

RESOLUTION NUMBER R- 292706

ADOPTED ON FEB 01 2000

WHEREAS, on November 3, 1998, the electorate of the City of San Diego [City] approved Ordinance No. O-18613 [Ordinance] which authorized the City to enter into a Memorandum of Understanding [MOU] with the San Diego Padres [Padres], the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation Concerning a Ballpark District, Construction of a Baseball Park, and a Redevelopment Project within the Centre City East (East Village) Redevelopment District of the Expansion Sub Area of the Centre City Redevelopment Project; and

WHEREAS, the Ordinance provided that it was the intent of the electorate that the Ordinance and the MOU constitute the legislative acts establishing policy for the City on those matters, and provided for the ways and means for the implementation of that policy by such administrative and non-legislative acts as may be necessary and appropriate to carry out the purpose and intent of the Ordinance; and

WHEREAS, the MOU has been executed by all parties thereto; and

WHEREAS, the MOU reflects the basic business deal between the parties, and contains certain general terms for the operation, management, use and occupancy of the proposed new ballpark [Ballpark], including the requirement that the City pay annually the lesser of seventy percent (70%) of joint ownership expenses or \$3.5 million, increased annually by C.P.I., and that this obligation has been approved by the Ordinance as required by San Diego City Charter section 99; and

WHEREAS, the MOU provides that the operation, management, use and occupancy of the Ballpark shall be subject to the terms of more definitive agreements, encompassing issues not addressed in the MOU; and

WHEREAS, it is now appropriate to consider setting forth such other non-monetary provisions as may be necessary to provide for the operation, management, use and occupancy of the Ballpark; and

WHEREAS, it is also now fitting to consider such other actions as may be necessary and appropriate to implement the purpose and intent of the Ordinance and MOU, consistent with the City's obligations under California law, and the discretion lawfully vested in the City Council acting on behalf of the City; and

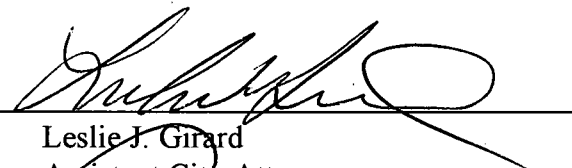
WHEREAS, the action authorized by this resolution is fully consistent with the MOU, and does not materially: 1) decrease the rights or increase the obligations of the City; 2) increase the financial commitments of the City; or 3) decrease revenue to the City; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager be and he is hereby authorized and directed to execute for and on behalf of the City the Joint Use and Management Agreement for the Ballpark between the City and the Padres, attached hereto as Exhibit 1. When that agreement is fully executed, it shall be kept on file in the Office of the City Clerk as Document No. RR- 292706.

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BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized and directed to take such other and further actions as may be necessary or appropriate to implement the intent and purposes of this resolution, consistent with the rights and obligations of the City pursuant to the Ordinance and MOU.

APPROVED: CASEY GWINN, City Attorney

By 
Leslie J. Girard
Assistant City Attorney

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R- 292706

JOINT USE AND MANAGEMENT AGREEMENT

BETWEEN

THE CITY OF SAN DIEGO

&

PADRES L. P.

FEB 01 2000, 2000

FORM OF:

JOINT USE AND MANAGEMENT AGREEMENT

BETWEEN

THE CITY OF SAN DIEGO

&

PADRES L. P.

FEB 01 2000, 2000

EXHIBIT 1

DOCUMENT NO.

R- 292706

FILED

FEB 01 2000

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

R- 292706

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JOINT USE AND MANAGEMENT AGREEMENT

THIS JOINT USE AND MANAGEMENT AGREEMENT (this "Agreement") dated _____, 2000 (the "Effective Date"), is by and between The City of San Diego (the "City"), and Padres L.P., a Delaware limited partnership (the "Padres").

RECITALS

- A. MOU. On November 3, 1998, the electorate of the City approved Proposition C, which adopted Ordinance No. 0-18613 authorizing the City to enter into the Memorandum of Understanding Concerning a Ballpark District, Construction of a Baseball Park and a Redevelopment Project (the "MOU") between the City, the Redevelopment Agency of the City of San Diego, the Centre City Development Corporation and the Padres.
- B. Baseball. The Padres hold the franchise (the "Franchise") issued by The National League of Professional Baseball Clubs for the City, and own the "San Diego Padres" Major League Baseball Team (the "Team").
- C. Ballpark Land. The City owns or will acquire the legal right to possession to certain real property on which the Ballpark Structure and Outfield Park will be constructed pursuant to the Design-Build Agreement, as more particularly described in Section 2.7 of this Agreement (the "Ballpark Land"). The Padres' Affiliate, Padres Construction, L.P., is obligated to cause a new Ballpark Structure and certain improvements related thereto to be constructed on the Ballpark Land, and the Padres have guaranteed that obligation.
- D. Joint Ownership. The aggregate costs of assembling the Ballpark Land and constructing the new Ballpark Structure and related improvements thereon will be borne in part by the

City and in part by the Padres. Subject to the terms and conditions of this Agreement, the Padres will pay for and own certain improvements, fixtures and equipment installed in the Ballpark Property, and the City will pay for and own the Ballpark Structure and the balance of the improvements which comprise the Ballpark Property. Accordingly, when the Padres wish to use the Ballpark Property for Events, they will need rights to use the City Property, as a complement to their own ownership interest in the Ballpark Property. Conversely, when the City wishes to use the Ballpark Property for Events, it will need rights to use the Padres Property, as a complement to the City's own ownership interest in the Ballpark Property. The items owned by the Padres which constitute their ownership interest in the Ballpark Property are to be established pursuant to the Design-Build Agreement (the "Padres Property") and, pursuant to the Design-Build Agreement, the list of such items is subject to change by agreement of the parties thereto during the construction of the Ballpark Structure. By the Commencement Date, or as soon thereafter as practicable, the parties shall attach the list of those items which constitute the Padres Property as Exhibit A to this Agreement. The items owned by the City which constitute its ownership interest in the Ballpark Property consist of all components of the Ballpark Property other than the Padres Property. The parameters of the Padres Property and the City Property are subject to evolution in accordance with Section 7.12 of this Agreement.

