

ORIGINAL

Copy

EXHIBIT "E"

RECORDING REQUESTED BY)
AND WHEN RECORDED, MAIL TO:)
)
GRAY, CARY, AMES & FRYE)
401 "B" Street, Suite 1700)
San Diego, California 92101)
Attn: R. Martin Bohl, Esq.)

(Space above for Recorder's
use only)

MEMORANDUM OF AGREEMENT

By this Memorandum, the CITY OF SAN DIEGO, a California municipal corporation ("CITY"), hereby grants to PASADENA COLLEGE, dba POINT LOMA NAZARENE COLLEGE, a California nonprofit corporation ("COLLEGE"), the right to use the real property commonly known as "The Western Loop Road" (the "Property") and described more particularly below.

1. Property Description. The Property is described in the attached Exhibit "1."

2. Term. The term of the Agreement begins on August 1, 1992, and ends July 31, 2017.

3. Terms. The parties have executed and recorded this instrument for the purpose of imparting notice of the Agreement and the respective rights and obligations of CITY and COLLEGE. The other terms are set forth in the unrecorded Agreement, all of the terms, covenants and conditions of which are incorporated herein by reference as though set forth fully herein. In the event of any inconsistency between this Memorandum and the Agreement, the Agreement shall control. This

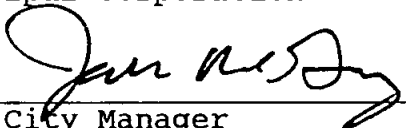
[continued]

Memorandum and the Agreement shall bind and inure to the benefit of the parties hereto, and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, CITY and COLLEGE have signed this Memorandum as of the 1st day of August, 1992.

CITY

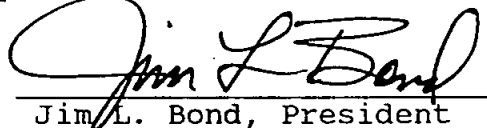
THE CITY OF SAN DIEGO, a California
municipal corporation

By: 

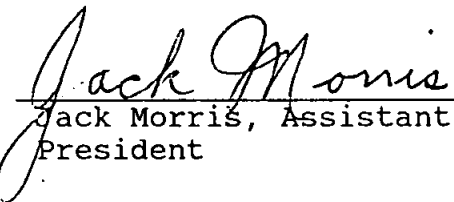
City Manager

COLLEGE

PASADENA COLLEGE, dba POINT LOMA
NAZARENE COLLEGE, a California nonprofit
corporation

By: 

Jim L. Bond, President

By: 

Jack Morris, Assistant to the
President

[Acknowledgments required]

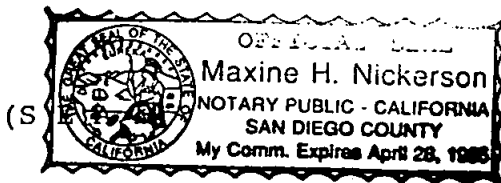
STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On this 21st day of July, 1992, before me,
MAXINE H. NICKERSON, the undersigned Notary
Public, personally appeared Jim L. Bond,

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence

to be the person who executed the within instrument as President
on behalf of the corporation therein named, and acknowledged to
me that the corporation executed it.



Maxine H. Nickerson
Notary Public

STATE OF CALIFORNIA)
) ss..
COUNTY OF SAN DIEGO)

On this 22nd day of July, 1992, before me,
Georgia Cohen, the undersigned Notary
Public, personally appeared Jack Morris,

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence

to be the person who executed the within instrument as Assistant
to the President on behalf of the corporation therein named, and
acknowledged to me that the corporation executed it.

Georgia Cohen
Notary Public

(S E A L)

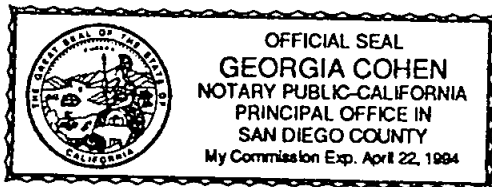


Exhibit 1

Property Description

EXHIBIT "X" 1

The following described real property in the City of San Diego, County of San Diego, State of California:

Parcel 1: Parcel 2 of Parcel Map No. 1889, a copy of which was recorded September 5, 1973, as file no. 73-251126 in the Office of the County Recorder of said county.

Parcel 2: Lots 2 and 3 of LOMA CLIFFS, according to Map thereof No. 4095, filed in the Office of the County Recorder of said county, February 20, 1959.

