

ORIGINAL

THE CITY OF SAN DIEGO
SAN DIEGO HALL OF CHAMPIONS INC.
BALBOA PARK LEASE AGREEMENT

DOCUMENT NO. 00-17702
FILED OCT 21 1991
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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CITY OF SAN DIEGO
AND
SAN DIEGO HALL OF CHAMPIONS INC.
AGREEMENT

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SAN DIEGO HALL OF CHAMPIONS INC.

LEASE AGREEMENT

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and SAN DIEGO HALL OF CHAMPIONS INC, a California non-profit public benefit corporation, hereinafter called "LESSEE."

SECTION 1: USES

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the CITY of San Diego, County of San Diego, State of California, known as the Federal Building, more particularly described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises."

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of operation and maintenance of a public museum, including gift shop, food service operations, research archives, library and such other incidental purposes as may be approved in writing by the City Manager. LESSEE's right to operate a food service operation on the premises shall be further subject to the approval in writing by the City Manager of the scope and nature of such food service operation and of plans and specifications for such a facility. LESSEE shall not exclude the general public or interfere with the public's right to the use and enjoyment of Balboa Park and its facilities; provided, however, that reasonable restrictions and regulations may be made in order to carry on art museum and related activities in an orderly and proper manner.

LESSEE may operate a gift shop on the premises and sell to the general public articles which primarily relate to subjects on display or activities conducted in the Museum, including, but not limited to books, periodicals and related artifacts.

LESSEE may reasonably place signs, displays and promotional materials within the premises provided however that no

exterior signs, displays, logos or any other form of message may appear on the exterior of the leased premises without the express written approval of the City Manager which shall not be unreasonably withheld.

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

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

1.05 Easements and Reservations

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

However, CITY shall not unreasonably or substantially interfere with LESSEE's use and enjoyment of the premises or with the safety or security of LESSEE's property, employees or invitees and will reimburse LESSEE for physical damages, if any, to the permanent improvements

1.06 Competent Management. Throughout the term of this Lease Agreement, LESSEE shall provide competent management of the premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a public museum and related activities in a fiscally responsible manner.

1.07 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public as set forth in Section 3.01; Operation of a Public Museum, 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.

1.08 Political Activities. The premises shall be used exclusively for the purposes specified in Section 1.02, USES, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual of any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

SECTION 2: TERM

2.01 Commencement. The term of this agreement shall be fifty-four (54) years and eleven (11) months commencing on the first day of the calendar month following written notice from CITY to LESSEE that CITY has vacated the premises. It is CITY's intent to relocate the activities now housed on the premises and to vacate the property on or about September, 1994. Nothing in this Agreement, however, shall require that CITY vacate the premises until the planned replacement facility is complete and open to the public.

Lessee moved
into Federal
Bldg in
July 1999.

"Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following CITY's written notice to LESSEE that CITY has vacated the premises.

2.02 Renewal of Lease. If, after the fifty second anniversary of the effective date of this agreement, CITY, by action of its CITY Council, shall determine that it is in the public interest to continue the uses described in Section 1.02 hereof on the premises leased herein, then LESSEE shall be offered the first right of refusal to negotiate a renewal of this lease under the terms and conditions established by CITY. If no renewed lease has being mutually agreed to by the fifty third anniversary of the effective date of this agreement, however, CITY may include other interested parties in the negotiation for a successor lessee upon termination of this Agreement pursuant to Section 2.01 herein.

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

2.04 Quitclaim and Surrender of LESSEE's Interest. On execution of this lease, LESSEE shall deliver to CITY a Quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration of the term of the lease, including any extensions or upon the earlier undisputed termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which exist on the date of execution hereof, and in the same or better condition as when received from CITY, reasonable wear and tear excepted. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

SECTION 3: CONSIDERATION

3.01 Operation of A Public Museum. In consideration of CITY entering into this agreement with LESSEE, LESSEE agrees to

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

3.02 Improvements to Premises. LESSEE shall undertake a major renovation of the premises within five (5) years of the commencement date of this agreement in accordance with Section 2.01 herein. Said major renovation is more fully described in Section 6.10 (f)(1), (2) and (3) herein. The estimated current cost of the major renovation is a minimum of THREE MILLION DOLLARS (\$3,000,000.00) which shall be the sole responsibility of the LESSEE. Failure of LESSEE to complete said major renovation to satisfaction of CITY shall be cause for termination of this agreement. LESSEE's compliance with the terms of this section shall be evidenced by a Certificate of Occupancy issued by CITY, the issuance of which shall not be unreasonably withheld.

3.03 Schedule of Rates and Charges

Schedule of Rates and Charges, shall be set by the Executive Director of LESSEE but shall be subject to the review and approval of the City Manager.

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

SECTION 4: ASSIGNMENT

4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of

the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.

4.02 Assignment and Subletting. LESSEE shall not assign this lease, or any interest therein; shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, for a period exceeding 24 hours; and shall not suffer any other person, except employees, agents and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law, without the written consent of the City Manager. "Assignment," for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of the agreement which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any sublease or assignment, that the proposed sublessee or assignee comply with standard CITY lease requirements that are then current.

4.03 Defaults and Remedies

a. Default. In the event that:

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

day period and diligently pursue such cure to completion; or

- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.03a(1) hereof, is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

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

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of CITY, the remainder of the premises is suitable for contin-

ued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken.

d. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to, LESSEE's then remaining leasehold interest in installations or improvements of LESSEE or to relocation expense. CITY shall have no liability to LESSEE for any award not provided by the condemning authority. In the event of a partial taking under Subsection 4.04(c), all monies awarded shall be placed in a separate fund and shall be utilized, subject to the joint approval of CITY and LESSEE, for the repair and/or improvement of the remaining portion of the premises.

e. Transfer. CITY has the right to transfer CITY's interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.

f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

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

- a. any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by the party;
- b. any operation, use or occupation conducted on the premises by a party or under its auspices;
- c. any act, omission, or negligence on the part of a party, its employees, agents, sublessees, invitees, licensees; or
- d. any failure by a party to comply with any of the lease terms or conditions.

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

- a. Comprehensive general liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
- b. Fire, extended coverage, and vandalism insurance on all insurable property of LESSEE, except fine arts and collections, located on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable to LESSEE. The proceeds shall be reinvested in rebuilding, repairing or improving the damaged property.
- c. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applica-

ble 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.

d. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days prior written notice. CITY's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.

e. LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

f. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

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

5.03 Waste, Damage, or Destruction. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY.

LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage.

If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE and CITY shall discuss procedures and funding sources in order to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage, or, to rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage. LESSEE and CITY agree that these preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIR

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

6.02 Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition due to the breach of a duty of LESSEE under this lease, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in decent, safe, healthy, and sanitary

condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition due to the breach of a duty of LESSEE under this lease, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

- 6.03 Maintenance. LESSEE and CITY agree to assume responsibility and cost for the operation and maintenance of the premises pursuant to Exhibit B Maintenance and Repairs hereof.

LESSEE and CITY will perform all such repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy and sanitary condition satisfactory to CITY and in compliance with all applicable laws. Appropriate codes and standards of CITY, state and federal agencies shall be observed in all maintenance, repairs and replacements on the premises.

- 6.04 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager. This provision shall not relieve LESSEE of any of its obligations under Exhibit B of this lease to maintain the premises in a decent, safe, healthy and sanitary condition. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

- 6.05 Utilities. Except as hereinafter provided, LESSEE agrees to order, obtain and pay for all utilities necessary for operation of the premises. All utilities will be installed underground. CITY shall provide reasonable amounts of water for use on the leased premises. The City Manager shall have sole

and absolute discretion to determine what constitutes a "reasonable amount" for purposes of this paragraph.

6.06 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY prior to commencement of said construction a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY's option it may be placed in an escrow or other trust approved by CITY.

6.07 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.08 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and

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

6.09 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of the City Manager. Such approval shall not be unreasonably withheld. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE's cost.

6.10 Ownership of Improvements

a. Any and all improvements, 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. Trade Fixtures, LESSEE-owned machines, appliances, equipment, exhibits 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. CITY

shall comply with all applicable law regarding abandoned property.

d. If any removal of such trade fixtures or personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.

e. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its trade fixtures and 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 trade fixtures and personal property.

f. In the event of the termination of the Lease prior to the expiration of its term pursuant to the mutual consent of CITY and LESSEE, the CITY shall make a good faith effort to negotiate with provisions to the next succeeding lessee, to pay to LESSEE herein an amount equal to the then unamortized portion of the capital expenditures incurred by LESSEE during the term of the Lease on those major structural improvements and repairs identified as:

1. Addition of approximately 15,000 square feet in a new basement area including, among other things, a new concrete slab, finished exhibit floor area and wall surface, electrical, lighting, security, HVAC system, telephone and emergency exits.