- E. Site Lease. The City has requested the Public Facilities Financing Authority of the City of San Diego, a California Joint Powers Authority ("PFFA"), to facilitate financing of the construction of improvements on the Ballpark Land, including without limitation issuance of lease revenue bonds (the "Bonds"). Pursuant to a Site Lease Agreement to be executed between the City and PFFA substantially in the form attached hereto as Exhibit B (the "Site Lease"), the City will lease the Ballpark Land to PFFA.
- F. Ballpark Facility Lease. Pursuant to a sublease to be executed between the City and PFFA substantially in the form attached hereto as Exhibit C (the "Ballpark Facility Lease"), PFFA will sublease the City Property to the City.
- G. Implementation. The MOU sets forth the basic terms and conditions governing the proposed use and occupancy of the Ballpark Land, the Ballpark Property and certain improvements related to the Ballpark Property that are located on the Ballpark Land, by both the Padres and the City. Pursuant to Article XL of the MOU, this Agreement implements those basic terms and conditions.
- H. Joint Use Divided Each Year. As contemplated by the MOU, the City desires to provide to the Padres, and the Padres desire to accept from the City, the right to use and occupy the City Property for Padres Games and Events on up to one hundred twenty-five (125) days per calendar year, except for certain City Exclusive Use Areas more particularly described in this Agreement. Similarly, the Padres desire to provide to the City, and the City desires to accept from the Padres, the right to use and occupy the Padres Property for City Events on up to two hundred forty (240) days per calendar year, except for certain Padres Exclusive Use Areas also more particularly described in this Agreement. In

addition, the Padres and the City desire to use both the City Property, except for said City Exclusive Use Areas, and the Padres Property, except for said Padres Exclusive Use Areas, for 70/30 Events as set forth herein.

- I. Management Throughout Each Year. As contemplated by the MOU, the City desires to engage the Padres to manage the Ballpark Property, and the Padres desire to accept such engagement from the City, as the sole and exclusive on-site manager of the Ballpark Property throughout each year, for the entire term of this Agreement, all as more particularly described herein.
- J. Purpose. This Agreement establishes the final terms of the Padres' and the City's joint use of the Ballpark Property and other real and personal property as described herein, and the final terms of the Padres' exclusive management of the Ballpark Property and other real and personal property as described herein. By its implementation of the MOU, this Agreement is intended by the parties to be the sole and definitive statement of such final terms with respect to the specific subject matter hereof. If any provision of this Agreement is found to be ambiguous, however, the MOU may be of assistance in the interpretation of that ambiguity. Without limiting the foregoing, this Agreement shall not be deemed to supersede provisions of the MOU that address subject matter not addressed herein.

AGREEMENT

Now, therefore, in consideration of the mutual agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Padres agree as follows:

ARTICLE 1

DEFINITIONS AND USAGE

1.1 Definitions. When used in this Agreement, the capitalized terms set forth in this Section 1.1 shall have the meanings ascribed to such terms in this Section 1.1.

1.1.1 “AAA” shall have the meaning given to such term in paragraph 28.1.3.

1.1.2 “ADA” shall mean Americans with Disabilities Act as defined by federal statute and the state equivalent, as codified in Title 24, as amended from time to time.

1.1.3 “Admission Ticket Proceeds” shall mean the revenue collected by the Padres for admission tickets to Events, net of such portions thereof as the Padres are obligated to disburse to third parties solely and directly on account of the Padres’ sale of such admission tickets (such as credit card servicing fees, and taxes on admission tickets payable to Governmental Authorities).

1.1.4 “Affiliate” means, as to any party, a Person controlling, controlled by or under common control with such party.

1.1.5 “Agency” shall mean the Redevelopment Agency of the City of San Diego.

- 1.1.6 “**Agreement**” shall mean this Joint Use and Management Agreement.
- 1.1.7 “**Ancillary Development**” shall mean the commercial, retail and residential development, including hotels, office buildings and associated parking, to be built within the District.
- 1.1.8 “**Approved Capital Expenditures**” shall have the meaning given to such term in paragraph 7.8.8.
- 1.1.9 “**Approved Capital Expenditure Budget**” shall have the meaning given to such term in paragraph 7.8.7.
- 1.1.10 “**Audit**” shall have the meaning given to such term in paragraph 28.5.2.
- 1.1.11 “**Auxiliary Clubhouse**” shall mean that locker room area shown on Exhibit D attached hereto.
- 1.1.12 “**Ballpark Facility Lease**” shall have the meaning given to such term in the Recitals hereto.
- 1.1.13 “**Ballpark Land**” shall have the meaning given to such term in the Recitals hereto.
- 1.1.14 “**Ballpark Management**” shall mean the planning, supervising and conducting of the year-round, day-to-day management of the Ballpark Property as a First-Class Facility and all activities connected with the operation of the Ballpark Property, including the provision of (or arrangements for third parties to provide):
- (a) all Repairs, Maintenance, Improvements, and the security the Padres are required to provide under Article 7, including all

personnel, materials, supplies, equipment and services necessary therefor and all management and planning in respect thereof, at a level consistent with a First-Class Facility; and

- (b) management of all administrative functions associated with the Ballpark Property, including operation of any computer based maintenance management system, administration of the purchasing system, coordination and reporting of payroll and employee benefits, and proper supervision of all clerical staff, at a level consistent with a First-Class Facility.

1.1.15 “**Ballpark Owner**” shall mean the Ballpark Owner as that term is defined in Section 1.17 of the Outfield Park CCRs.

1.1.16 “**Ballpark Property**” shall mean the Ballpark Land, Ballpark Structure and Outfield Park, including grounds and walkways immediately surrounding the same, together with all Improvements, additions, alterations, fixtures, furnishings and equipment installed, provided or added thereto from time to time. The Ballpark Property consists of the City Property and the Padres Property.

1.1.17 “**Ballpark Structure**” shall mean the open-air, natural grass, state-of-the-art baseball facility, its fixtures and systems, with multiple uses, and with approximately 42,000 seats and the Outfield Park, to be constructed on the Ballpark Land, together with all Improvements,

additions, alterations, fixtures, furnishings and equipment installed, provided or added thereto from time to time.

1.1.18 “**Baseball Use Season**” shall mean the period, to the extent included in the Term, commencing on February 1 of a calendar year and ending on the day of the Team’s last Major League Baseball Game at the Ballpark Property (including post-season play, if any) in such calendar year.

