

CONSENT TO MEMORANDUM OF UNDERSTANDING - BROWSE PROJECT

The City of San Diego (CITY), as Lessor under that certain Lease Agreement (Master Lease) entered into with

GIRLS SCOUTS, SAN DIEGO- IMPERIAL COUNCIL, INC.

(LESSEE), and filed in the Office of the City Clerk as Document No. RR- 295826, hereby consents to the incidental use of the leased premises at 1231 Upas Street, as described in that certain Memorandum of Understanding, dated May 9, 2002, attached hereto, between the above LESSEE and

THE ZOOLOGICAL SOCIETY OF SAN DIEGO

(SOCIETY) and as further explained in the letter from LESSEE dated February 24, 2003, also attached hereto (collectively, "the MOU"). The MOU shall be subordinate to the Master Lease in all respects. CITY is merely approving the MOU between LESSEE and SOCIETY and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the MOU. CITY is not bound by any term or condition in the MOU which in any way conflicts with or is additional to the provisions of the Master Lease.

THIS CONSENT IS SUBJECT TO THE FOLLOWING CONDITIONS:

ASSIGNMENT: SOCIETY shall not assign the MOU without the prior written consent of CITY. An assignment by operation of law shall automatically terminate and rescind this consent.

HOLD HARMLESS: SOCIETY shall assume the defense of, indemnify and hold harmless CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises at 1231 Upas Street, the condition of the premises or from any act or omission of SOCIETY, its agents and invitees; provided, however, SOCIETY'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 CITY, its agents, officers, or employees.

INSURANCE: SOCIETY shall be insured by an insurance carrier acceptable to CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be \$2 million combined single limit liability. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego, its elected officials, officers, employees, agents, and representatives" as additional insureds. Said policy shall specify that the policy may not be terminated, altered or canceled without 30 days prior written notice to CITY by the insurance company.

LEGAL PROCEEDINGS: Should it become necessary for CITY to commence legal proceedings against SOCIETY, to recover possession or enforce any other provision of this consent, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.

NONEXCLUSIVE USE: SOCIETY shall not obtain any right to exclusive use of any part of LESSEE'S leasehold. The area used for cultivation shall not be segregated from the rest of the leasehold but shall continue to be a contiguous part thereof, being available for use by LESSEE.

NONINTERFERENCE: The cultivation and harvesting of the plants by SOCIETY shall not be conducted at any time that would interfere with LESSEE'S programs or activities.

BEAUTIFICATION: The plants shall be planted and cultivated in a neat and attractive manner that adds to the beauty of the surroundings. The plants shall be harvested so as to leave a neat and attractive screen.

REVOCABILITY: CITY retains the right to revoke permission for this use at any time, upon written notice to LESSEE from the City Manager or designee.

CONSIDERATION: Consideration for this arrangement shall be limited to the mutual benefits provided by the situation (i.e., additional plants and screening in exchange for browse harvesting and paying the cost of the water to grow the browse), and no monetary or other consideration shall be paid as part of SOCIETY'S use of the leased premises.

This consent shall be effective upon execution by the City Manager or his designee.

THE CITY OF SAN DIEGO

Date 4-24-03

By [Signature]
Deputy Director, Real Estate Assets Department

GIRL SCOUTS, SAN DIEGO- IMPERIAL
COUNCIL, INC., a California nonprofit corporation

Date 3-31-03

By [Signature]
Title Jo Dee C. Jacob
Executive Director
Girl Scouts, San Diego-Imperial Council, Inc.