2. Addition of approximately 15,000 square feet in a new second floor mezzanine area including, among other things, a structural steel frame, concrete topping, kitchen, rest rooms, HVAC system, electrical, lighting, security, telephone and emergency exits.

3. Two elevators

The total amount of such capital expenditures incurred by LESSEE shall be documented by a certificate executed by the architect of LESSEE in a form acceptable to CITY, which certificate shall be provided by LESSEE to CITY within ninety (90) days following the completion of any such improvements and repairs.

Further, it is understood that CITY is not obligated in any way for payment to LESSEE herein of any portion of LESSEE's unmortized capital expenditures.

- 6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

SECTION 7: ASBESTOS

7.01 Asbestos Removal

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

- 7.02 Improvements. Lessor and LESSEE further acknowledge that similar asbestos concerns may arise if either party undertakes improvements or remodeling (collectively, "Improvements") of the premises. Lessor and LESSEE agree that the party who undertakes the Improvements, as provided in section 6.04 of the Lease Agreement, shall also be responsible for any asbestos removal, management or containment and all Asbestos Costs caused by such Improvements. The parties acknowledge

that Improvements may be undertaken simultaneously with the Repair of the premises. If so, the parties shall allocate and pay the Asbestos Costs in an equitable manner in direct relation to the relative proportion of Repair and Improvements undertaken by each party on such project.

- 7.03 General Guidelines. Such asbestos removal or management shall be conducted in accordance with all applicable laws and in accordance with an asbestos removal or management plan approved by Lessor and LESSEE. Only contractors who are qualified and licensed in accordance with state law to engage in asbestos material removal shall be used. All asbestos material removed shall be lawfully disposed of, and a Certificate of Lawful Removal _____ shall be furnished to LESSEE or CITY by whichever party engaged the qualified and licensed contractor to perform the asbestos removal.

Lessor reserves the right to inspect any work undertaken by LESSEE pursuant to this section and to station supervisory personnel at the work site, at Lessor's sole discretion, to ensure that LESSEE's obligations are carried out. Both parties shall coordinate any Repairs and Improvements with each other and, except in the event of an emergency, the party undertaking a Repair shall provide prior written notice to the other.

SECTION 8: GENERAL PROVISIONS

8.01 Notices

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

City Manager
Attention Deputy Director
Park and Recreation/Central Division
2125 Park Boulevard
San Diego, CA 92101

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.

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

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

8.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in LESSEE's use of the premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

8.05 Equal Opportunity. LESSEE shall comply with the CITY's Equal Opportunity and Minority and Women and Business Enterprise Contracting Programs for LESSEE's doing business with the CITY of San Diego which was approved by the CITY Council and filed with the CITY Clerk as document RR-262633 in March of 1985. The objectives of the programs are twofold:

1. to encourage equity in contracting opportunities for Minority (MBE) and Women (WBE) Business Enterprises, and
2. to assure that LESSEE's doing business with the CITY are Equal Opportunity Employers who achieve, or attempt to achieve, parity in the representation of women and minorities in their workforce.

LESSEE agrees to submit a Certificate of Compliance and Workforce Analysis Report. The Workforce Analysis Form (WFA) must be completed in its entirety including Part III of the form which requires applicants to identify their current work force by 1) occupational category; 2) ethnicity and 3) gender. When completing this section, include only those employees who are working within the San Diego County area. For each occupational category, indicate the number of males and females in each ethnic group that are employed by your organization. Total each column in the space provided. The sum of all totals should be equal to your total San Diego County Workforce.

LESSEE agrees to submit reports of contracting activities, in the format specified by the CITY. The report will detail the status of the contractor's progress in Equal Opportunity hiring practices and Minority and Women Business Enterprise contracting.

The report shall be submitted to the City Manager through the CITY's representative no later than thirty (30) working days after the end of scheduled reporting period.

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 Agreement.

8.06 Partial Invalidity. If any term, covenant, condition, or provisions of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

8.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.

8.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

8.09 Captions. The lease Index, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.

8.10 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.

8.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by CITY if the contractor or LESSEE knowingly and intentionally employs an individual who within the twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the CITY Council in connection with the

selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the CITY Council.

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

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

SECTION 9: SPECIFIC PROVISIONS

9.01 CITY Funds. During the term of this lease, CITY may provide funds to help defray the cost of operation and maintenance of the premises and the museum in amounts to be determined annually by the CITY Council, provided however, that nothing in this agreement shall commit the CITY to provide any funds to LESSEE to help defray cost of operation and maintenance of the premises.

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

9.03 Covenants by LESSEE. The policies established by LESSEE for the operation of the premises shall conform to the general policies established by CITY for the use and operation of its cultural and educational facilities.

9.04 Board of Trustees. A Board of Trustees (the "Board") shall be elected by LESSEE. The activities and affairs of LESSEE shall be exercised by or under the direction of the Board. The Board may, however, hire an officer, known as the Executive

Director, to act as the general manager and chief executive officer of LESSEE and who shall be authorized by the Board to handle the day-to-day affairs and business of LESSEE.

9.05 Admission Fees. As specified in Section 3.03, Schedule of Rates and Charges, LESSEE shall have the right to charge reasonable admission fees; however, at least one day per month shall be designated by LESSEE as a day when no fees for general admission shall be charged, except for special showings, exhibitions and events on the premises. The schedule of admission fees, except admission fees for special showings, exhibitions and events on the premises, shall be subject to prior written approval by the City Manager.

9.06 Use of CITY Funds. CITY funds shall not be used for acquisition of exhibition objects, educational programs, scientific publications, field trips and research other than that which has as its object the preparation of exhibits. In accordance with CITY's policies, CITY funds may be expended for utilities, custodial, demonstration and guard services, materials and personnel engaged in preparing Museum exhibits for public display in a scientific manner. CITY funds may also be used for administrative and office personnel and for salaries of curators and others engaged in the normal operation of the premises. LESSEE shall not use, directly or indirectly, any of the funds received from CITY under this lease for any political or religious activities whatsoever.

9.07 Use of Proceeds. LESSEE agrees that all income and proceeds received by LESSEE from the operation of the leased premises, shall be utilized for purposes of the continued operation, maintenance and improvement of the leased premises and for purposes incidental thereto or for any purpose authorized or permitted under LESSEE's then current articles of incorporation or bylaws. Certification of LESSEE's compliance with the requirements of this section shall be specifically set forth in LESSEE's audited financial statements as provided for in Section 8.11 hereof.

9.08 Annual Report. On or before March 15th of each year of this lease, LESSEE shall submit to the City Manager a financial report certified by an independent certified public accountant for the previous fiscal year of LESSEE. Said financial report shall include an operating statement and a report of net

worth, and shall be in a form satisfactory to CITY and be subject to review and audit by the CITY Auditor of CITY. The final report shall be submitted within ninety (90) days of the expiration date of this lease and shall cover the period between the last report and the said expiration date.

9.09 Financial Records. LESSEE shall keep or cause to be kept true, accurate and complete records, including double entry books, a profit and loss statement and a balance sheet, making it possible at all times to determine the nature and amount of revenue and expenditures. All of the LESSEE's expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices and receipts. Documents supporting a profit and loss statement shall be retained by LESSEE until an audit of LESSEE's records is conducted by CITY, or until a period of three (3) years has elapsed, whichever occurs first.

9.10 Accounting Procedures. LESSEE shall use such accounting procedures as shall be recommended by the American Association of Museums. Revisions or changes in LESSEE's accounting procedures not in accord with the procedures recommended by the American Association of Museums shall be approved by CITY Auditor and Comptroller.

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

9.12 Proposed Budget. LESSEE shall have deposited with the City Manager by March 15 of each year copies of documents evidencing the proposed programs and financial status of LESSEE for the year for which support is required. Without limiting the generality of the foregoing, such documents shall include (i) a copy of LESSEE's proposed programs, and (ii) a copy of a

detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures.

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

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

SECTION 10: SIGNATURES

10.01 Signature Page

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

THE CITY OF SAN DIEGO

Date 10-25-91

By

K. L. Purney
~~Deputy City Manager~~
ASST. PARK & RECREATION DIR

SAN DIEGO HALL OF CHAMPIONS INC.

Date 9-20-1991

By

[Signature]

Date _____

By

APPROVED as to form and legality this 25th day of October, 1991.