1.1.19 **Bond Counsel Opinion**” shall mean an opinion from a nationally recognized bond counsel retained by the City, at no expense to the Padres, as to whether an action proposed by the Padres would cause the Bonds issued by the City in connection with the construction of the Ballpark Structure and related Improvements on the Ballpark Property not to qualify for tax-exempt status under federal law.

1.1.20 “**Bond Documents**” shall mean the Site Lease, Ballpark Facility Lease, Recognition and Attornment Agreements, Official Statement, Indenture and all documents related to the issuance of the Bonds.

1.1.21 “**Bonds**” shall have the meaning given to such term in the Recitals hereto.

1.1.22 “**Broadcast Fees**” shall have the meaning given to such term in Section 12.1.

1.1.23 “**Business Day**” shall mean a day other than (a) a Saturday, (b) a Sunday, or (c) any other day (i) which is a governmental holiday under the laws of the State of California, and/or (ii) on which commercial banks are authorized or required to close under the laws of the State of California.

- 1.1.24 “**Capital Expenditure**” shall mean the cost of all labor and materials reasonably required to install, construct or upgrade any structural components, systems components or integral parts of the Ballpark Property, which, as of the Effective Date, would customarily be treated as a capital item for federal income tax purposes, including Improvements Costs.
- 1.1.25 “**Capital Expenditure Reserve Fund**” shall mean the account established pursuant to paragraph 8.6.1 of this Agreement to hold certain funds for Capital Expenditures.
- 1.1.26 “**CCDC**” shall mean the Centre City Development Corporation.
- 1.1.27 “**City**” shall mean the City of San Diego, California.
- 1.1.28 “**City Audit Costs**” shall have the meaning given to such term in paragraph 28.5.4(b)(ii).
- 1.1.29 “**City Default**” shall have the meaning given to such term in Section 19.4.
- 1.1.30 “**City Event**” shall mean any event at the Ballpark Property conducted or authorized by the City, or conducted by any other Person authorized and sponsored by the City, that would be a 70/30 Event but for an “opt-out” by the Padres pursuant to paragraph 6.9.6, and that is not included within the definition of Padres Games and Events.
- 1.1.31 “**City Exclusive Use Areas**” shall mean the following areas within the Ballpark Property, which the City shall have an exclusive right to use and occupy year-round throughout the Term of this Agreement, irrespective of

the identity of the party who may be having an Event at the Ballpark Property. Such exclusive rights do not preclude access by the manager of the Ballpark Property for purposes of Maintenance or Repair. The City Exclusive Use Areas, which include City Property in part and Padres Property in part, consist of:

- (a) The City Offices; and
- (b) Other areas within the Ballpark Property which, by mutual and reasonable agreement of the parties, are of such a nature that the City requires exclusive rights of use and occupancy year-round throughout the Term.

1.1.32 “**City Joint Expense Cap**” shall have the meaning given to such term in paragraph 8.2.3.

1.1.33 “**City Offices**” shall mean the offices within the Ballpark Property for use and occupancy by a reasonable number of City employees (in light of City responsibilities in relation to the Ballpark Property) throughout the Term, more particularly described as follows:

- (a) the City Offices shall contain a reasonable number of square feet for the reasonable number of full-time City employees to be working therein (in accordance with City standards for office space per employee as of the Effective Date);

- (b) the City Offices shall be in the Ballpark Property and in the same building structure as, and reasonably proximate in location to, the Padres Offices; and
- (c) the parties shall reasonably agree upon the exact size and location of the City Offices on or before the Commencement Date, and shall confirm their agreement by attaching a description of the City Offices as Exhibit E to this Agreement.

1.1.34 “City Parking” shall have the meaning given to that term in Section 2.4.

1.1.35 “City Parties” shall have the meaning given to that term in Section 18.1.

1.1.36 “City Property” shall mean the Ballpark Land and the City’s entire interest in the Ballpark Property, including the City’s interest in all improvements, additions, alterations, furnishings, fixtures, equipment and installations constructed or installed on the Ballpark Land, or added thereto, that are subleased by PFFA to the City pursuant to the Ballpark Facility Lease, and the City’s interest in all improvements, additions, alterations, furnishings, fixtures, equipment and installations subsequently constructed or installed upon the Ballpark Land as set forth in this Agreement, but excluding from the foregoing definition all of the Padres Property.

1.1.37 “City Revenue from Admission Tickets” shall mean the revenue collected by the Padres for admission tickets to City Events, net of such portions thereof as the Padres are obligated to disburse to third parties

solely and directly on account of the Padres' sale of such admission tickets (such as credit card servicing fees, and taxes on admission tickets payable to Governmental Authorities).

1.1.38 "**City Share of Joint Ballpark Expenses**" shall have the meaning given to such term in paragraph 8.2.2.

1.1.39 "**City Split Season**" shall have the meaning given to such term in paragraph 6.10.1.

1.1.40 "**City Suite**" shall have the meaning given to such term in Section 2.3.

1.1.41 "**Civic Impact Event**" shall mean a major national or international Event or convention for which the City successfully competes and the hosting of which is generally acknowledged as significantly enhancing the positive image of the City and providing a material economic impact.

1.1.42 "**Co-Owner's Everyday Event**" shall have the meaning given to such term in Section 6.7.

1.1.43 "**Commencement Date**" shall mean the date upon which the Padres have a right to occupy either (a) the Padres Offices, or (b) the Playing Field and a substantial portion of the seating bowl within the Ballpark Property. With respect to improvements for which the appropriate Governmental Authority issues a temporary or permanent certificate of occupancy, the Padres' right to occupy shall be deemed to commence on the date on which such a temporary or permanent certificate of occupancy is issued by the appropriate Governmental Authority. With respect to improvements

for which the appropriate Governmental Authority does not issue a temporary or permanent certificate of occupancy, the Padres' right to occupy shall be deemed to commence upon substantial completion of such improvements as determined by a certificate of the architect therefor or by mutual written agreement of the City and the Padres.

