City Attorney

By Prescilla Dugard
Prescilla Dugard
Deputy City Attorney

PD:cdk
11/20/01
12/07/01 REV.
Or.Dept:REA
R-2002-725
Form=leaser.frm

Passed and adopted by the Council of San Diego on December 04, 2001 by the following vote:

YEAS: PETERS, WEAR, STEVENS, MAIENSCHIN, MADAFFER, MAYOR MURPHY

NAY: ATKINS, FRYE, INZUNZA

VACANT: NONE

NOT PRESENT: NONE

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Esther Ramos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R- 295827, passed and adopted by the Council of The City of
San Diego, California on **DEC 04 2001**

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

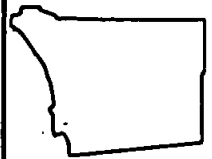
(SEAL)

By: , Deputy



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Vicinity Map



The group is a non-profit organization that is dedicated to the study of the history of the United States. The group is a non-profit organization that is dedicated to the study of the history of the United States. The group is a non-profit organization that is dedicated to the study of the history of the United States.

Plot Date: 11/13/00



1:1800

Vicinity Map

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Plot Date: 11/13/00