THE ZOOLOGICAL SOCIETY OF SAN DIEGO,
a California nonprofit corporation

Date 7/3/02

By Paula Bruce

Title CFO

APPROVED AS TO FORM AND LEGALITY:
CASEY GWINN, City Attorney

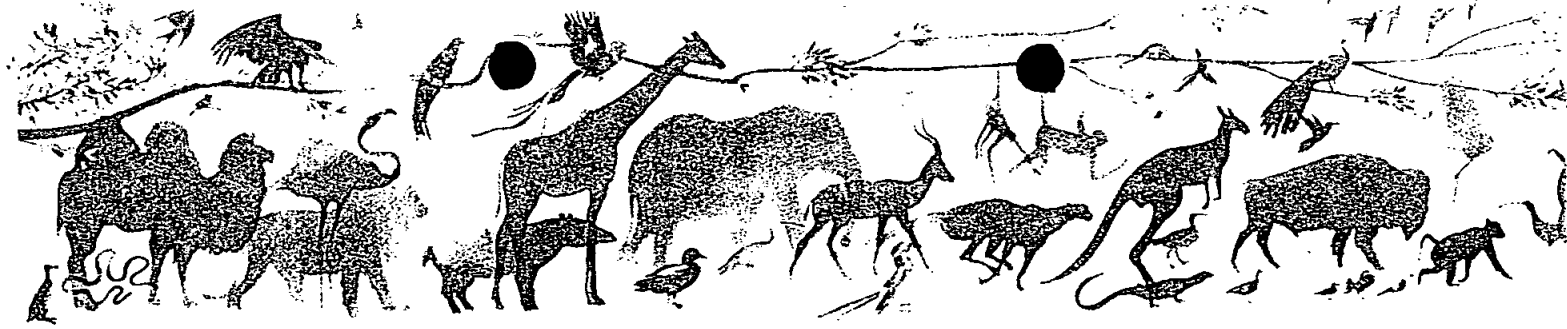
Date 4/30/03

By [Signature]
Deputy City Attorney

PTC/cj

3/19/03

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The Zoological Society of San Diego

May 9, 2002

Randal A. Boyles
Girl Scouts/S.D.-Imperial Council, Inc.
1231 Upas Street
San Diego, CA 92103-5199

Re: Browse Project

Dear Randal:

This letter shall serve as a **Memorandum of Understanding** regarding the proposed cooperative arrangement between the San Diego Zoo Horticulture Department ("Zoo") and Girl Scout Camp in Balboa Park ("Girl Scouts").

RECITALS

- A. The Zoo desires to cultivate vegetation used for zoo animal forage ("Browse") on Girl Scouts' property in Balboa Park for the purpose of supplementing the Zoo's existing supply; and
- B. The Girl Scouts desire the Zoo to cultivate Browse on the Girl Scouts' property in Balboa Park for the purpose of aesthetics and to provide a sound screen; and
- C. The parties desire to explore possible opportunities to develop educational material or programs relating to the growth of Browse on the Girl Scout property.

Wherefore, the parties agree as follows:

1. Zoo Responsibilities:

- a. The Zoo will coordinate with the Girls Scouts as to the amount and location of the intended planting prior to planting.

Post Office Box 120551, San Diego, California 92112-0551 USA Telephone (619) 231-1515

*Zoological and Botanical Gardens
Accredited by the American Zoo and Aquarium Association
and American Association of Museums*

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May 9, 2002

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b. The Zoo will be obtain and install all plant material. Regular site visits will be made to ensure that material is growing in the fashion intended for the desired browse material.

c. During the agreed-upon hours of access, a Zoo horticulture worker with a Zoo vehicle will drive to the designated harvest area on Girl Scout property and cut plant material to the Zoo's specified sizes. The material will then be loaded and returned to the Zoo for use as Browse.

d. The Zoo will be responsible for removal of debris generated by his harvesting. No debris will be left on site.

e. The Zoo will provide the Girl Scouts with the following prior to each proposed phase of planting:

- (i) Types of Plants
- (ii) Growth Characteristics
- (iii) Location of Planting
- (iv) Spacing of Plants (number of rows and distance between rows)
- (v) Approximate Water Requirements

f. Until such time as meters are installed on the Girls Scouts' property to accurately measure the amount of water being used for the Browse growth, the Zoo will reimburse Girl Scouts for their cost of water in the amount of 25% of the water bill for the Girl Scouts' Balboa Park Facility. The Girl Scouts will invoice the Zoo quarterly and the Zoo will pay within thirty days of receipt of such invoice. The parties will mutually agree upon the timing of the first invoice.

g. Upon installation of meters by the Zoo (on live feeds to valve manifolds), if feasible, and upon determination of the actual water usage per billing cycle attributable to Browse growth, the Girl Scouts will begin to invoice the Zoo for actual water usage.

h. The Zoo will provide Girl Scouts with a certificate of insurance showing proof of general liability and automobile liability coverage.