(R-93-100)

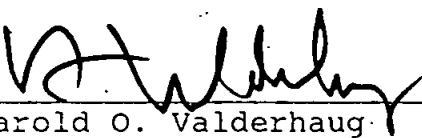
RESOLUTION NUMBER R-280373

ADOPTED ON JUL 20 1992

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a document entitled "Western Loop Road Joint Use Agreement" with PASADENA COLLEGE, dba POINT LOMA NAZARENE COLLEGE, a California nonprofit corporation, (hereinafter "the College"), which grants the College the non-exclusive right, for a period of 25 years, to use an existing road located on a portion of Sunset Cliffs Natural Park, with public access to also be allowed through the College property to the road, under the terms and conditions set forth in that Western Loop Road Joint Use Agreement on file in the office of the City Clerk as Document No. RR-280373-1.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
07/15/92
Or.Dept:Atty.
R-93-100
Form=r-t

MEMORANDUM OF AGREEMENT on file in the
Office of the City Clerk as Document No.
RR-280373-2

Passed and adopted by the Council of The City of San Diego on JUL 20 1992 by the following vote:

YEAS: Wolfsheimer, Roberts, Hartley, Stevens, Stallings, McCarty,
Filner, Mayor O'Connor.

NAYS: None.

NOT PRESENT: Behr.

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: MAYDELL L. PONTECORVO, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION
NO. R- 280373, passed and adopted by the Council of The City of San Diego, California
on JUL 20 1992.

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

(SEAL)

By: *Maydell L. Pontecorvo*, Deputy

-2

Return to CITY CLERK M

 OFFICIAL SEAL
MARSHA L. ALES
NOTARY PUBLIC - CALIFORNIA
SAN DIEGO COUNTY
My comm. expires AUG 31, 1993

WESTERN LOOP ROAD JOINT USE AGREEMENT

THIS WESTERN LOOP ROAD JOINT USE AGREEMENT ("Agreement") is made this JUL 20 1992 day of , 1992, by and between THE CITY OF SAN DIEGO, a California municipal corporation, herein called "City," and PASADENA COLLEGE, dba POINT LOMA NAZARENE COLLEGE, a California nonprofit corporation, herein called "PLNC."

R E C I T A L S

A. City owns certain real property commonly known as Sunset Cliffs Natural Park in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit "A" ("Park").

B. PLNC owns certain real property commonly known as Point Loma Nazarene College in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit "B" ("Campus").

C. PLNC's predecessor in interest owned both the Campus and a portion of the Park on which a road improvement commonly referred to as the western loop road was constructed ("Western Loop Road"). The Western Loop Road connects two parts of the Campus and transverses a portion of what is now the Park. The location of the Western Loop Road is depicted in Exhibit "C."

D. The conveyance by PLNC's predecessor in interest of the Campus to PLNC was made at or about the same time as PLNC's predecessor conveyed a portion of the Park to the City.

DOCUMENT NO.

FILED

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

FINAL VERSION
FOR CITY COUNCIL
JULY 20, 1992

E. The Western Loop Road is accessible only through the Campus and serves the purpose of providing public benefit in that it affords a means for public access to the Park, provides scenic vantage points and recreational opportunities to pedestrians and bicyclists. PLNC desires to enter into this Agreement in order to maintain its use of the Western Loop Road for its students, faculty and guests.

F. PLNC and City now intend to create this right to use the Western Loop Road and to create an obligation for PLNC to pay the maintenance costs thereof during the term of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. Term. City hereby grants to PLNC a right to use the Western Loop Road for a period of 25 years commencing August 1, 1992, when signed by the City Manager.

2. Use. The Western Loop Road shall be used for ordinary public road purposes and any improvements to the Western Loop Road other than ordinary replacement and repair shall be subject to City approval. No parking shall be allowed on the road or its shoulders. PLNC shall allow the public access to the Western Loop Road and Park via Lomaland Drive as extended through the Campus to the Western Loop Road. The specific plan for allowing public access is being coordinated with the California Coastal Commission as part of PLNC's requirements under the Coastal Development Permit. The plan provides for signing on areas adjacent to the College property, adequate to inform the public

of the existence and availability of the public access road. PLNC shall, at all times, comply with the access requirements of this Agreement to allow full public access to the Western Loop Road.

3. Maintenance. PLNC shall, at its sole cost and expense, maintain the Western Loop Road, to standards reasonably acceptable to the City, upon written notification to the City and its advance written approval.