JOHN W. WITT, City Attorney

By

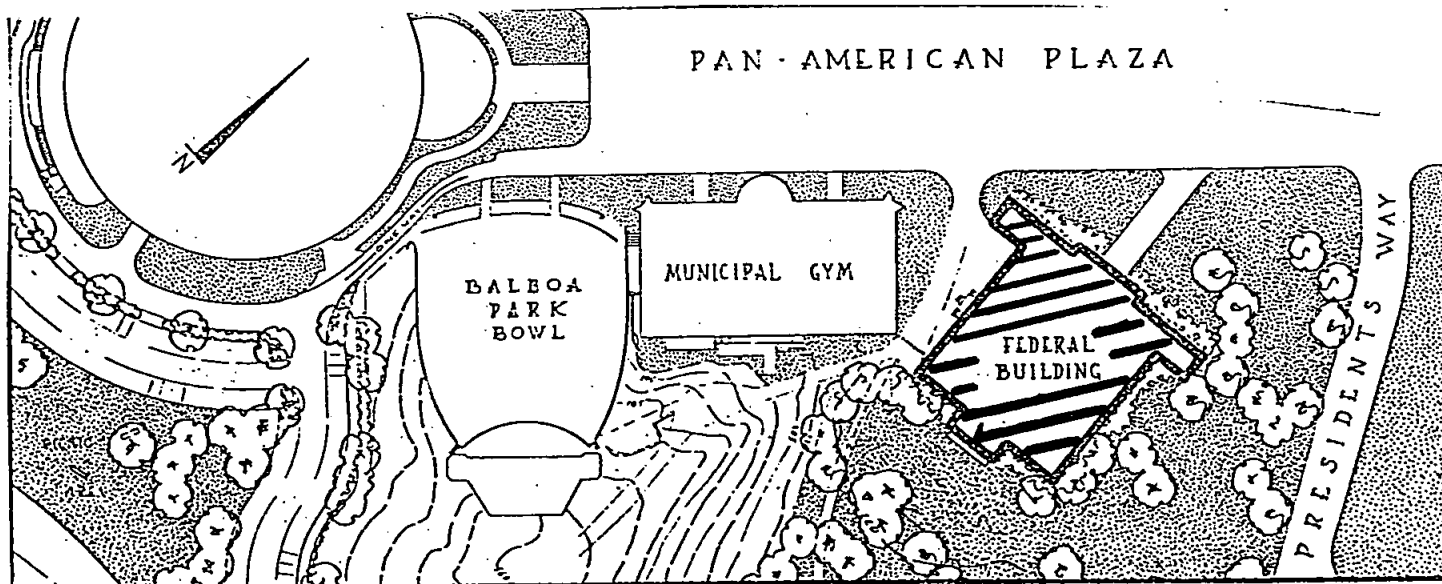
Mary Kay Jackson
Deputy City Attorney

09/11/91
sgs/HALCHAM3

EXHIBIT "A"

Description of Premises

HALL OF CHAMPIONS



The approximate boundary of the premises is outlined on the graphic above. It is intended that the leasehold be concomitant with the exterior surface of all exterior walls, plus stairs and stairwells, ventilation shafts, and loading docks.

EXHIBIT "B"

LEASE AGREEMENT
SAN DIEGO HALL OF CHAMPIONS INC.
MAINTENANCE AND REPAIRS

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

EXHIBIT "B"

<u>System/Area</u>	<u>CITY's Responsibilities</u>	<u>LESSEE Responsibilities</u>
Fire Suppression System	All maintenance fire suppression system, sprinkler systems, and/or other permanently installed system for the of the building. Conduct inspection of all equipment not less than annually.	Check and observe daily. Report problems to CITY. Maintain all portable and/or temporary systems, extinguishers, hoses and nozzles, sensors and alarms, etc.
Alarms	None.	All sensors, alarms, wiring, etc., for security and fire alarm systems. Including heat, smoke, motion, intrusion, etc.
Security	Exterior building envelope, including exterior locks, emergency boarding up and repair of doors and windows.	All other security including lock installations and maintenance.
Displays and Additions	Approval of hookups and modifications of all types.	All installation, removal and maintenance.
Elevators/Dumbwaiters	All maintenance. Obtain and maintain permits, inspections, etc.	Check and observe daily. Identify and report problems to the CITY.
Floors/Floor Coverings	All permanent floors.	Temporary floor coverings. Repairing floor when temporary floor coverings and carpet is removed.
Windows/Glass	All glass in permanent windows and doors.	All glass in temporary partitions, displays, etc. All tinting film on windows.
Doors, Walls, Ceilings, Roof and Metal Shades	All permanent items.	Any additions or modifications to existing equipment, structures or systems, displays and temporary installations, window coverings (film, shades, blinds, drapes).

EXHIBIT "B"

<u>System/Area</u>	<u>CITY's Responsibilities</u>	<u>LESSEE Responsibilities</u>
Custodial	None.	All, including providing paper products, soap, light bulbs and tubes. Cleaning adjacent to structures.
Vandalism	All CITY owned items and permanent structures, including windows.	All non-permanent structure, collection and equipment or display owned by LESSEE.
Paint	All exterior and interior painting, excluding only those areas for which LESSEE has responsibility. Surfaces shall be repainted every 7-10 years.	All interior painting of exhibit areas, office and basement areas.

The above division of maintenance responsibilities notwithstanding, CITY's obligation to provide for maintenance of the premises in accordance with the terms of this Agreement shall be limited to the extent that provision has been made therefor in the annual CITY appropriation for maintenance of public buildings.

ORDINANCE NUMBER O- 17702 (NEW SERIES)

ADOPTED ON OCT 21 1991

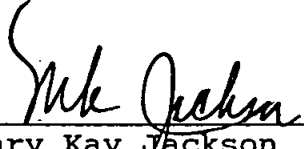
BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That the City Manager be and is hereby authorized and empowered to execute, for and on behalf of said City, an agreement with San Diego Hall of Champions, Inc., for a fifty-five year lease of the Federal Building in Balboa Park, under the terms and conditions set forth in the Lease Agreement on file in the office of the City Clerk as Document No. OO- 17702, together with any reasonably necessary modifications or amendments thereto which do not increase this project's scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By


Mary Kay Jackson
Deputy City Attorney

MKJ:mb:lc
09/18/91
09/23/91 COR.COPY
Or.Dept:Pk.&Rec.
O-92-50
Form=none

Passed and adopted by the Council of The City of San Diego on Oct. 21, 1991
by the following vote:

YEAS: Wolfsheimer, Roberts, Hartley, Pratt, Henderson, McCarty, Filner.

NAYS: None.

NOT PRESENT: Behr, Mayor O'Connor.

AUTHENTICATED BY:

MAUREEN O'CONNOR

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By RHONDA R. BARNES, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy
of ORDINANCE NO. O-17702 (New Series) of the City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar
days had elapsed between the day of its introduction and the day of its final
passage, to wit, on Sept. 23, 1991, and on Oct. 21, 1991.

I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with
by a vote of not less than a majority of the members elected to the Council, and
that there was available for the consideration of each member of the Council and
the public prior to the day of its passage a written or printed copy of said
ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

By Blonda R. Barnes, Deputy

(Seal)

BYLAWS
SAN DIEGO HALL OF CHAMPIONS, INC.

ARTICLE I
PURPOSE

Section 1. The purpose of the Corporation is to operate a sports museum known as the San Diego Hall of Champions that honors San Diego and other athletes and to recognize athletes and community members for their achievements both on and off of the athletic field. An additional purpose of the Corporation is to provide broad based community outreach and educational programs for children of San Diego County in order to promote athletic and physical education, provide an educational experience through the use of athletic history and events, and to promote and teach the values of all champions.

ARTICLE II
MISSION

Section 1. The mission of the San Diego Hall of Champions is to promote, recognize and preserve athletic achievement for the purpose of inspiring individuals of all ages to reach their full potential.

ARTICLE III
OFFICES

Section 1. The principal office for the transaction of business of this Corporation shall be the San Diego Hall of Champions, 2131 Pan American Plaza in Balboa Park, San Diego, California, and such other places in San Diego, California as the Board of Trustees shall from time to time designate.

ARTICLE IV

BOARD OF TRUSTEES

Section 1. Categories of Trustees. The Board of Trustees shall consist of Regular Trustees (Board of Trustees), Honorary Trustees and Advisory Trustees. Honorary Trustees are those persons selected by the Regular Trustees based upon their contributions to the Corporation. Advisory Trustees are distinguished persons selected from the community-at-large to provide their advice and counsel to the Corporation. Neither Honorary nor Advisory Trustees have any specific financial obligation to the Corporation nor shall they be entitled to vote on Corporate matters.

Section 2. Qualifications. Any person who is a member and can and will contribute beneficially and will support the Corporation's fund raising activities is eligible for election to the Board of Trustees, provided that such person shall not be a paid employee of the Corporation.

Section 3. Number and Composition. The authorized number of Regular Trustees of the Corporation shall not exceed forty-five (45). There shall be no limit as to the number of Honorary or Advisory Trustees.