- 1.1.44 “**Condemnation**” shall have the meaning given to such term in paragraph 24.1.1.
- 1.1.45 “**Consultant**” shall mean a design professional, contractor, subcontractor, project manager, or other Person retained in accordance with the terms of this Agreement with respect to any Maintenance, Repair, Improvement or emergency repair authorized under Section 7.9, or a Person otherwise engaged to perform work or services in accordance with, and as contemplated by, the terms of this Agreement.
- 1.1.46 “**CPI**” shall mean the Consumer Price Index - San Diego - All Urban Consumers (1982-1984=100).
- 1.1.47 “**Damaged Property**” means any facility, structure, fixture or any other component of the Ballpark Property (other than personal property) which is damaged or destroyed, including any damage or destruction resulting from the acts or omissions of third parties (including licensees, invitees, agents or employees of the Padres or the Team).
- 1.1.48 “**Default Interest Rate**” shall mean interest at the rate of three percent (3%) per annum above the Prime Rate in effect on the date of default by

any party pursuant to this Agreement, payable on the amount outstanding from its due date as set forth in this Agreement until paid in full. Once established for a particular default by reference to the Prime Rate in effect on the date of default by any party pursuant to this Agreement, the Default Interest Rate shall remain fixed with respect to that particular default, notwithstanding subsequent changes in the Prime Rate.

1.1.49 “**Design-Build Agreement**” shall mean the Ballpark Design-Build Procurement Consultant Agreement dated _____, 2000, between the City, CCDC, the Agency, the Padres, and Padres Construction, L.P.

1.1.50 “**Deterioration**” and “**Deteriorated**” shall mean any facility, structure, fixture, surface or any other component of the Ballpark Property (other than personal property) which has become dysfunctional due to ordinary wear and tear or economic obsolescence. For purposes hereof, any facility, structure, fixture, surface, or any other component of the Ballpark Property (other than personal property) shall be deemed dysfunctional if such item has deteriorated to a degree that such item cannot be remedied through Maintenance, or has become economically obsolete to a degree that keeps it from reasonably serving the needs of a First-Class Facility.

1.1.51 “**Developer**” shall mean the master developer for “Phase I” (as such term is used in the MOU) selected by the Padres and reasonably acceptable to the City, the Agency and CCDC. As of the date hereof, the Developer is

JMI Realty, Inc., a Delaware corporation, except for the Outfield Park Retail Parcels as to which the Padres are the Developer.

1.1.52 “**Dispute**” shall have the meaning given to such term in Section 28.1.

1.1.53 “**District**” shall mean the Sports and Entertainment District (whether or not existing as a separate legal entity) established by the City within, but not as a part of, the Centre City East Sub-area of the project area established by the City Council for the City of San Diego on May 11, 1992, by the adoption of Ordinance No. O-17767 (commonly known as the “Centre City Redevelopment Project”), and which is located adjacent to the Gaslamp Quarter and across from the San Diego Convention Center Expansion Project.

1.1.54 “**Effective Date**” shall have the meaning given to such term in the introductory paragraph of this Agreement.

1.1.55 “**EHC Agreement**” shall mean that certain Settlement Agreement among the City, the Agency, CCDC, the Padres and the Environmental Health Coalition dated as of October 19, 1999.

1.1.56 “**Events**” shall mean Padres Games and Events, City Events and 70/30 Events.

1.1.57 “**Exclusive Use Areas**” shall mean the Padres Exclusive Use Areas and the City Exclusive Use Areas.

1.1.58 “**First-Class Facility**” shall mean a state-of-the-art Major League Baseball park that is capable of hosting events other than baseball,

including concerts, family entertainment and meeting/special events, wherein the level and quality of: (a) the baseball park amenities (such as private suites, restaurants and concessions located in or around the Ballpark Property) are consistent with the level and quality of amenities in other Major League Baseball parks built or under construction within five years prior to the Effective Date to host Major League Baseball events, and (b) interior and exterior Ballpark Property finishes are comparable to the level and quality of interior and exterior finishes in Major League Baseball parks built within five years prior to the Effective Date to host Major League Baseball and other events.

1.1.59 “**First Extension Term**” shall have the meaning given to such term in paragraph 4.2.1(a).

1.1.60 “**Fiscal Year**” shall mean the full or partial annual period commencing on November 1 and ending on the following October 31, to the extent such period is included within the Term. As of the Effective Date, the Fiscal Year corresponds to the Padres’ tax fiscal year. Future changes in the Padres’ tax fiscal year (if any) shall not affect the Fiscal Year as defined herein, unless otherwise agreed by the parties in writing. For CPI adjustments made at the end of the fifth Fiscal Year under this Agreement, any partial Fiscal Year at the beginning of the Term shall count as the first Fiscal Year.

1.1.61 “**Force Majeure**” shall mean any of the following events which prevents a party from performing any obligation under this Agreement: any act of God, strike, lockout or other industrial disturbance during the development or construction only of the initial improvements on the Ballpark Property, not including a strike or lockout by Major League Baseball players or umpires; any act of public enemy, blockade, war insurrection, civil disturbance, explosion or riot; any epidemic; any landslide, earthquake, fire storm, flood or washout; any act of God, strike, lockout or other industrial disturbance including a strike or lockout by Major League Baseball players or umpires (except as expressly provided above); any title dispute or other litigation, including the inability to timely obtain judgments in eminent domain or timely obtain possession through eminent domain; any governmental restraint, action or inaction, either federal, state, county, civil or military, including the adoption of any new law materially affecting either the ability of the parties to proceed or the costs of proceeding (but not including any City laws or ordinances); any initiative or referendum; and any failure to obtain any necessary federal, state or county governmental approval.

1.1.62 “**Franchise**” shall have the meaning given to such term in the Recitals hereto.

1.1.63 “**Governmental Authority**” shall mean any government of any nation, state or other political subdivision thereof and any entity exercising

executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

1.1.64 **“Highest Ticket Price Generally Available”** shall mean the highest price set by the City for admission tickets made available to members of the general public for seats within the seating bowl of the Ballpark Structure for a City Event and/or a 70/30 Event, applicable to at least two hundred fifty (250) seats within the seating bowl of the Ballpark Structure; provided, however, that there shall be excluded from the seats and prices considered, in determining such highest price, all seats and all admission ticket prices made applicable to (a) the Private Suites, and (b) dugout seating. In accordance with the foregoing definition, Premium Seats and the admission ticket price applicable to them may properly be considered in determining the Highest Ticket Price Generally Available (if such price is applicable to at least two hundred fifty (250) seats within the seating bowl of the Ballpark Structure counting the Premium Seats themselves, and not counting the Private Suites and dugout seats).