4. Entry and Inspection. City reserves, and shall always have the right, to enter upon said real property for the purpose of viewing and ascertaining the condition thereof.

5. Compliance with Law. At its sole cost and expense PLNC shall comply, and shall secure compliance by persons within its control and authority, with all the requirements of state 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 of all local, state and federal statutes now in force or which may hereafter be in force in the use of the premises by persons within its control and authority.

6. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or any subsequent breach of the same or any other terms, covenant, or condition of this Agreement.

7. Administration of Agreement; Notice. Control and administration of this Agreement is under the jurisdiction of the Vice President for Financial Affairs, as to PLNC's interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this Agreement or by law required to be given or served upon PLNC may be given or served by certified letter deposited in the United States mails, postage prepaid, and addressed to the Point Loma Nazarene College, 3900 Lomaland Drive, San Diego, California 92106, Attention: Vice President for Financial Affairs, or may be personally served upon PLNC or any person hereafter authorized by PLNC to receive such notice. Any notice or notices provided for by this Agreement or by law to be given or served upon City may be given or served by depositing in the United States mails, postage prepaid, a certified letter addressed to the Director of Park and Recreation, City Administration Building, Charles C. Dail Concourse, 202 C Street, MS 9B, San Diego, California 92101. Any notice or notices given or served as provided herein shall be deemed delivered for all purposes, upon the principals of the parties so served upon personal service or 48 hours after mailing in the manner required herein.

8. Remedies. In the event that either party shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by that party and shall fail to cure said default within sixty (60) days following the service on the defaulting party of a written notice from the

second party specifying the default complained of, then the second party may, at its option, without further notice or demand upon the defaulting party or upon any person claiming through the defaulting party, immediately terminate this Agreement and all rights of the defaulting party and of all persons claiming rights through the defaulting party. Notwithstanding the above provisions, in the event that any default cannot be cured within sixty (60) days after the service of written notice upon the defaulting party, the second party shall not terminate this Agreement pursuant to said default if the defaulting party immediately commences to cure said fault and diligently pursues such cure to completion.

9. Indemnity. City agrees to indemnify and save PLNC, its agents and employees, harmless from any and all liability, claims, damages, or injuries to any person caused by the independent acts of City, its agents or employees in connection with the performance of this Agreement. PLNC agrees to indemnify and save City, its agents and employees, harmless from any and all liability, claims, damages, or injuries to any person caused by the independent acts of PLNC, its agents or employees in connection with the performance of this Agreement and the use and maintenance of the subject road.

10. Insurance. PLNC shall maintain public liability insurance which names CITY as an additional insured with an insurance carrier licensed to do business in California and must have a B+ excellent rating in the current issue of Best's

Insurance Guide to protect against loss from liability imposed by law for damages or account of bodily injury, including death resulting therefrom, suffered or alleged to be suffered by any person or persons whatsoever resulting directly or indirectly from any act or activities of PLNC, or any person acting for PLNC or under PLNC's control or direction, and also to protect against loss from liability imposed by law for damage to any property or any person caused directly or indirectly by or from acts or activities of PLNC, or any person acting for PLNC or under PLNC's control or direction. Such public liability and property insurance shall be maintained in full force and effect during the entire term of this Agreement in the amount of not less than One * Million Dollars (\$1,000,000) (1992 dollars, subject to adjustment for inflation at ten-year intervals upon written demand by the City Manager) combined single (occurrence basis) limit liability.

11. Legal Proceedings. The parties agree that the law of the State of California shall be used in interpreting this Agreement and will govern all disputes under this Agreement and will determine all rights thereunder.

12. Verbal Agreements. This Agreement contains the complete expression of the whole agreement between the parties hereto and there are no promises, representations, agreements, warranties, or inducements either expressed verbally or implied except as are fully set forth herein. This contract cannot be enlarged, modified, or changed in any respect except by written agreement between the said parties.

13. Severance. If any part of the Agreement contained herein is found by a court of competent jurisdiction to be void or voidable, that portion which is so held to be defective shall be severed from the remainder hereof, the latter to remain in full force and effect.

14. Amendment. This Agreement may be amended by the mutual written consent of PLNC and City as permitted by law.

15. Possessory Interest Tax. In the event that this Agreement is deemed to create a taxable possessory interest, then PLNC agrees to pay any such tax which may be owing and in such event PLNC shall have the right to terminate the Agreement upon 60 days written notice.