2. Girl Scout Responsibilities.

a. Girl Scouts will provide the Zoo with reasonable access to their property seven days per week between the hours of six a.m. and four p.m. for the purposes of planting, monitoring, maintaining and harvesting of the Browse. Girl Scouts will provide the Zoo with an on-site contact to coordinate with Zoo staff on best times for and access routes to harvest areas.

May 9, 2002

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b. Girl Scouts will monitor and evaluate progress of project for their intended purposes.

c. Girl Scouts will ensure that no pesticides, herbicides, fertilizers or any other chemicals are applied to the growing areas or in the vicinity of the growing areas as set forth by the Zoo staff.

d. Girl Scouts will provide a security access code or keys to Michael Bostwick of the Zoo for access to the designated areas. Such code and/or keys will be used by the Zoo solely for the purposes of fulfilling the intent of this agreement.

e. Girl Scouts will provide a weekly schedule of activities at the Girl Scout Facility to enable the Zoo to schedule plant maintenance around the Girl Scout activities.

3. Site Contact. The primary contact at Girl Scouts will be Randy Boyles, Property Manager (phone number (619) 610-0698, and fax number (619) 298-2031), and the contacts for the Zoo will be Michael Bostwick (phone number (619) 231-1515, ext. 4294, and fax number (619) 685-3232), and Dan Simpson (phone number (619) 231-1515, ext. 4299 and fax number (619) 685-3232).

4. Term/Termination. This agreement will become effective upon the signature of both parties and will continue until December 31, 2003 unless earlier terminated by either party providing sixty(60) days written notice of termination to the other party. The agreement shall automatically renew for periods of one (1) year each unless either party provides sixty (60) days advance written notice of intent not to renew.

a. Upon expiration or termination of this agreement, the area used for Zoo Browse will be restored by mutual agreement. Any meters installed for monitoring water usage will be removed by the Zoo.

5. Periodic Review. The designated Zoo and Girl Scouts' contacts and others who they deem appropriate will meet monthly during the first year of this agreement to discuss progress and direction. Future meetings may be less frequent, but will remain periodic.

6. Education Opportunities. The Zoo and Girl Scouts' program staff will meet to determine potential collaborative educational programs between the Zoo and Girl Scouts.

7. Public Relations. Any media coverage related to this agreement must be coordinated between the parties. The Zoo's public relations department contact is

May 9, 2002

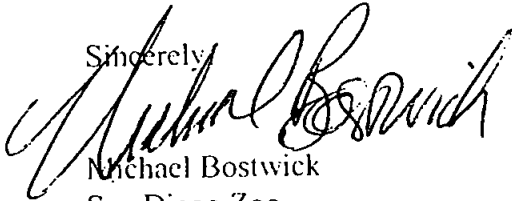
Page 4

Christina Simmons, at (619) 231-1515, ext. 4250. The Girl Scouts public relations contact is DEBORAH BAKER 619-440-0710.

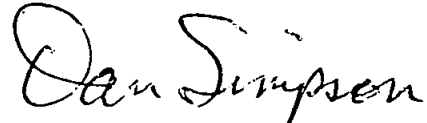
8. Indemnification. The Zoo shall indemnify Girl Scouts and their agents, employees and directors against all claims and associated expenses and/or losses arising as a result of breach of this Agreement or the negligence or willful acts of the Zoo, its agents, employees and directors. Girl Scouts shall indemnify the Zoo its agents, employees and directors against all claims and associated expenses and/or losses arising as a result of breach of this Agreement or the negligence or willful acts of Girl Scouts, their agents, employees and directors.

Thank you for your assistance and interest in this project!

Sincerely,



Michael Bostwick
San Diego Zoo
Associate Horticulturist



Dan Simpson
San Diego Zoo
Arborist Supervisor

Accepted and Agreed:

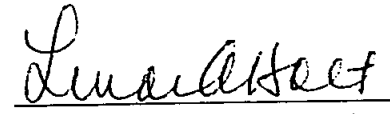
ZOO:

Zoological Society of San Diego

By: 
Paula Brock
Chief Financial Officer

Date: 5/16/02

GIRL SCOUTS:

By: 
[Name] LINDA A. HOLT
[Title] DIRECTOR, RESOURCES MANAGER

Date: 6/27/02

Balboa Service Center
1231 Upas Street
San Diego, CA 92103
T619-298-8391
S00-643-4798
F619-298-2031