1.1.65 **“Home Game”** shall have the meaning given in Section 13.1 hereof.

1.1.66 **“HVAC”** shall mean heating, ventilation and air conditioning systems and equipment.

1.1.67 **“Improvements”** shall mean any alterations, modifications, additions, or other construction, development, or improvement of any part of the Ballpark Property, other than Maintenance and Repairs.

1.1.68 “**Improvement Costs**” shall mean the cost of all labor and materials reasonably required to construct, develop and install permitted Improvements.

1.1.69 “**Incremental Ballpark Expenses**” shall mean the following costs and expenses that are related to one or more Events at the Ballpark Property:

- (a) wages, salaries and benefits of all Event-day staff, including ushers, ticket-takers, ticket-sellers, fan assistance personnel, and the part-time supervisors for such personnel, together with taxes and insurance related thereto;
- (b) costs for Event security, both public and private, in excess of the security which the City is required to provide pursuant to paragraph 7.7.2;
- (c) on-site first aid and ambulance service;
- (d) Event publicity and marketing;
- (e) concession services;
- (f) licenses and permits required for such City Events or Padres Games and Events, as appropriate;
- (g) Event liability insurance;
- (h) video board and scoreboard event staff, entertainment and Event production costs;
- (i) public address system operations;

- (j) post-Event dismantling, cleaning and trash removal and costs and expenses necessary to restore all relevant portions of the Ballpark Property to their pre-Event condition;
- (k) custodial staff and maintenance personnel during Events, such as electricians, plumbers, and air-conditioning, elevator and escalator service personnel, sound system and field crew, and scoreboard and video board maintenance personnel;
- (l) any costs for the preparation and set-up for Events, including the cost for one-time upgrades to any facility such as the provision of electricity to a particular location;
- (m) the costs (taking into account prevailing market conditions) of providing parking or transportation for Event-day staff and part-time supervisors; provided, however, that the parties shall work together cooperatively to develop a cost-effective employee parking program, and provided further that in connection with City Events and 70/30 Events, any payments to the Padres or Affiliates of the Padres in this regard shall be subject to the approval of the City, which shall not be unreasonably withheld and shall be evaluated in the context of such costs and prevailing market conditions;
- (n) any other Event-related costs or expenses; and

- (o) “Incremental Event Expenses” (as set forth in the Outfield Park CCRs).

If a cost or expense is more related to ongoing Ballpark Property operations than to a particular Event, it will be treated as a Joint Ballpark Ownership Expense; if a cost or expense is more related to a particular Event than to ongoing Ballpark Property operations, it will be treated as an Incremental Ballpark Expense.

1.1.70 “**Incremental Ballpark Revenues**” shall mean all revenues that arise from one or more particular Events at the Ballpark Property. If an item of revenue is more related to ongoing Ballpark Property operations than to a particular Event, it will be treated as general Ballpark Property revenue. If an item of revenue is more related to a particular Event than to ongoing Ballpark Property operations, it will be treated as an item of Incremental Ballpark Revenue.

1.1.71 “**Indemnified Party**” shall have the meaning given to such term in Section 18.3.

1.1.72 “**Indemnifying Party**” shall have the meaning given to such term in Section 18.3.

1.1.73 “**Indenture**” shall mean the agreement substantially in the form of Exhibit F attached hereto between PFFA and the Trustee made in connection of the issuance of the Bonds.

1.1.74 “**Initial Expiration Date**” shall have the meaning given to such term in paragraph 4.1.2(b).

1.1.75 “**Joint Ballpark Ownership Expenses**” shall mean the following costs associated with the Maintenance, Repair, operation, use and ownership of the Ballpark Property, including all fixtures, equipment and systems included therein:

- (a) wages, salaries and benefits of all year-round Ballpark Property supervisory staff, all year-round Event operations supervisory staff, and all year-round employees engaged in the Maintenance, Repair, operation or security of the Ballpark Property (including year-round Playing Field maintenance and landscaping), together with taxes and insurance related thereto;
- (b) the cost of all supplies and materials used by the Padres in the routine Maintenance, Repair and operation of the Ballpark Property;
- (c) the cost of all utilities for the Ballpark Property, including the cost of water, power, lighting, HVAC, chilled water system, storm water drainage, waste water, and trash disposal, and including utilities supplied to Private Suites and Exclusive Use Areas;
- (d) the costs of all routine Maintenance, Repair and upkeep for the Ballpark Property, its fixtures, equipment and systems, including year-round janitorial service, year-round window cleaning, year-

round security and alarm services, year-round elevator maintenance, and year-round Playing Field maintenance and landscaping costs, and including such routine Maintenance, Repair and upkeep of the Ballpark Property, its fixtures, equipment and systems in Private Suites and Exclusive Use Areas;

- (e) All assessments imposed upon the owner of the underlying Ballpark Property, by or under any and all landscape maintenance districts, maintenance assessment districts or other property-based assessment districts, but only to the extent that such assessments are permitted by the terms of Section 28.7 of this Agreement.
- (f) the cost of all insurance provided pursuant to Article 17;
- (g) the cost of professional fees (including legal and accounting fees and expenses) for professional services paid to unaffiliated third-parties directly related to the management of the Ballpark Property;
- (h) any other customary, year-round, non-Event-specific costs which in the ordinary course of business are included as operating costs under generally accepted accounting principles; and
- (i) "Common Area Maintenance Costs" of the Ballpark Owner as set forth in the Outfield Park CCRs, in accordance with paragraph 16.4.2 of this Agreement.