Section 4. Election. Trustees shall be elected by a majority vote of the Regular Trustees from time to time at a Regular or Special meeting of the Board of Trustees, upon nomination by the Nominating Board/Development Committee.

Section 5. Term of Office. The term of office of each Trustee first elected to the Board shall be one (1) year. Thereafter, the term of office of each Trustee shall be three (3) years.

Section 6. Vacancies. Vacancies on the Board of Trustees caused by resignation, removal, death, or other cause may be filled by a majority vote of the remaining Trustees at a meeting noticed for such purpose, where a quorum is present. Each Trustee so

elected shall hold office until the expiration of the vacancy to which the Trustee has been elected.

Section 7. Duties and Powers. Subject to the limitations of the Articles of Incorporation, the Bylaws, and the laws of the State of California as to actions to be authorized and approved by the Trustees and subject to the duties of Trustees as prescribed by these Bylaws, all Corporate powers and the business and affairs of the Corporation shall be exercised by or under the authority of the Board of Trustees.

Without prejudice to its general powers, but subject to the same limitations, it is hereby expressly declared that the Trustees shall have the following powers:

- (a) To select and to remove all the officers, agents, and employees of the Corporation; to prescribe such powers and duties for them as may be consistent with law, the Articles of Incorporation, and these Bylaws; to fix their compensation; and to require from them security for faithful service.
- (b) To conduct, manage, and control the affairs of the business of the Corporation and to make rules and regulations consistent with law, the Articles of Incorporation and these Bylaws, as they may deem best.
- (c) To change the principal office for the transaction of the business of the Corporation.
- (d) To borrow money and to incur indebtedness for the purpose of the Corporation and to cause to be executed and delivered therefor, in the corporate name, promissory notes, or other evidences of debt and instruments securing the payment of the same.

Section 8. Liabilities and Indemnification.

- (a) None of the Trustees of the Corporation shall be personally liable for the debts, liabilities or obligations of the Corporation.

(b) The Corporation shall have the power to purchase and maintain insurance on behalf of the Trustees of the Corporation against any liability asserted against or incurred by the Trustees in such capacity or arising out of the Trustees status as such, whether or not the Corporation would have the power to indemnify the Trustee against such liability under the provisions of this section.

Section 9. Regular Meetings. Regular meetings of the Board of Trustees shall be held monthly at any place within the County of San Diego, State of California which has been designated from time to time by the Board of Trustees or by written consent of a majority of the Board of Trustees.

Section 10. Annual Meeting. There shall be an annual meeting held at a place determined appropriate by the Board of Trustees. The meeting shall be held in May of each year, or at any other date so designated by the Board of Trustees.

Section 11. Special Meetings. Special meetings of the Board of Trustees may be called by the President, the Executive Committee or by the written request of fifteen (15) members of the Board of Trustees. If the President is absent or unable or refuses to act, special meetings may also be called by any Vice President. Notice of special meetings shall be given at least four (4) days prior to such meeting if given by first-class mail or at least forty-eight (48) hours prior to such meeting if delivered personally or by telephone or by electronic notification. Notice of the special meeting shall specify, in addition to the place, date and hour of such meeting, the general nature of the business or proposals to be considered or acted upon at such meeting.

Section 12. Quorum.

(a) Presence at a meeting of the Board of Trustees by one-third (1/3) or more of the Trustees in office shall constitute a quorum of the Board of Trustees for the transaction of business. Every act or decision made by a majority of the Trustees present at a meeting

duly held at which a quorum is present shall be regarded as the act of the Board of Trustees, unless a greater number is required by law or these Bylaws.

(b) A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Trustees, if any action taken is approved by at least a majority of the required quorum for such meeting, or such greater number as may be required by law or these Bylaws.

Section 13. Participation at Meetings. The Board of Trustees may participate in a meeting by the use of conference telephone or similar communications equipment, as long as all Trustees participating in such meeting can hear one another. Participation by the use of conference telephone or similar communications equipment constitutes presence in person at such meeting.

Section 14. Executive Session. At any meeting of the Board of Trustees, the chairman of the meeting may declare an Executive Session, which shall be a closed meeting of the Board at which only members of the Board and the Board's invited guests may be present. Separate minutes of the actions taken by the Board in Executive Session shall be entered in a separate and confidential minute book and shall not be available for inspection by any persons, other than Trustees, except upon the prior approval of the President or the Board of Trustees.

ARTICLE V OFFICERS

Section 1. Number and Title. The officers of this Corporation shall consist of the President, one or more Vice-Presidents, Secretary, Treasurer and such other officers as the Board of Trustees may establish from time to time. The Treasurer and Secretary may be the same person. The immediate Past President shall serve as Chairman of the Board of Trustees.

Section 2. Election. Officers shall be elected from a slate of candidates submitted by the Trustee Development Committee, or from nominations submitted by Board members at the time of election. All candidates must be current members of the Board of Trustees.

Section 3. Term of Office. The officers of the Corporation shall be chosen annually by the Board of Trustees and shall hold office for the term of one year or until such officer or officers shall resign, shall be removed or shall otherwise be disqualified to serve, or until their successors shall be elected and qualified.

Section 4. Removal and Resignation. An officer may be removed with or without cause by a majority of the Trustees at any regular or special meeting of the Board. Any officer may resign at any time by giving written notice to the Board of Trustees or to the President or to the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified in the notice, and unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office because of death, resignation, removal, or other cause shall be filled by a vote of the majority of Trustees at any meeting noticed for such purpose and at which a quorum is present. Each officer so elected shall hold the office for the term prescribed by the Trustees.

Section 6. President. The President shall be chief executive officer of the Corporation and shall, subject to the authority of the Board of Trustees, have general supervision, direction, and control of the business and officers of the Corporation. He/she shall preside at all meetings of the Board of Trustees. He/she shall be an ex-officio member of all standing committees and shall have the general powers and duties of management usually vested in the office of President of an incorporated body and shall have such other powers and duties as may be prescribed by the Board of Trustees or by these Bylaws.

Section 7. Vice Presidents. In the absence or disability of the President, the Vice President designated by the Board of Trustees, shall perform all of the powers and be subject to all the restrictions upon the President. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them by the Board of Trustees, the Executive Committee or the Bylaws.

Section 8. Secretary.

(a) The Secretary or his/her designee shall attend all meetings of the Executive Committee and the Board of Trustees of the Corporation. In case he/she cannot attend a meeting for any cause, the President shall appoint a Secretary Pro-Tem.

(b) The Secretary or his/her designee shall keep, or cause to be kept, a Book of Minutes at the principal office (and such other place as the Board of Trustees may order) of all meetings of the Board of Trustees and Executive Committee, including the time and place of the meeting, whether regular or special, and if special, how authorized, the notice given, the names of those present at meetings of the Board of Trustees and Executive Committee, and its proceedings.

(c) The Secretary or his/her designee shall keep, or cause to be kept, at the principal office of the Corporation, a register showing the name of all Trustees and their respective addresses.

(d) The Secretary or his/her designee shall give, or cause to be given, notice of all meetings of the Board of Trustees and Executive Committee required by the Bylaws or by law to be given, and he/shall keep the seal of the Corporation in safe custody. He/shall have such other powers and perform such other duties as may be prescribed for him/her from time to time by the Board of Trustees, the Executive Committee or the Bylaws.

(e) The Secretary or his/her designee shall maintain a file and shall handle or cause to be handled all correspondence of the Corporation and perform all duties relating thereto.

Section 9. Treasurer. The Treasurer shall oversee the administration of the Corporation's finances. The Treasurer shall present interim and annual financial statements to the Board of Trustees for consideration and approval. He/shall serve as Chair of the Finance and Audit Committee. He/she shall have such other powers and perform such other duties as may be prescribed for him/her from time to time by the Board of Trustees, the Executive Committee, or the Bylaws.

ARTICLE VI COMMITTEES

Section 1. Executive Committee. The Executive Committee shall consist of the President, the Vice-Presidents, the Treasurer, the Secretary and any other Trustee nominated by the President and elected by a majority vote of the Trustees. The President of the Corporation shall be Chairman of the Executive Committee. Except to the extent limited by California Corporations Code Section 5212, the Executive Committee shall, when the Board of Trustees is not in session, have charge, control and regulation of all of the affairs and properties of the Corporation, and shall assume such other duties, as the Board of Trustees shall delegate from time to time.

Section 2. Executive Committee Meetings. The Executive Committee shall meet at such times and upon the call of the President, as the Committee shall prescribe. A majority of the members of the Executive Committee shall constitute a quorum but a lesser number may adjourn the meeting from time to time.