Imperial Valley
Service Center
1681 W. Main Street
Ste. 412
El Centro, CA 92243
T760-353-2840
F760-353-3613

Escondido Program
Center
3050 Las Palmas
Escondido, CA 92025
T760-740-2670
888-873-9201
F760-739-0084

Palomar Mountain
Program Center
Palomar, CA 92060

Whispering Oaks
Program Center
4949 Pine Hills Rd.
Julian, CA 92036
T760-765-1273
F760-765-2705

Camp Winacka
4720 Boulder Creek
Julian, CA 92036
T760-765-1958
F760-765-2705

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Girl Scouts.
Where Girls Grow Strong.

Girl Scouts, San Diego-Imperial Council, Inc.
1231 Upas Street
San Diego, CA 92103-5199
T619-298-8391 F619-298-2031

February 24, 2003

Paul Crawford, Property Agent
Real Estate Assets
1200 3rd Avenue, Ste 1700, MS 51A
San Diego, Ca 92101-4199

Dear Paul Crawford:

RE: Browse Project MOU

In response to your letter dated 12/10/02, I have been working with Mike Bostwick, Zoo Horticulturist, to better define the areas where the proposed Browse Project will be. I have attached larger plan views that should assist you in determining what and where we propose to plant. Phase 1 and 2 as well as the Hibiscus along the Upas Street driveway already exist and are covered in the original Browse agreement. The remaining proposed Phases (3 through 5), will be planted in areas where there is no current or planned program activity. Phases 1, 2 and 5 are planted along and next to fences; Phase 3 is a Eucalyptus grove where there are no activities due to privacy issues with the residence and its inhabitants. Phase 4 will enhance the parking lot medians that currently serve no purpose other than to divide parking spaces. All of the phases will serve a variety of purposes as follows:

- A. Beautify the site
- B. Provide plant screening that will enhance both the audio and visual environments for both our neighbors and us.
- C. Provide a local supply of browse material for a variety of the Zoo's animals such as Marsupials, Primates and others.

Further benefits to this organization would be that; the Zoological Society would supply all cost for the initial planting, material and labor, and the ongoing maintenance. I asked our Outdoor Program Manager for input as to the benefits for our Program, her response is as follows. "Collaboration with the San Diego Zoo's browse program opens a new world of program opportunities for girls at Balboa Program Center in the areas of botany, gardening, ecology environmental education, career exploration and more. The proposed planting of bamboo (*Phylostachys aurea*) is an example of a great learning opportunity that allows girls to interact with zoo professionals. Botanist from the zoo would deliver programs to the girls about the bamboo, it's benefits, how to plant it. From there it is an easy jump to discussing the Pandas who will eat the bamboo, the importance of protecting forest, conservation and what girls can do to protect the environment. Hands on, activity based, educational guides will allow volunteer leaders and camp staff to work with the girls around these issues on a more regular, informal basis. Such programs allow girls to develop leadership, teamwork, communication skills, concern for the world around her and provide her with skills necessary to be a productive, responsible citizen." Included in the Memorandum of Understanding is a commitment by the Zoological Society to meet with our Program Staff to determine potential collaborative educational programs between them.

Girl Scouts is funded through contributions from individuals, corporations and foundations; the Girl Scout cookie sale program and United Way.

Paul Crawford
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I hope this answers your concerns. Please call me at (619) 610-0698 if you need more or different information. Mr. Bostwick and I would be more than happy to meet with you to discuss this further, if you think it would help the process.

Sincerely;

Randal Boyles, Property Manager

/Enclosures

RB:ten

DUPLICATE

THE CITY OF SAN DIEGO

GIRL SCOUTS, SAN DIEGO-IMPERIAL COUNCIL, INC.

Nonprofit Lease

DOCUMENT NO. PC-295826

FILED DEC 4 - 2001
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 GIRL SCOUTS, SAN DIEGO-IMPERIAL COUNCIL, 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 "Balboa Program Center" at 1231 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 Girl 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 Girl 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 Girl Scouts of America, San Diego-Imperial Council, a nationally chartered Girl Scout Council.
- 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.