Notwithstanding the foregoing, "Joint Ballpark Ownership Expenses"

shall not include:

- (i) Costs for specific Events held at the Ballpark Property, which costs are classified as “Incremental Ballpark Expenses” under this Agreement, rather than “Joint Ballpark Ownership Expenses.” The emphasis upon “year-round” costs and expenses in the definition of “Joint Ballpark Ownership Expenses” is intended to help distinguish Incremental Ballpark Expenses from Joint Ballpark Ownership Expenses;
- (ii) Costs for Improvements requiring Capital Expenditures;
- (iii) Costs for above-standard Maintenance, Repair and upkeep of Private Suites and Exclusive Use Areas (as distinguished from routine Maintenance, Repair and upkeep of such areas), such as more costly Maintenance, Repair and upkeep necessitated by the nature of above-standard Improvements constructed therein. Rather than being treated as Joint Ballpark Ownership Expenses, such above-standard costs shall be borne: (A) solely by the Padres with respect to the Padres Offices and Padres Exclusive Use Areas; (B) solely by the City with respect to the City Offices and City Exclusive Use Areas; and (C) in

accordance with the applicable license agreements with respect to the Private Suites;

- (iv) Costs for the repair, restoration or replacement of Damaged Property if the damage is the result of the gross negligence or willful misconduct of: (A) the Padres or the Padres' partners, officers, employees, agents or contractors (as set forth in Section 7.11); or (B) the City or the City's officers, employees, agents or contractors (as set forth in Section 7.11); and
- (v) "Incremental Event Expenses" (as set forth in the Outfield Park CCRs), in accordance with paragraph 16.4.2. of this Agreement.

1.1.76 "Joint Expense Estimate" shall have the meaning given to such term in paragraph 8.2.1.

1.1.77 "Law" shall mean any law, statute, ordinance, rule, regulation, order, decree or other requirement having the force of law and, where applicable, any interpretation thereof by any Governmental Authority having jurisdiction with respect thereto or charged with the administration thereof.

1.1.78 "Lien" shall mean any deed of trust, mortgage, pledge, charge, hypothecation, assignment, deposit arrangement, Lien (statutory or otherwise), security interest, preferential arrangement of any kind

whatsoever, restriction, covenant, reservation, right, easement, lease, other title or interest retention arrangement, and any other encumbrance of any nature whatsoever.

1.1.79 “**Limited Access Areas**” shall mean those areas within the Ballpark Property to which the right of access by the City and other Persons is controlled by means of credentials issued by the Padres. Such credentials shall be issued upon City request and not be unreasonably withheld. The Limited Access Areas shall include the following areas:

- (a) the ticket windows, and only Padres’ personnel shall be permitted to operate the equipment located therein;
- (b) the scoreboard and video control areas, and only Padres’ personnel shall be permitted to operate the equipment located therein; and
- (c) the auditorium, in which non-technical set-up may be staffed by the City or other users or occupants, but only Padres’ personnel shall be permitted to operate the technical equipment located therein.

1.1.80 “**Losses**” shall have the meaning given to such term in Section 18.1.

1.1.81 “**Maintain**” and “**Maintenance**” shall mean all work (including all labor, supplies, materials and equipment) reasonably necessary for the cleaning and routine upkeep of any property, structures, surfaces, facilities, fixtures (including media plug-ins and cable and all wiring attendant thereto), equipment or furnishings, or any other component of the Ballpark

Property, and all Repairs necessary to meet the Repair Standard, in order to preserve such items in their existing condition, ordinary wear and tear excepted; but expressly excluding from the definition of Maintain and Maintenance any work (including labor, supplies, materials and equipment) of restoration or replacement involving a Capital Expenditure for any component of the Ballpark Property, or of construction, installation or upgrading of Improvements to the Ballpark Property. By way of illustration, and without limiting the foregoing, Maintenance shall include: (a) preventive or periodic maintenance procedures for equipment, fixtures, computers or systems; (b) periodic testing of building systems, such as mechanical, card-key security, fire alarm, field and building lighting, and sound systems; (c) ongoing trash removal and other custodial, groundskeeping, irrigation and water runoff operations; (d) regular maintenance procedures for HVAC, plumbing, mechanical, electrical and structural systems, such as periodic cleaning, lubrication, and changing of air filters and lights; (e) touch up painting; (f) cleaning prior to, during and following all Events; (g) year-round field maintenance and landscaping; and (h) any other work of a routine, regular and generally predictable nature that is reasonably necessary in order to keep the Ballpark Property in good order and condition as a First-Class Facility. In all respects, Maintenance shall comply with the terms of the EHC Agreement.

1.1.82 “**Maintenance Manual**” shall have the meaning given to such term in paragraph 7.21.2.

1.1.83 “**Major League Baseball**” shall mean professional baseball organized under the Major League Agreement dated January 21, 1921, as amended, restated or extended from time to time, between the National League, The American League of Professional Baseball Clubs and each of their member clubs.

1.1.84 “**Major League Baseball Game**” shall mean (a) any Major League Baseball exhibition, regular season or post-season game, except for exhibition games played during any regularly scheduled Major League Baseball spring-training season, or (b) any All-Star game which the Team has requested, through application or otherwise, be played within the boundaries of the City.

1.1.85 “**Major League Baseball Season**” shall mean each period commencing on the day of the Team’s first Major League Baseball Game at the Ballpark Property (including exhibition play at the Ballpark Property, if any) in any calendar year and ending on the day of the Team’s last Major League Baseball Game at the Ballpark Property (including post-season play, if any) in such calendar year.

1.1.86 “**Material Adverse Effect**” shall mean an event, action or inaction which results in the City’s breach of its covenants to maintain the tax-exempt

status of the Bonds or of any of the City's other material agreements relative to the Bonds.

1.1.87 "**Material Ballpark Management Obligations**" shall have the meaning given to such term in paragraph 7.1.2.

1.1.88 "**Material Contract**" shall mean a contract or any change order to any contract estimated to cost in the aggregate in excess of \$150,000 (adjusted upward at the end of the fifth Fiscal Year included in the Term, and on every fifth Fiscal Year thereafter during the Term, but never downward, by the amount of the percentage increase, if any, in the CPI for the period which includes January 1 of the Fiscal Year for which the adjustment is then being made over the CPI for the period which includes January 1 of the Fiscal Year five (5) years earlier).

1.1.89 "**MOU**" shall have the meaning given to such term in the Recitals hereto.

1.1.90 "**Naming Rights**" shall have the meaning given to such term in Section 28.6.

1.1.91 "**National League**" shall mean The National League of Professional Baseball Clubs in which the Team plays Major League Baseball as of the Effective Date, or the renamed, restructured or reconstituted league under the jurisdiction of Major League Baseball in which the Team plays Major League Baseball at any other time during the Term.

1.1.92 "**Net Incremental Loss**" shall have the meaning given to such term in paragraph 6.10.2.