Section 3. Standing Committees. The following Standing Committees shall be appointed by the President and each committee shall consist of a chairman and such number of members as the President shall fix and determine: (a) Development and Endowment Committee, (b) Awards Committee, (c) Salute to the Champions Dinner Committee, (d) Finance and Audit Committee, (e) Membership Committee, (f) Trustee Development Committee.

Section 4. Other Committees. Other committees shall be appointed by the President from time to time for such purposes as shall be required to properly and efficiently conduct the business and affairs of the Corporation.

MEMBERS

ARTICLE VII

Section 1. Voting. All San Diego Hall of Champions memberships shall be non-voting memberships.

Section 2. Categories of Membership. The memberships shall be divided into the following categories:

- (a) Corporate Gold
- (b) Gold Medallion
- (c) Silver Medallion
- (d) Bronze Medallion
- (e) Patrons
- (f) Contributing
- (g) Family
- (h) Individual

The dollar contributions for each of the above categories and the rights and privileges attached to each category shall be determined by the Board of Trustees, and may be modified from time to time at the discretion of the Trustees.

ARTICLE VIII

FINANCES AND AUDIT

Section 1. The time of commencement and ending of the fiscal year of the Corporation shall be specified by the Board of Trustees.

Section 2. The accounts of the Corporation shall be audited by an auditor appointed by the Board of Trustees, to whom the auditor shall render his report. Such audit shall be made by a Certified Public Accountant. The time of such audits shall be as follows:

- (a) Annually as of the last day of the fiscal year.
- (b) Whenever the Executive Director resigns, retires or is discharged.
- (c) Whenever the structure of the organization, or management of the Corporation is substantially changed.
- (d) At any other times deemed prudent by the Board of Trustees.

Section 3. All funds and property received by or coming into the custody of the Corporation shall be expended only for the purposes authorized and only in accordance with the policies prescribed by the Corporation. The financial affairs of the Corporation shall be conducted in accordance with recognized accounting principles, and the records shall be kept in such manner as to facilitate the preparation of periodic reports to the Board of Trustees or other bodies.

Section 4. All monies received by the Corporation shall be deposited in banks or depositories in the name of the San Diego Hall of Champions. All transactions in excess of one thousand dollars (\$1,000.00) from any such accounts shall be signed by two authorized officers or the Executive Director and one other authorized officer. No accounts shall be opened without the approval of the Board of Trustees. Only banks that are members of the Federal Deposit Insurance Corporation or financial institutions that are members of the Federal Savings & Loan Insurance Corporation may be used as depositories, unless prior approval of the Board of Trustees is obtained.

ARTICLE IX

AUXILIARY

Section 1. The Board of Trustees may authorize from time to time an auxiliary association to the Corporation, to be known as the "San Diego Hall of Champions

Auxiliary.” The primary purpose of the Auxiliary shall be to foster, promote and enhance the interests and purposes of the Corporation, as stated in these Bylaws, including fundraising on behalf of the Corporation.

- (a) The Auxiliary shall be composed of civic minded, responsible and charitable individuals from the community served by the Corporation.
- (b) There shall be no limit as to the number of individuals constituting the Auxiliary, and admission of individuals to the Auxiliary group shall be at the discretion of a majority of the Auxiliary. In addition, a majority of the Auxiliary may designate one or more of its members to act as officers to organize and regulate the activities of the Auxiliary.
- (c) Recognizing that the individuals constituting the Auxiliary donate their time, advice and efforts as charitable contributions to the Corporation, the Corporation shall recognize the Auxiliary’s achievements from time to time as the Board of Trustees shall see fit.
- (d) Any member of the group constituting the Auxiliary may be invited to attend meetings of the Board of Trustees as a representative, but the Auxiliary shall have no vote in matters brought before such meetings.

ARTICLE X

AMENDMENTS TO BYLAWS

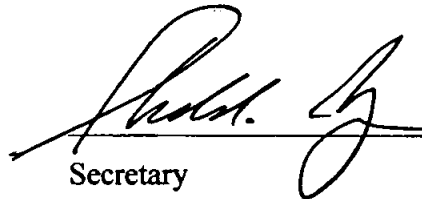
Section 1. Amendments. The Bylaws may be amended by a two-thirds (2/3) vote of Trustees present.

Section 2. Record of Amendments. Whenever a Bylaw is amended, repealed or a new Bylaw is adopted, it shall be entered in the Book of Bylaws with the existing Bylaws. The date of the meeting when the action was taken shall be stated and filed in the Book.

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of the San Diego Hall of Champions, Inc., a California non-profit Corporation; and that the foregoing is a true copy of the Bylaws of said Corporation as revised to this date.

In witness Whereof, I have hereunto set my hand and affixed the Seal of this Corporation this 2 day of May, ~~2002~~ 2003


Secretary

RESTATED ARTICLES OF INCORPORATION
OF SAN DIEGO HALL OF CHAMPIONS, INC.

ENDORSED
FILED
In the office of the Secretary of State
of the State of California
JUN - 4 1981
MARCH FONG EU, Secretary of State
By JAMES E. HARRIS
Deputy

RAY HOOBLER and CLETUS GARDNER hereby certify:

1. That they are the duly elected and acting president and treasurer, respectively, of the corporation.
2. That the Articles of Incorporation of the corporation have been amended and are restated to read in full as follows:

FIRST

The name of this corporation shall be SAN DIEGO HALL OF CHAMPIONS, INC.

SECOND

The corporation hereby elects to be governed by all of the provisions of the Nonprofit Public Benefit Corporation Law not otherwise applicable to it.

THIRD

This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes, which shall include acquisition, exhibition, conservation and education of matters relating to sports and athletics.

FOURTH

This corporation is not organized, nor shall it be operated, for pecuniary gain or profit, and it does not contemplate the distribution of gains, profits or dividends thereof and is organized solely for nonprofit purposes. The property, assets, profits and net income of this corporation are irrevocably dedicated to charitable purposes and no part of the profits or net income of this corporation shall ever inure to the benefit of any director, officer, or member thereof, or to the benefit of any private shareholder or individual. Upon the dissolution or winding up of this corporation, its assets remaining after payment of, or provision for payment of, all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation, which is organized and operated exclusively for charitable purposes and which has established its tax-exempt status under Section 23701d of the Revenue and Taxation Code and/or Section 501(c)(3) of the Internal Revenue Code. If this corporation holds any assets in trust, such assets shall be disposed of in such manner as may be directed by decree of the Superior Court of the County in which the corporation has its principal office, upon petition therefor by the Attorney General or by any person concerned in the liquidation.

FIFTH

No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provisions of these articles, this corporation shall not, except to any insubstantial degree, engage in any activities or exercise any powers that are not in the furtherance of the purposes of this corporation.

SIXTH

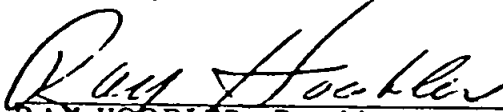
This corporation shall have perpetual existence.

SEVENTH

The Board of Directors of this corporation shall be known and described as the Board of Trustees and the directors of this corporation shall be known and described as trustees. The Board of Trustees shall have the entire and complete control and management of the corporation.

3. The foregoing Restated Articles of Incorporation, including the amendments made thereby, have been approved by the Board of Trustees of the corporation.

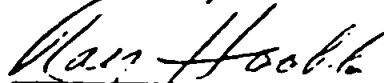
4. The amendments made by the foregoing Restated Articles may be adopted with approval by the Board of Trustees alone because the Bylaws of the corporation, as duly adopted and amended, provide that the corporation shall have no members and Section 5310 of the Nonprofit Public Benefit Corporation Law provides that in such a case action which would otherwise require approval by the members shall require only approval of the board.

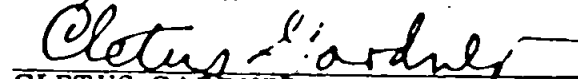

RAY HOOBLER, President


CLETUS GARDNER, Treasurer

The undersigned do hereby declare under penalty of perjury that the matters set forth in the foregoing certificate are true of their own knowledge.

Executed at San Diego, California on May 11, 1981.


RAY HOOBLER


CLETUS GARDNER

50-0
B

AGREEMENT

ORIGINAL

THIS AGREEMENT is made by THE CITY OF SAN DIEGO, a municipal corporation, herein called "City", and SAN DIEGO HALL OF CHAMPIONS, INC., a nonprofit California corporation, herein call "Corporation".

RECITALS

A. In Balboa Park in the City of San Diego, the City owns a building now known as the Electric Building, herein called "Building."

B. It is to the best interests of City that Corporation, being well qualified and competent, manage and operate a public museum known as the SAN DIEGO HALL OF CHAMPIONS, INC., herein called "Museum", in part of the Building in the manner herein set forth. The part of the Building which the Corporation would manage and operate as the Museum is described in Exhibit "A" attached hereto and made a part hereof by this reference. Such part of the Building is herein called "part of the Building".