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 those adjacent portions of Balboa Park lying between Upas Street and the leasehold boundary and between Richmond 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, walkway sweeping, and keeping the aboveground storm drain along Richmond Street clear. LESSEE acknowledges that CITY has performed any necessary maintenance to said adjacent portions of Balboa Park to make these areas safe and usable prior to LESSEE assuming maintenance responsibilities under this lease. These areas 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 x 1.10). In the second adjustment it will be \$1,254 per month (\$1,100 x 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 mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

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

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.
- 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 Nine Hundred Thousand Dollars (\$1.9 million) during the first seven (7) years of this lease for capital improvements to the leased premises. The \$1.9 million shall not include maintenance expenditures. 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 \$1.9 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 31, 1955, with Girl Scout Council of San Diego County, Inc., City Clerk Document 509405, 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-295826 and by LESSEE, acting by and through its lawfully authorized officers.

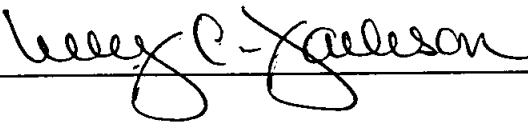
THE CITY OF SAN DIEGO

Date 3-6-02

By 
William T. Griffith
Real Estate Assets Director

LESSEE: GIRL SCOUTS, SAN DIEGO-
IMPERIAL COUNCIL, INC.

Date January 4, 2002

By 
By 

APPROVED as to form and legality this 5th day of March, 2002

CASEY GWINN, CITY ATTORNEY

By 
Deputy City Attorney

PTC:jmj
12/27/01
I:\WPO\2001\CRAWFORD\LEASE-GIRL SCOUTS.wpd

SECTION 9: EXHIBITS

9.1 Legal Description.

All 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, lying within the following described line:

Commencing at the intersection of the Northwestern line of Richmond Street with a line parallel with and 83.00 feet Southerly from the Southerly line of Upas Street, as said Upas Street and Richmond Street are located and established as of the date of this instrument; thence Westerly along said parallel line to the intersection with a line parallel with and 25.00 feet Northwesternly, measured at right angles, from the Northwestern line of said Richmond Street and being the True Point of Beginning; thence Southwesterly along said parallel line lying Northwesternly of Richmond Street following the alignment of Richmond Street to its intersection with the Easterly line of Cabrillo Freeway, as said freeway is located and established as of the date of this instrument; thence Northerly along said Easterly line of Cabrillo Freeway to a point lying due West from the most Southerly point of that parcel of land occupied by the Desert Pacific Council of the Boy Scouts of America and as more particularly shown on said Engineering Department Drawing No. 6453-L; thence Northwesternly and Northerly following the Southeasterly and Easterly line of said Boy Scout parcel to its most Northeasterly point; thence continuing along the Northerly prolongation of the last described line to the intersection with said parallel line lying 83.00 feet Southerly from the Southerly line of Upas Street; thence Easterly along said line lying Southerly of Upas Street 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 page 31a.)

9.2b. CONCEPTUAL DEVELOPMENT PLAN

The Girl Scouts, San Diego-Imperial Council, Inc. desires to extend its lease at Balboa Park in order to continue to provide an accepting and nurturing environment where girls can learn teamwork, self reliance and interdependence by participating in camping and outdoor programs. With the assurance of a lease extension, the Girl Scouts can move forward with the design, construction and funding of improvements to its leasehold consistent with the needs and interests of its 33,000 membership of girls ages 5 to 17. A survey conducted in 1998 of members and volunteers identified members' needs and interests to be:

- ▶ Opportunities to spend time in nature and develop an appreciation for the out-of-doors.
- ▶ Physical activities in response to increasingly sedentary and urban lifestyles.
- ▶ Challenging physical activities to build self-esteem, learn goal setting, overcome fear and appreciate the importance of health and strength.
- ▶ Team sports to encourage cooperation and develop a positive spirit of competition.
- ▶ Fun, non-competitive activities.
- ▶ Performance arts programs which are increasingly unavailable in public schools.