- 1.1.93 **“Net Incremental Revenue”** shall have the meaning given to such term in paragraph 6.10.2.
- 1.1.94 **“Net Parking Revenue”** shall have the meaning give to such term in paragraph 9.6.2.
- 1.1.95 **“Non-Padres Baseball Event”** shall mean any Event other than (a) a Major League Baseball Game, or (b) any other Padres-Sponsored Baseball Event at the Ballpark Property.
- 1.1.96 **“Offer”** shall have the meaning given to such term in Section 14.1.
- 1.1.97 **“Off-Season”** shall mean each period of time commencing the day after the last day of any Baseball Use Season and ending on the day preceding the first day of the following Baseball Use Season.
- 1.1.98 **“Opening Date”** shall mean the first scheduled Major League Baseball Game to be played at the Ballpark Property.
- 1.1.99 **“Operations Manual”** shall have the meaning given to such term in Section 7.21.1.
- 1.1.100 **“Opt-Out Event”** shall have the meaning given to such term in paragraph 6.6.6.
- 1.1.101 **“Outfield Park”** shall mean the park-like area, suitable for picnics and observing events at the Ballpark Property, and adjoining walkways, set amidst (but not including) the Outfield Park Retail Parcels.
- 1.1.102 **“Outfield Park CCRs”** shall mean any and all easement agreements and operating maintenance covenants, now or hereafter existing, affecting:

(a) the Outfield Park Retail Parcels; (b) Outfield Park; and (c) the Ballpark Land (exclusive of the Outfield Park), including, without limitation, the agreement executed pursuant to paragraph 2.7.5 of this Agreement.

1.1.103“**Outfield Park Retail Parcels**” shall mean the parcels of land adjoining the Ballpark land and bounded north by J Street, which parcels are more particularly described in Section 2.7 of this Agreement.

1.1.104“**Padres**” shall mean Padres L.P., a Delaware limited partnership, and its managing and general partners.

1.1.105“**Padres Audit Costs**” shall have the meaning given to such term in paragraph 28.5.4(b)(ii).

1.1.106“**Padres Clubhouse**” shall mean that locker room area shown on Exhibit D attached hereto.

1.1.107“**Padres Default**” shall have the meaning given to such term in Section 19.1.

1.1.108“**Padres Exclusive Use Areas**” shall mean the following areas within the Ballpark Property, which the Padres shall have an exclusive right to use and occupy year-round throughout the Term of this Agreement, irrespective of the identity of the party who may be having an Event at the Ballpark Property. Such exclusive rights do not preclude access by the manager of the Ballpark Property for purposes of Maintenance or Repair. The Padres Exclusive Use Areas, which include City Property in part and Padres Property in part, consist of:

- (a) The Padres Offices;
- (b) The Padres Clubhouse, substantially as shown on Exhibit D attached hereto;
- (c) The ticket vault;
- (d) A reasonable number of designated storage areas for Padres equipment and supplies, to be reasonably agreed upon by the parties on or before the Commencement Date;
- (e) A reasonable number of designated offices in the Ballpark Property for coaches, trainers and the like, to be reasonably agreed upon by the parties on or before the Commencement Date; and
- (f) Other areas within the Ballpark Property which, by mutual and reasonable agreement of the parties, are of such a nature that the Padres require exclusive rights of use and occupancy year-round throughout the Term.

1.1.109 "Padres Games and Events" shall mean any and all:

- (a) Major League Baseball Games;
- (b) Padres-Sponsored Baseball Events; and
- (c) events at the Ballpark Property that would be 70/30 Events but for an "opt-out" by the City pursuant to paragraph 6.9.6.

1.1.110 "Padres Offices" shall mean the offices within the Ballpark Property substantially as shown on Exhibit D attached hereto, for use and occupancy by the Padres throughout the Term.

- 1.1.111“**Padres Parking**” shall have the meaning given to that term in Section 2.5.
- 1.1.112“**Padres Parties**” shall have the meaning given to such term in Section 18.1.
- 1.1.113“**Padres Property**” shall have the meaning given to such term in the Recitals hereto.
- 1.1.114“**Padres Split Season**” shall have the meaning given to such term in paragraph 6.10.1.
- 1.1.115“**Padres-Sponsored Baseball Event**” shall mean any baseball game or baseball-related event at the Ballpark Property, other than Major League Baseball Games, which is conducted or sponsored either by the Padres or by Major League Baseball, including without limitation baseball fantasy camps and clinics.
- 1.1.116“**Parking Facilities**” shall mean the Public Parking Facilities and the Phase I Parking Facilities, which contain approximately 5,000 parking stalls.
- 1.1.117“**Person**” shall mean any natural person, Governmental Authority, corporation, partnership, limited liability company, joint venture, association, or other entity of any kind.
- 1.1.118“**PFFA**” shall mean the meaning given to such term in the Recitals hereto.
- 1.1.119“**Phase I**” shall mean the first phase of Ancillary Development which, subject to the credit available for Substitute Ancillary Development, shall

include at least (a) a 150 room extended stay hotel and 700 additional new hotel rooms with associated parking, (b) office complexes containing at least 600,000 gross square feet with associated parking, and (c) retail development containing at least 150,000 gross square feet.

1.1.120“**Playing Field**” shall mean the infield grass, the outfield grass, the infield skinned area, the ground lying to the foul side of the foul lines of the playing field, the warning track, the sod farms, the dugouts, and the bullpens within the Ballpark Property.

1.1.121“**Premium Seats**” shall mean those certain seats in the Ballpark Property more particularly described on Exhibit G attached hereto.

1.1.122“**Prevailing Party**” shall have the meaning given to such term in paragraph 28.1.4.

1.1.123“**Prime Rate**” shall mean the annual prime rate publicly announced or published from time to time by the largest (measured in terms of deposits) federally-chartered bank headquartered in California, as its prime rate, adjustable the day of any change in such rate.

1.1.124“**Private Suites**” shall mean all the private suites in the Ballpark Property more particularly described on Exhibit H attached hereto. Although the Private Suites are not Exclusive Use Areas, the parties recognize and agree that (a) the licensees of the Private Suites are to have an exclusive right to use and occupancy of their Private Suites for the term of their respective licenses, (b) routine Maintenance and Repair of the Private Suites to the

Repair Standard will be a responsibility of the manager of the Ballpark Property, the reasonable costs for which shall be included as Joint Ballpark Ownership Expenses, and (c) Capital Expenditure Improvements to the Private Suites, if any, would have to be mutually approved by the parties in an Approved Capital Expenditure Budget. The parties anticipate that (i) some Private Suites may be licensed to the Padres themselves, (ii) others licensed to Governmental Authorities, (iii) others licensed to other Persons for their business or personal use, and (iv) others retained to provide rental opportunities for single Event or other short-term use.