C. The Charter of the City of San Diego, Section 64, makes provision for the appropriation of monies for the support of institutions of an educational, scientific, historical and cultural character and authorizes City to execute agreements with respect to the use of such institutions.

D. The Corporation has been operating the SAN DIEGO HALL OF CHAMPIONS, INC. in the public interest; and has maintained and greatly expanded their exhibit and research materials at no capital cost to City.

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the parties as herein expressed, City and Corporation agree as follows:

1. Corporation as Legal Entity.

Corporation shall have deposited with the City Manager by March 15 of each year duly certified copies of documents evidencing its existence as a legal entity. Without limiting the generality of the foregoing, such documents, by way of illustration, shall include the following:

DOCUMENT NO. **RR-253883**

FILED **MAR 24 1981**

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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a. A copy of the Articles of Incorporation certified by the Secretary of State of the State of California. The Articles need only be filed once with City, but any amendments to the Articles shall be filed by Corporation with a similar certification by the Secretary of State.

b. A copy of the bylaws of Corporation certified to be correct by the secretary of Corporation. The bylaws need only be filed once except that copies of any amendments to them similarly certified shall be filed with City.

c. A certificate executed by the Secretary of State of the State of California certifying that the Corporation is in good standing and authorized to transact business within the State of California.

d. Certificates executed by the secretary of Corporation evidencing the names of all persons holding office in Corporations together with the terms of such office.

e. A copy of a resolution of the board of directors or other governing body of the Corporation certified by its secretary authorizing the application by Corporation for financial assistance and authority to execute this agreement on behalf of Corporation.

f. Such other records, documents or papers as may be required by the City Manager to assure him that Corporation is a valid and viable organization with a continuing existence.

2. Occupancy.

a. City hereby grants to Corporation a permit for the use and occupancy of its part of the Building. During the term of this agreement, City shall not grant to any individual, group or organization, other than Corporation, a permit for or a right to use and/or occupy its part of the Building, or any portion thereof, without prior written permission of Corporation.

b. Corporation shall use its part of the Building exclusively for the Museum and related purposes including research archives, provided that Corporation shall not exclude the general public or interfere with the public's right to the use and enjoyment of its part of the Building and its facilities; providing, however, that reasonable restrictions and regulations may be made in order to carry on Museum activities in an orderly and proper manner.

c. Corporation shall have the right to charge reasonable admission fees, however, at least one day per week shall be designated as a day when no fees for admission will be charged. Any schedule or admission fees will be subject to prior approval by the City Manager.

d. Corporation may operate a gift shop and sell articles to the general public, articles which primarily relate to subjects on display or activities conducted in the Museum, including, but not limited to books, periodicals and related artifacts. All profits realized by said gift shop shall be used only for Museum purposes.

e. During the entire term of this agreement, Corporation agrees to procure and maintain public liability insurance which names City as an additional insured with an insurance company satisfactory to City licensed to do business in California to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of Corporation, its sublessees or any person acting for Corporation or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from act or activities of Corporation, or any person acting for Corporation, or under its control or direction. Such public liability and property damage insurance shall also provide for and protect City against incurring any legal cost in defending claims for alleged loss. Such public liability and

property damage insurance shall be maintained in full force and effect during the entire term of this agreement in the amount of not less than \$1,000,000 COMBINED SINGLE LIMIT LIABILITY. Corporation agrees to submit a policy of said insurance to the City on or before the effective date of this agreement indicating full coverage of the contractual liability imposed by this agreement and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least thirty days prior written notice thereof to City. If the operation under this agreement results in an increased or decreased risk in the opinion of the City Manager, then Corporation agrees that the minimum limits hereinabove designated shall be changed accordingly upon request by the City Manager. Corporation agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the Corporation may be held responsible for the payment of damages to persons or property resulting from Corporation's activities, or the activities of any person or persons for which Corporation is otherwise responsible. Corporation agrees to increase the limits of liability when, in the opinion of City, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits. Corporation agrees, at its sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering said premises, buildings and appurtenances.

f. Corporation shall perform janitorial services within its part of the Building, and its immediate approaches, in such manner as to keep its part of the Building in a safe, clean and sanitary condition at all times. City shall perform major building maintenance on permanent features, including but not being limited to exterior and interior walls, ceilings, roofs, floors, external structures, replacement of windows, electrical circuits, plumbing, fire-fighting and protection equipment, fire sprinkler systems, doors and door closures, and such fixtures as heating equipment, elevators, etc., to the extent that provision has been made therefor in the schedules upon which the annual City

appropriation for maintenance of public buildings is based. A detailed division of these services between City and Corporation is described in Exhibit "C" attached hereto and made a part hereof by this reference.

Janitorial and other maintenance of the lobby and restroom areas, common to all building tenants will be maintained jointly by all tenants under the direction of the Building Tenants Committee as outlined in Exhibit "D" and in accordance with the provisions of Exhibit "C" attached hereto.

Problems regarding building development and management will be referred to the Building Tenants Committee for resolution. Decisions of the Committee may be appealed to the City Manager, or his representative, whose decision is final.

Interior decoration and alterations for the accommodation of the Museum or its exhibits in the Corporation's part of the Building shall be the responsibility of Corporation, and shall meet National Fire, Building and Electrical Code requirements.

g. Corporation agrees to pay for utilities within its part of the building and to share in the lobby and restroom areas common to all building tenants in accordance with procedures outlined in Exhibit "D". City will pay for utilities in its space and for exterior lighting.

h. Corporation may, at Corporation's own expense, make any major and/or minor permanent alteration or changes in its part of the Building or cause to be made, built or installed structures, exterior signs, fixtures, equipment, or other improvements in its part of the Building necessary or desirable for Corporation's use of its part of the Building and may alter and repair any such structures or other improvements; provided, however, that permanent and major alterations and changes shall not be made and such structures and other improvements shall not be built or installed except in accordance with plans and specifications previously submitted by Corporation to the City Manager and approved, in writing, by him.

Corporation will at all times save City free and harmless and indemnify it against all claims for labor or materials furnished for or

in connection with any and all work, change or improvement in or upon its part of the Building pursuant to this paragraph.

i. The City reserves and shall always have the right to enter the Building for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises or to inspect the operations conducted thereon. In the event that such entry or inspection by City disclosed that said premises are not in a decent, safe, healthy and sanitary condition, the City shall have the right, after ten days written notice to Corporation to have any maintenance work done at the expense of Corporation. Corporation hereby agrees to pay promptly any and all costs incurred by City in having such necessary maintenance work done in order to keep said premises in a decent, safe, healthy and sanitary condition.

3. Operation in General.

a. Corporation shall be operating and open to the public within six months from date the City officially accepts the building from the contractor. The anticipated completion dates as set forth in Exhibit "B" are subject to reasonable delays caused by material and labor shortages, strikes or other labor disputes, governmental actions, war, riot, insurrection, rebellion, act of God, fire, flood, storm, earthquake, or any and all causes beyond the reasonable control of Corporation or its contractors.

b. All personnel provided for in the annual budget for operating the Museum shall be employed by and be the employees or volunteers of Corporation. They shall not be subject in any way to the control of City. In order to carry out wholesome and proper park and recreation purposes and consistent with the rights of the public in and to such areas, the Park and Recreation Director, with the approval of the City Manager, may prefer charges against any such employee for conduct detrimental to such purposes or rights. Such charges shall be considered by Corporation and a report of its action thereon shall be made promptly to the City Manager. During the pendency of the report by Corporation, the City Manager may demand the

suspension of the charged employee and Corporation shall promptly suspend that employee until the matter is resolved to the satisfaction of the City Manager.

c. Corporation agrees to indemnify and save the City of San Diego and its agents and employees harmless from any and all liability claims, damages or injuries to any person, including injury to Corporation or any of Corporation's employees, representatives, agents, guests, licensees, invitees, patrons or of any other person whomsoever, and all expenses of investigating and defending against same: (a) arising from or alleged to have arisen from or connected with the use of or operations on the premises; (b) caused or claimed to be caused by the independent acts of Corporation, their agents or employees.

d. Corporation shall take affirmative action to improve employment of minorities and women by implementing an Affirmative Action Program consistent with the City's Affirmative Action Program, a copy of which is on file in the office of the City Clerk and by this reference incorporated herein. Minorities are defined as Mexican-American, Black, Filipino, American Indian, and Asian/Oriental. The goal of this Affirmative Action Program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment established by City for its Affirmative Action Program each year.

e. Corporation agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, physical handicap or medical condition in Corporation'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.

f. The Board of Directors shall:

1. Establish rules and regulations for the proper use, operation and protection of its part of the Building, and property housed therein.