Possible improvements to address the membership needs and interests may include:

- ▶ Community garden
- ▶ Tree house
- ▶ Climbing wall
- ▶ Playground
- ▶ Science and technology center
- ▶ Wood-working and weaving center
- ▶ Music center
- ▶ Courts for basketball and four-square
- ▶ Amphitheater for performing arts

9.3 Corporate Name.

GIRL SCOUTS, SAN DIEGO-IMPERIAL COUNCIL, INC.
CORPORATE NAME

I, Lucy C. Jackson, certify that I am the Council President of the corporation named in the attached agreement; that Jo Dee C. Jacob, who signed this agreement on behalf of the corporation, was then Executive Director 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 October 25, 20 00, 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

Lucy C. Jackson

CORPORATE SEAL

Name Lucy C. Jackson
Title

Name Council President
Title

Name Jo Dee C. Jacob
Title

Name Executive Director
Title



9.4 Schedule of Rates and Charges.

Girl Scouts pay the following typical fees for building and facility rental:

- \$66 per day per lodge
- \$196 per day for all three lodges

Non-Girl Scouts pay the following typical fees for building and facility rental:

- \$10 per hour per lodge
- \$270 per day for lodge and grounds
- \$803 per day for all three lodges

Girl Scouts Retail Store sells uniforms, handbooks, badges, and gift items. Prices are comparable to other retail establishments. The majority of items sell for between \$1 and \$25.

9.5 Schedule of Days and Hours of Operation.

Program and Service Center and Retail Store

- Monday through Friday 8:30 a.m. to 5:30 p.m., year-round
- Most Saturdays 10:00 a.m. to 1:30 p.m.

Program Property and Facilities are also available for use anytime with advance booking.

RESOLUTION NUMBER R- 295826

ADOPTED ON DEC 4 - 2001

WHEREAS, since 1955, the Girl Scouts, San Diego-Imperial Council, Inc., has leased approximately 15 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 Girl Scouts over the years consist of an administrative headquarters, resource center, Scout store, and cabins; and

WHEREAS, the current 50-year lease expires in 2005 and the Girl Scouts requested an early renewal of the lease to engage in a capital campaign to further improve the leased premises; and

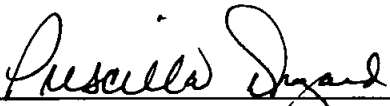
WHEREAS, the City and Girl Scouts, San Diego-Imperial Council, Inc., have negotiated a 25-year lease agreement at the initial rental rate of \$1.00 per year; and

WHEREAS, the new lease will require the Girl Scouts to raise and expend at least \$1.9 million during the next seven years to improve the leased premises, including upgrading and remodeling existing improvements and constructing new improvements such as a multipurpose building, amphitheater, storeroom, and expanded recreational areas and paths; 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 lease agreement with Girl Scouts, San Diego-Imperial Council, Inc., a California nonprofit corporation, for a Girl Scout recreational facility and related administrative offices on approximately 15.0 acres of Balboa

Park at 1231 Upas Street, at an initial annual rent of \$1.00, with the term being 25-years with a 15-year option, provided that the Girl 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-_____.

APPROVED: CASEY GWINN, City Attorney

By 
Prescilla Dugard
Deputy City Attorney

PD:cdk
11/20/01
12/06/01 REV.
Or.Dept:REA
R-2002-726
Form=leaser.frm

Passed and adopted by the Council of San Diego on December 4, 2001 by the following vote:

YEAS: PETERS, WEAR, ATKINS, STEVENS, FRYE, MAIENSCHIN, MADAFFER, INZUNZA, MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: NONE.

VACANT: 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: Ramone Lewis, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R- 295826, passed and adopted by the Council of The City of San
Diego, California on December 4, 2001.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy

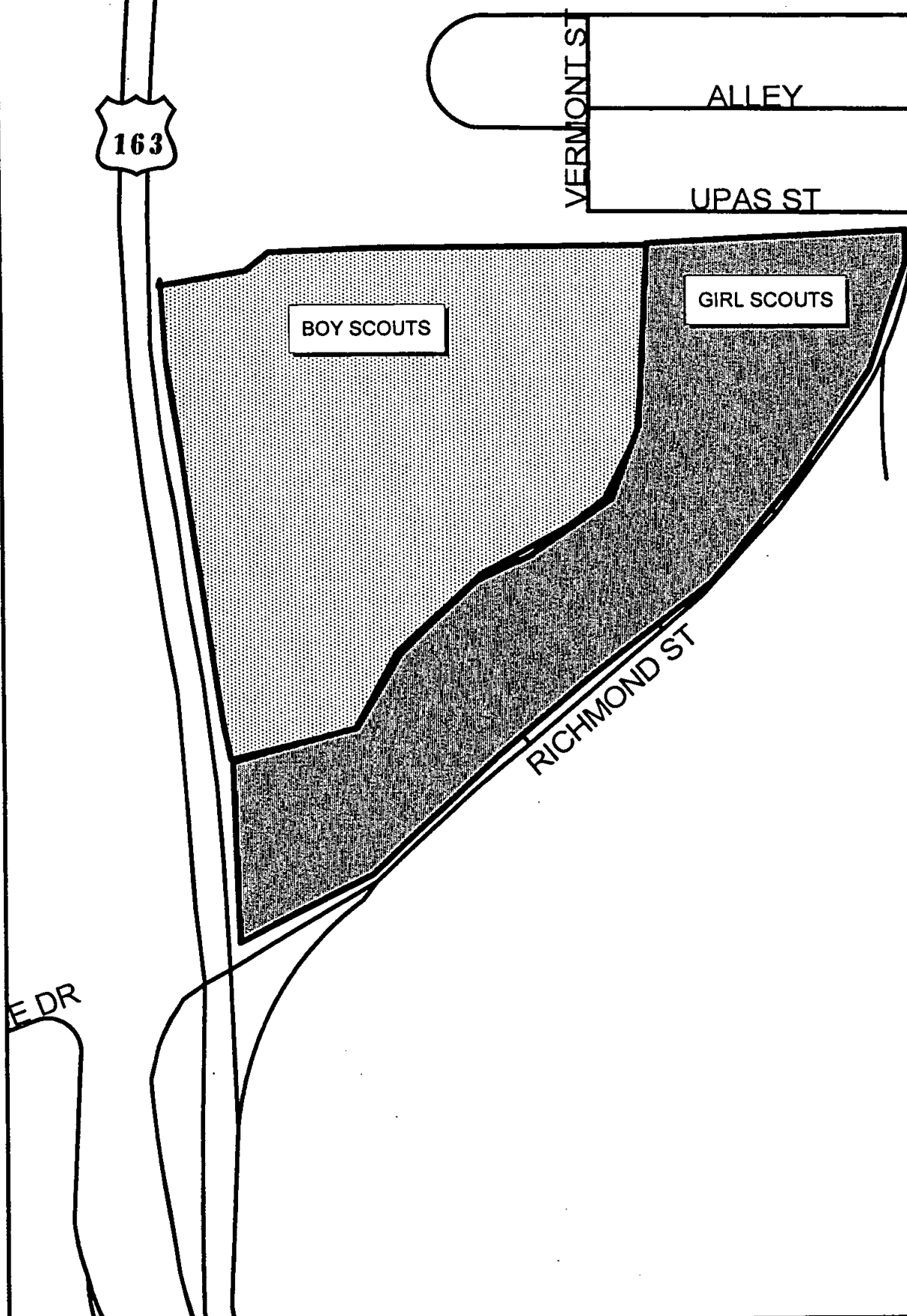


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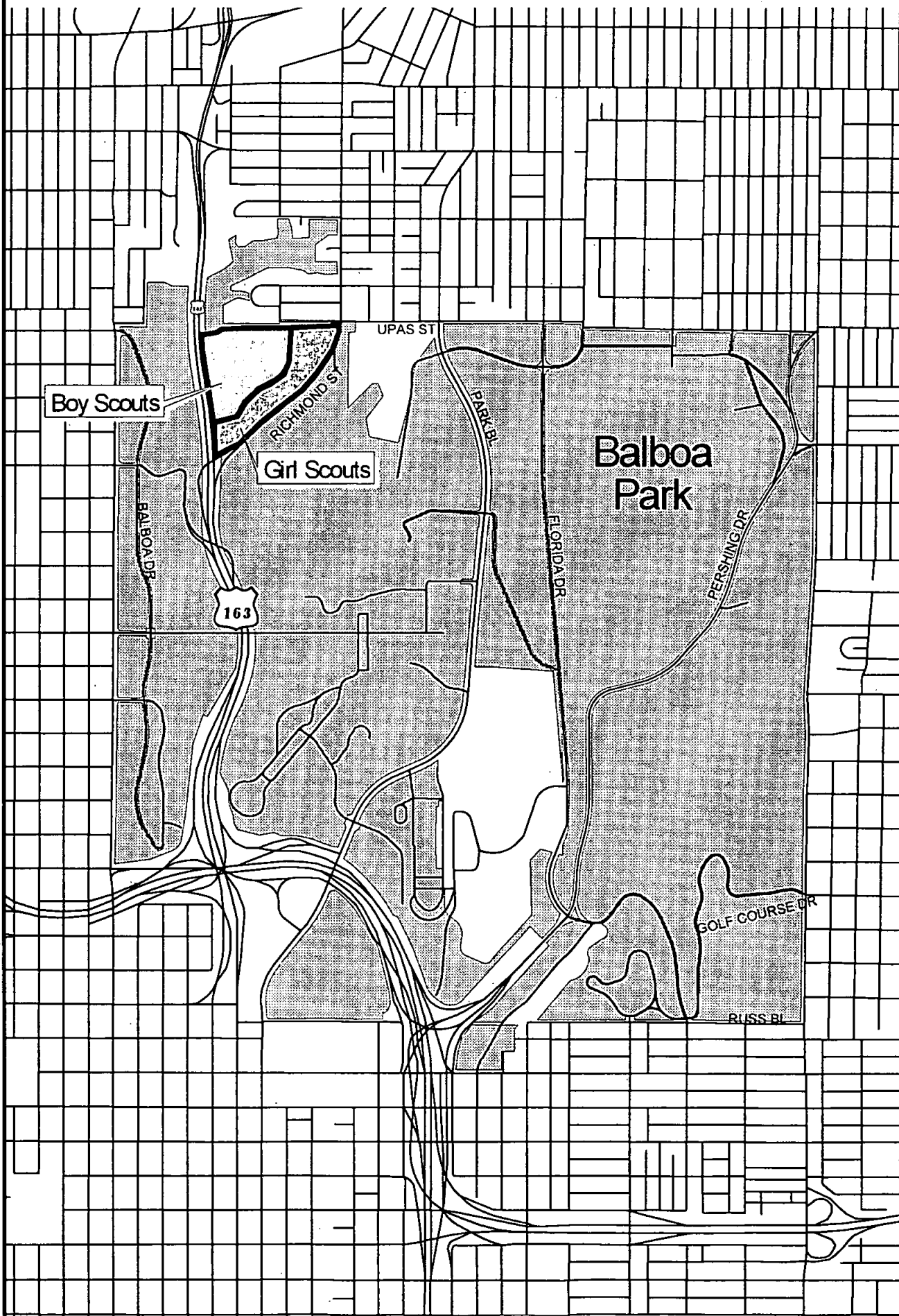
Vicinity Map

[illegible]

Plot Date: 11/13/00



BOY SCOUTS & GIRL SCOUTS LEASES IN BALBOA PARK



1:18000

Vicinity Map



SanGIS
We Have San Diego Covered!

SanGIS is a registered trademark of the City of San Diego. All other trademarks are the property of their respective owners. This map was created using data from the City of San Diego's Geographic Information System (GIS) and is not intended for use in any other context. The City of San Diego is not responsible for any errors or omissions in this map. For more information, please contact the City of San Diego's GIS Department.

Plot Date: 11/13/00

West to
Cabrillo Freeway

Boundary
Fence

P.L. 1131

Boy Scout Camp

Boundary
Fence

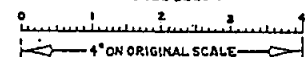
Girl Scout
Camp

Base Line

Boundary Fence



REDUCED PLAN
USE SCALE BELOW



Fence is Boundary Line
2-17-58 per Ben Hagar,
Prop. Management.

MARSTON HILLS
Map No. 1790

VERMONT

CITY OF SAN DIEGO
OPERATING DEPARTMENT

Area to be occupied by the Boy
Scouts in Balboa Park.
Location of Girl Scout Camp fence (1956)

APPROVED	<i>[Signature]</i>	DATE	Apr. 11, 1945.
DRAWN BY	WELLY	SCALE	1" = 50'
CHECKED BY	WELLY	DATE	Apr. 11, 1945.
FILE NO.	1131-11	PROJECT NO.	6453bL

MICROFILMED