16. Attorneys' Fees. Should either party hereto employ an attorney for the purpose of enforcing or construing this Agreement, or any judgment based upon this Agreement, in any legal proceeding whatsoever, the prevailing party shall be entitled to receive from the other party reimbursement for all attorneys' fees and all costs, and that such reimbursement shall be included in any judgment or final order issued in such proceeding. As used herein, "prevailing party" shall mean the party determined by the court to most nearly prevail and not necessarily the one in whose favor a judgment is rendered.

17. Agreement to Run with Land. This Agreement shall run with the land and shall be binding upon, and inure to the benefit of, the parties and their respective heirs, successors and assigns.

18. Memorandum of Agreement. The parties shall promptly execute, and have acknowledged and recorded in the Official Records of San Diego County, a short form of this Agreement in the form of Exhibit "E."

19. Counterparts. This Agreement may be executed in triplicate originals and each counterpart shall be deemed an original and they shall constitute one instrument.

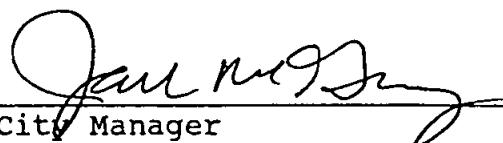
20. Equal Opportunity. PLNC shall comply with the City's Equal Opportunity and Minority and Women Business Enterprise Contracting Programs approved by the City Council and filed with the City Clerk as Document RR-262633. PLNC shall submit a Workforce Analysis Report and a Certificate of Compliance with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations hereinafter enacted. Notwithstanding the foregoing, nothing in this paragraph shall increase or expand PLNC's existing obligations under municipal, state, or federal law. PLNC 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.

21. Dismissals. PLNC shall dismiss, with prejudice, its federal court lawsuit, No. 92-466K (M), with the agreement that each party will bear its own costs. PLNC further agrees to dismiss its state court quiet title action, Superior Court Case No. 634222, without prejudice, with the agreement that each party

will bear its own costs, and agrees that it will not bring any further action against the City to quiet title to that portion of the Western Loop Road depicted on Exhibit "C" during the term of this Agreement. By this dismissal, neither party is waiving, or admitting anything regarding, any right, claim, or defense asserted in the quiet title action. It is the intent of the parties that all rights, claims, and defenses, which either of them may have had against the other before entering into this Agreement shall remain, unaffected, upon the expiration of this Agreement. PLNC also agrees to waive any and all claims for damages which may have arisen out of the facts and circumstances of the actions filed in both state and federal courts (Superior Court Case Nos. 634222 and 634247 and United States District Court Case No. 92-466K (M)).

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-**280373**, authorizing such execution, and by PLNC.

THE CITY OF SAN DIEGO,
a California municipal corporation

By 
City Manager

PASADENA COLLEGE, dba
POINT LOMA NAZARENE COLLEGE,
a California nonprofit corporation

By _____
Jim L. Bond, President

By _____
Arthur L. Shingler,
Vice President for Financial
Affairs

I HEREBY APPROVE the form and legality of the foregoing
Agreement this _____ day of _____, 1992.

JOHN W. WITT, City Attorney

By _____
Harold O. Valderhaug
Deputy City Attorney

SSH:rlc
07/14/92

EXHIBIT "A"

The following described real property in the City of San Diego, County of San Diego, State of California:

Parcel 1: Parcel 2 of Parcel Map No. 1889, a copy of which was recorded September 5, 1973, as file no. 73-251126 in the Office of the County Recorder of said county.

Parcel 2: Lots 2 and 3 of LOMA CLIFFS, according to Map thereof No. 4095, filed in the Office of the County Recorder of said county, February 20, 1959.

EXHIBIT A

EXHIBIT "B"

Parcel A: Parcels 1, 3 and 4 of Parcel map Number 1889, filed in the Office of the County Recorder, September 5, 1973. Said Parcels Map being a survey of portions of Pueblo Lots 65, 103, 144, 145, 146 and 193 of Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof.

Parcel B: Lots 23 and 24 of Tingley Estates, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 3046, filed in the Office of the County Recorder of said San Diego County, December 16, 1953, made by James Pascoe, in 1870; a copy of said Map was filed in the Office of the County Recorder of said San Diego County, November 14, 1921, as Miscellaneous Map. No. 36.