2. Subject to the provisions of this agreement, designate a chief executive officer who shall have charge of the operation of the Museum.

3. Appoint a representative to the "Building Tenants Committee". This committee, consisting of a representative of each building tenant, shall provide for building development management in accordance with Exhibit "D".

g. The Corporation shall submit to the appropriate City representative the required reports, financial statements and other documents as requested in a timely and prompt manner.

4. TERM OF AGREEMENT

A. Term. The Term of this Agreement shall be twenty-five (25) years commencing on MARCH 24, 1981, and ending on MARCH 23, 2006.

B. Option to Renew. City hereby grants to Corporation an option to renew this agreement for an additional period of twenty-five (25) years upon the expiration of the term of this agreement. Said renewal shall be made on the same term, covenants, and conditions as expressed herein and subject to the same exceptions and reservations as herein contained. This option shall be exercised only by written notice, setting forth Corporation's election to exercise said option. Said notice of Corporation's exercise of this option to renew shall be given no more than one hundred eighty (180) days and no less than ninety (90) days prior to the expiration of the term hereof.

C. The performance of the Corporation, in accordance with the terms of this agreement, will be subject to periodic review. Should the Corporation not be in compliance with conditions of this agreement and shall fail to cure such default within 90 days written notice from City specifying the default

and the date on which its rights will be terminated, the C. may immediately cancel and terminate this agreement.

This agreement and the occupation of the Building by Corporation does not obligate City to perform any work or repairs or to expend any monies whatsoever except to the extent that monies may be appropriated by City Council.

This agreement may be amended in writing by mutual written consent of the City and the Corporation as permitted by law.

IN WITNESS WHEREOF, this agreement is executed by the City of San Diego, acting by and through its City Manager, pursuant to Resolution No. R-253883 authorizing such execution, and by Corporation.

Dated this 13th day of April, 1981

THE CITY OF SAN DIEGO

By Staine M. Balok
ASSISTANT TO THE City Manager

SAN DIEGO HALL OF CHAMPIONS, INC.
Corporation

By Raymond L. Hasler
PRESIDENT

I HEREBY APPROVE the form and legality of the foregoing agreement this 15 day of April, 1981

JOHN W. WITT

City Attorney

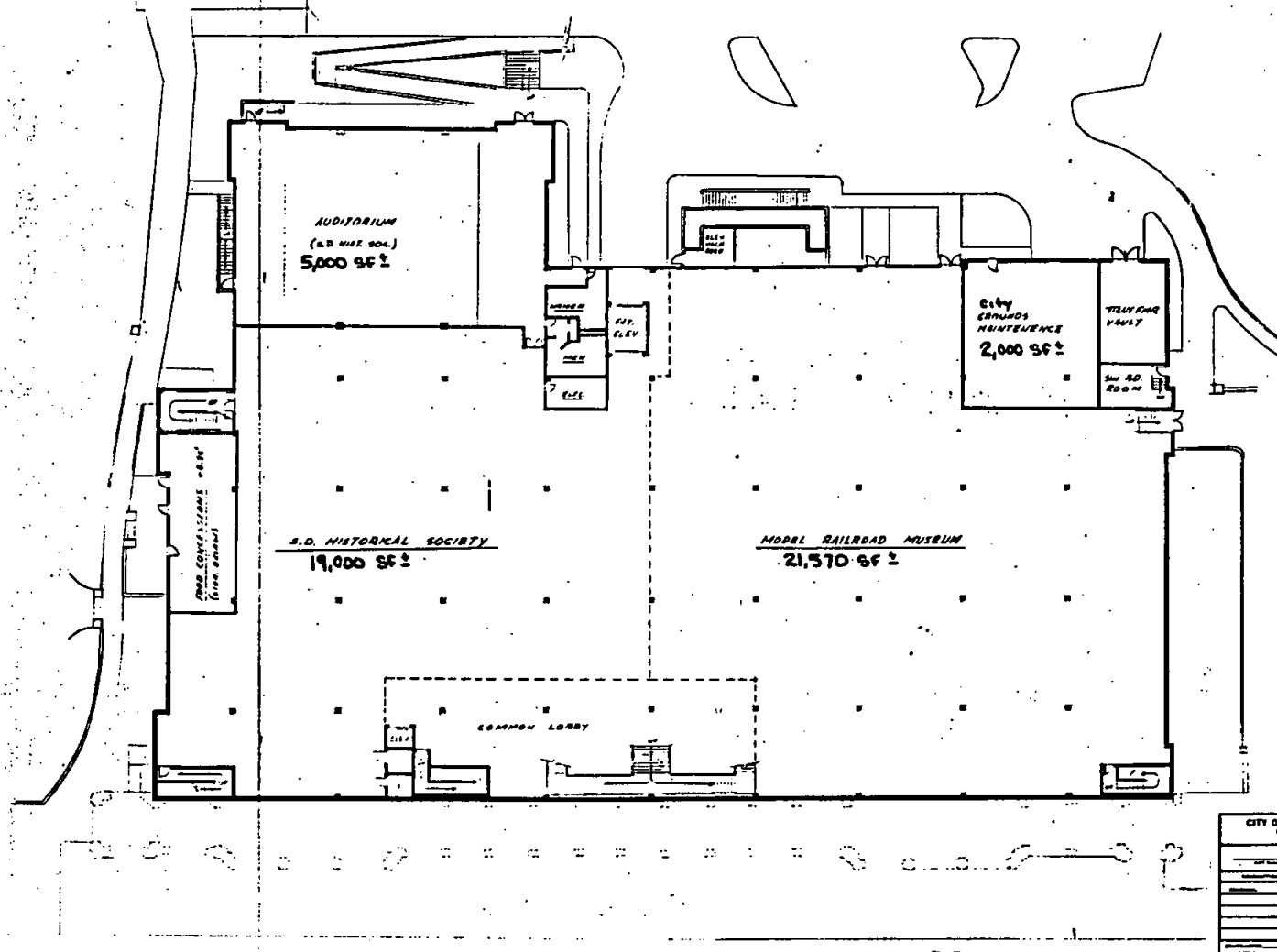
By W. W. W. W.
Deputy

Exhibit "E" is incorporated herein.

2740903 C.F.F.
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R-253883

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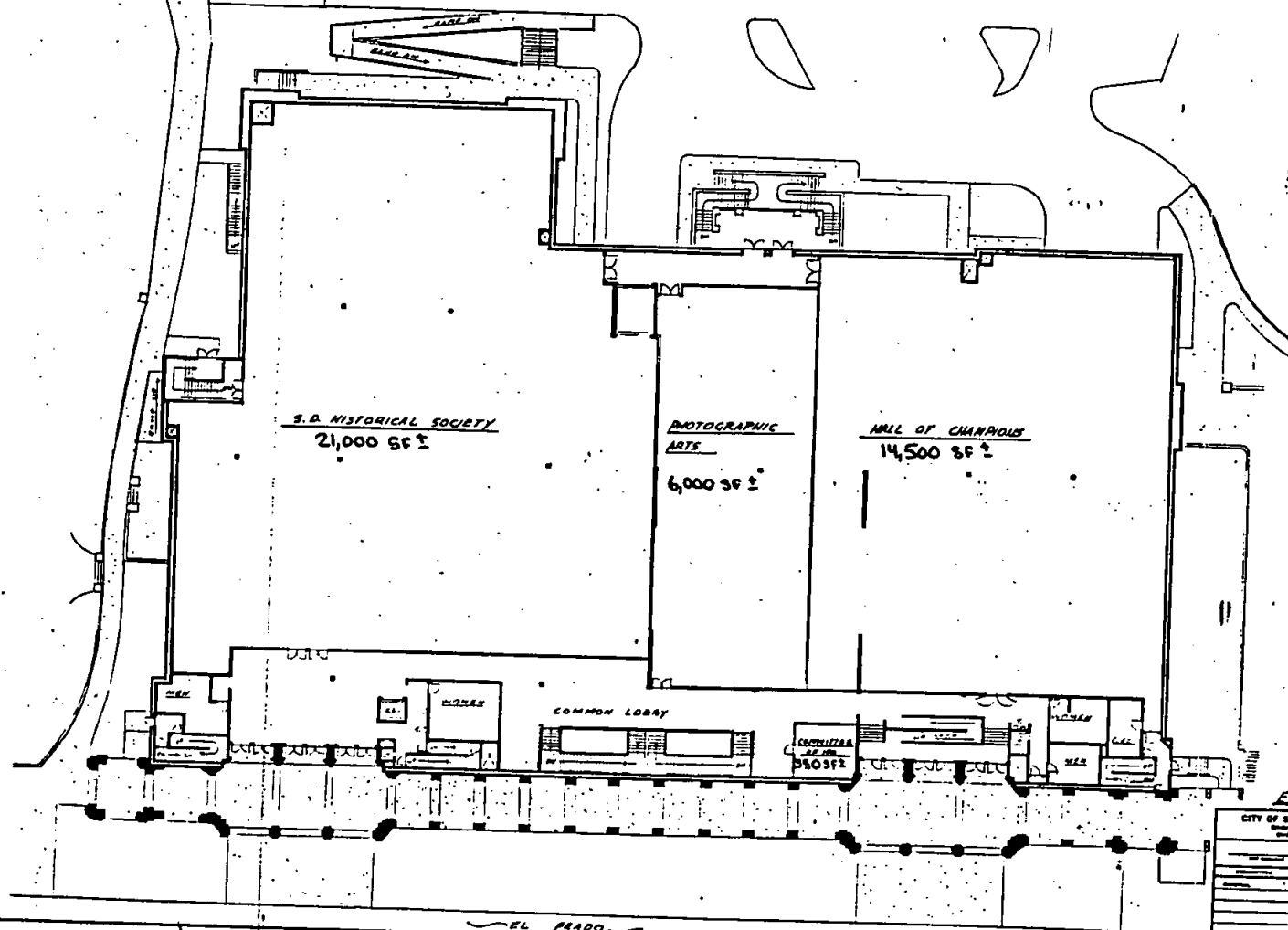


LOWER LEVEL

CITY OF SAN DIEGO, CALIFORNIA		NO. 117401
DEPARTMENT OF PUBLIC WORKS		
DIVISION OF ENGINEERING		
PROJECT NO.		
DATE		
BY		
CHECKED BY		
APPROVED BY		
DATE OF REVIEW		
REVISIONS		NONE

00380 00958

EXHIBIT "A" rev. 1 of 3



EL PRADO LEVEL

CITY OF SAN DIEGO, CALIFORNIA
ENGINEERING DEPARTMENT
SHEET 2 OF 4 SHEETS

EXHIBIT 'A'

pp 2 of 3

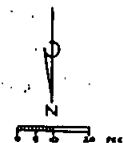


EXHIBIT "A" pgs. 3 of 3

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Completion Date (1)	Proposed Permanent Improvement (2)	Estimated Minimum Value (3)
11/15/81	Complete separation wall between Hall of Champions and Center for Photographic Arts and enclose area along that wall to house Theater, Storage, and Workshop Area contained therein.	\$ 60,000
11/15/81	Construct necessary stairways	6,000
11/15/81	Install doors in above areas	5,000
11/15/81	Install floor covering, main floor	18,000
11/15/81	Build Hall of Fame area with open upper deck	100,000
11/15/81	Build and install Space Frame	5,500
11/15/83	Construct Offices/Information Booth, main floor	12,500
11/15/83	Construct Walls and Ceilings, Mezzanine	120,000
11/15/83	Install Floor covering, Mezzanine	11,000
11/15/83	Install Restrooms, Mezzanine	12,500
<u>Proposed Non-Permanent Improvement (2)</u>		
11/15/81	Install some furniture, storage area, and display equipment, main floor	50,000
11/15/81	Equip Workshop, main floor	5,000
11/15/81	Equip Gift Shop area, main floor	10,500
11/15/83	Equip Theater, main floor	57,800
11/15/83	Complete installation of furniture, storage area and display equipments, main floor and mezzanine storage.	71,500
11/15/81	Equip Library/Archive Center, mezzanine	91,500
11/15/81	Equip Board Room, mezzanine	34,900
11/15/81	Equip Kitchen/Service Area, mezzanine	43,000
11/15/81	Equip Office/Lounge Area, mezzanine	17,600
		<u>\$ 732,300</u>

- (1) The City Manager may extend the completion date of proposed improvements, at his sole discretion, when delays are caused by situations beyond the control of the corporation, for a period not to exceed 1 year without City Council
- (2) To be built, or installed in accordance with current building codes and regulations and as delineated on /approval plans and specifications approved in writing, by him.
- (3) The Corporation shall provide the City Manager with documentations of the actual cost of improvements or an estimated value thereof. The City Manager is the sole judge of estimated value and his decision is final.

EXHIBIT "C"

MAINTENANCE REPAIRS
OPERATING AGREEMENT PERMIT FACILITIES

SYSTEM/AREACITY'S RESPONSIBILITIESJOINT TENANTS' RESPONSIBILITIESCORPORATION RESPONSIBILITIES

Electrical/Lighting & Power

Switches, switch/outlet plates, outlets & fixture lenses in lobby areas only. Wiring, conduit, breakers, light fixtures (as a complete item) neon lighting. All exterior lighting including lamps. Electrical costs in its part of building and exterior lighting costs.

Replace lamps in lobby and common use areas and electrical costs in those areas.

Replace lamps, switches, switch outlet plates, outlets and fixtures lenses and electrical costs in its part of the building.

Emergency Electrical System

Repair parts and/or system wiring/conduit, etc. Periodic operational check-out.

Preventive maintenance in lobby & common use areas.

Preventive maintenance in its part of the building.

Heating & Ventilation,
including Solar System,
Pumps & Boilers

All except filter/strainer changes and daily/weekly operational checks.

Clean/replace filters, cleaning of solar panel glass, daily/weekly operational checks.

None.

Plumbing, Sewer, Water

Broken pipe, valves within system. Clean sewer inside & outside of building. Repair/maintenance of valves, faucets & trim at service points, i.e. angle stops flushometers, toilet valves & seats, lavatory faucets, traps, hosebibs, in public restrooms in lobby & common use areas.

Preventive maintenance in lobby & common use areas. Custodial care of lobby restrooms & common use areas.

All except broken pipe & valves within system & clearing sewer related to labs, sinks, & restrooms added by Corporation in its part of the building.

Painting

All exterior, including touch up after vandalism. All lobby & common use areas, including touch up after vandalism.

Cleaning lobby & common use area walls.

All interior walls in its portion of the building.

Doors/Hardware

All but loose screws/bolts.

Loose screws/bolts in lobby & common use areas.

Loose screws/bolts in its portion of building.

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SYSTEM/AREA

CITY'S RESPONSIBILITIES

JOINT TENANTS' RESPONSIBILITIES

CORPORATION RESPONSIBILITIES

Windows/Glass in doors

Replace glass in doors. Replace glass in solar panels. Replace/repair windows & glass in windows.

Cleaning of glass in doors & windows in lobby & common use areas.

Replacement of window glass if responsible for breakage. All exhibit glass in its portion of building. Maintain security alarm system in its part of building.

Fire Suppression System

Maintain & repair City installed fire suppression system throughout building. Approve alternate systems installed by tenants.

Preventive maintenance to City system.

All, systems installed by Corporation.

Floor Covering

Repair/maintain tile/carpet etc. in lobby & common use areas.

Custodial care of tile, carpet, etc. in lobby & common use areas.

Repair/maintain tile/carpet etc. in its part of building.

Displays

Approve hook-up of electrical & water (Bldgs.) & structural (Engineering & Development)

Custodial care of displays in lobby and common use areas.

Install & operate displays in its part of building.

Elevators

All except routine inspection.

Routine inspection and reporting of problems.

None.

Pest Control

Termites, Bees

All other pests in common use areas.

All other pests in its part of building.

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Lease -
CLERK'S FILE COPY

RESOLUTION NO. R- **253883**

Adopted on MAR 24 1981

LEAS- (R-81-1740)
(REV.)

San Diego
Hall of Champions
Inc.

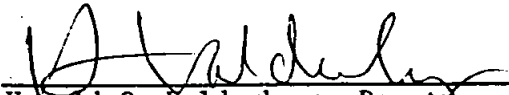
BE IT RESOLVED, by the Council of the City of San Diego, as follows:

That the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, an Agreement between City and SAN DIEGO HALL OF CHAMPIONS, INC., a nonprofit California corporation, for the use and occupancy of a portion of the ELECTRIC BUILDING in Balboa Park for museum purposes, which Agreement has a term of 25 years with an option vested in the user to renew the Agreement for an additional 25 year term, with consideration to the City being the construction of interior permanent public improvements and the maintenance and operation of museum exhibits to be open to the public, under the terms and conditions set forth in that Agreement on file in the office of the City Clerk as Document No. RR- **253883** .

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized and directed to approve a completion date for the initial improvements to be made by Corporation, which completion date shall be six (6) months following the date of execution of the Agreement, six (6) months after the Electric Building basic construction is accepted by The City of San Diego, or December 31, 1981, whichever date or event occurs last.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug, Deputy

HOV:ps:274

~~3/18/81~~ Revised 3/25/81

Or. Dept.: Pk&Rec.