Exhibit "D"

INTENTIONALLY OMITTED

EXHIBIT "E"

RECORDING REQUESTED BY)
AND WHEN RECORDED, MAIL TO:)
)
GRAY, CARY, AMES & FRYE)
401 "B" Street, Suite 1700)
San Diego, California 92101)
Attn: R. Martin Bohl, Esq.)

(Space above for Recorder's
use only)

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1. Property Description. The Property is described in the attached Exhibit "1."

2. Term. The term of the Agreement begins on August 1, 1992, and ends July 31, 2017.

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[continued]

Memorandum and the Agreement shall bind and inure to the benefit of the parties hereto, and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, CITY and COLLEGE have signed this Memorandum as of the 1st day of August, 1992.

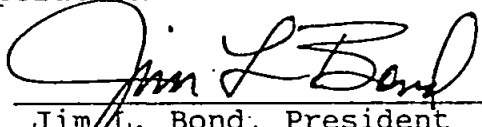
CITY

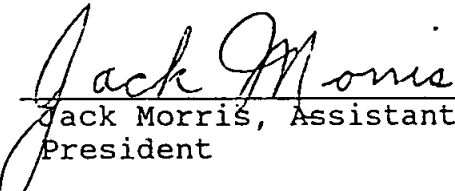
THE CITY OF SAN DIEGO, a California
municipal corporation

By: _____
City Manager

COLLEGE

PASADENA COLLEGE, dba POINT LOMA
NAZARENE COLLEGE, a California nonprofit
corporation

By:  _____
Jim L. Bond, President

By:  _____
Jack Morris, Assistant to the
President

[Acknowledgments required]

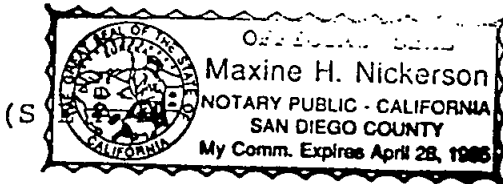
STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On this 21st day of July, 1992, before me,
MAXINE H. NICKERSON, the undersigned Notary
Public, personally appeared Jim L. Bond,

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence

to be the person who executed the within instrument as President
on behalf of the corporation therein named, and acknowledged to
me that the corporation executed it.



Maxine H. Nickerson
Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

On this 22nd day of July, 1992, before me,
Georgia Cohen, the undersigned Notary
Public, personally appeared Jack Morris,

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to be the person who executed the within instrument as Assistant
to the President on behalf of the corporation therein named, and
acknowledged to me that the corporation executed it.

Georgia Cohen
Notary Public

(S E A L)

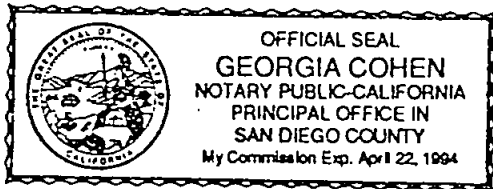


Exhibit 1
Property Description

(R-93-100)

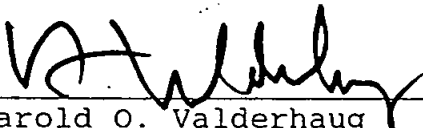
RESOLUTION NUMBER R-280373

ADOPTED ON JUL 20 1992

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a document entitled "Western Loop Road Joint Use Agreement" with PASADENA COLLEGE, dba POINT LOMA NAZARENE COLLEGE, a California nonprofit corporation, (hereinafter "the College"), which grants the College the non-exclusive right, for a period of 25 years, to use an existing road located on a portion of Sunset Cliffs Natural Park, with public access to also be allowed through the College property to the road, under the terms and conditions set forth in that Western Loop Road Joint Use Agreement on file in the office of the City Clerk as Document No. RR-280373 - 1.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
07/15/92
Or.Dept:Atty.
R-93-100
Form=r-t

MEMORANDUM OF AGREEMENT on file in the
Office of the City Clerk as Document No.
RR-280373 - 2

Passed and adopted by the Council of The City of San Diego on JUL 20 1992 by the following vote:

YEAS: Wolfsheimer, Roberts, Hartley, Stevens, Stallings, McCarty,
Filner, Mayor O'Connor.

NAYS: None.

NOT PRESENT: Behr.

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: MAYDELL L. PONTECORVO, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION
NO. R- 280373, passed and adopted by the Council of The City of San Diego, California
on JUL 20 1992

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

(SEAL)

By: *Maydell L. Pontecorvo*, Deputy