1.1.125 "**Prohibited Competitor**" shall have the meaning given to such term in paragraph 11.2.1.

1.1.126 "**Property**" shall mean the City Property and the Padres Property.

1.1.127 "**Recognition and Attornment Agreements**" shall mean, collectively, that certain Recognition and Attornment Agreement dated _____, 2000 between the Padres and the City related to the Site Lease and attached hereto as Exhibit I, and that certain Recognition and Attornment Agreement dated _____, 2000 between the Padres and PFFA related to the Ballpark Facility Lease and attached hereto as Exhibit J.

1.1.128 "**Reconciliation**" shall have the meaning given to such term in paragraph 8.3.3.

1.1.129 "**Re-Entry Default**" shall have the meaning given to such term in paragraph 19.3.2.

1.1.130“**Reimbursable Costs**” shall have the meaning given to such term in paragraph 19.2.3.

1.1.131“**Rent**” shall have the meaning given to such term in paragraph 4.4.1.

1.1.132“**Repair**” or “**Repairs**” shall mean the repair, restoration or routine replacement (including all labor, supplies, materials and equipment) of any component of the Ballpark Property (other than (a) personal property, and (b) above-standard repair, restoration or replacement attributable to the presence of above-standard Improvements within Exclusive Use Areas) to the extent reasonably necessary to maintain the Repair Standard, but excluding from the foregoing definition any repair, restoration or replacement involving a Capital Expenditure.

1.1.133“**Repair Standard**” shall mean the standard for the performance of the work of Repair, not involving a Capital Expenditure, but necessary or appropriate in order to maintain the Ballpark Property as a First-Class Facility, including those repairs necessary or appropriate to (a) remedy any material defects in design, construction or installation of any component of the Ballpark Property which, if not remedied, would create a threat to public health or safety or a material interference with the Team’s ability to play any Major League Baseball Game at the Ballpark Property or the ability to use the Ballpark Property for other intended uses; (b) repair, restore or routinely replace any Deteriorated component of the Ballpark Property; (c) comply with any requirements initiated and

imposed prospectively by the National League or the Office of the Commissioner of Baseball, which requirements are made of all National League or Major League Baseball open-air ballparks, as the case may be; (d) make modifications required by applicable Law, including accommodations required to be made to the Ballpark Property under ADA; or (e) satisfy the requirements of any insurance carrier, which requirements are necessary to enable the Padres to obtain insurance coverages pursuant to Article 17 at commercially reasonable rates.

1.1.134“**Request for Payment**” shall have the meaning given to such term in paragraph 8.9.3.

1.1.135“**Restoration Account**” shall have the meaning given to such term in paragraph 23.3.1.

1.1.136“**San Diego Padres**” has the meaning given to such term in the Recitals hereto.

1.1.137“**Season**” shall mean the Major League Baseball Season when used as part of that phrase (commencing on the day of the Team’s first Major League Baseball Game at the Ballpark Property in any calendar year), or the Baseball Use Season when used as part of that phrase (commencing on February 1 in any calendar year). The Major League Baseball Season and the Baseball Use Season share a common ending dated (the day of the Team’s last Major League Baseball Game at the Ballpark Property, including post-season play, if any, in such calendar year).

1.1.138“**Second Extension Term**” shall have the meaning given to such term in paragraph 4.2.1(b).

1.1.139“**70/30 Event**” shall mean any event conducted at the Ballpark Property which is not included within the definition of City Event or Padres Game or Event, or which the parties mutually agree, by reason of their joint sponsorship or authorization of it, should be considered a 70/30 Event, rather than being treated as a City Event or Padres Game or Event.

1.1.140“**Significant Events**” shall have the meaning given to such term in Section 6.9.

1.1.141“**Site Lease**” shall have the meaning given to such term in the Recitals hereto.

1.1.142“**Small Events**” shall have the meaning given to such term in paragraph 6.8.1.

1.1.143“**Substitute Ancillary Development**” shall mean development and construction of hotel and/or retail properties by other developers in the area in Centre City East in accordance with the MOU, of a type comparable to the Phase I hotel and/or retail properties, which hotel and/or retail properties shall be credited against the Padres’ commitment for Phase I hotel and/or retail development and construction; provided, however, that (a) the Transient Occupancy Tax revenue reasonably expected to be generated by the Substitute Ancillary Development is at least the same as the Transient Occupancy Tax revenue reasonably

expected to be generated by the comparable Phase I development; and (b) the net available tax increment revenue reasonably expected to be generated by the Substitute Ancillary Development is at least the same as the net available tax increment revenue reasonably expected to be generated by the comparable Phase I development. Notwithstanding the above, (i) in no event shall the Phase I retail adjacent to the Outfield Park be less than 100,000 gross square feet; and (ii) the Substitute Ancillary Development shall not include any development which has been proposed to CCDC, and for which plans and drawings have been created by the developer but not yet submitted to CCDC, as of August 4, 1998.

1.1.144“**Team**” shall have the meaning given to such term in the Recitals hereto.

1.1.145“**Term**” shall have the meaning given to such term in Section 4.3.

1.1.146“**Termination Date**” shall have the meaning given to such term in paragraph 4.1.2.

1.1.147“**Transfer Documents**” shall have the meaning given to such term in paragraph 3.1.3.

1.1.148“**Transferee**” shall have the meaning given to such term in Section 14.1.

1.1.149“**Transient Occupancy Taxes**” means taxes paid by users of hotel and motel rooms within the City, as more fully set forth in San Diego Municipal Code section 35.0101, et seq.

1.1.150“**Trustee**” shall mean the trustee named in the Indenture.

1.1.151“**Untenantable**” shall have the meaning given to such term in
Section 23.1.

1.1.152“**Usable City Property**” shall mean the City Property, excepting
therefrom the City Exclusive Use Areas.

1.1.153“**Usable Padres Property**” shall mean the Padres Property, excepting
therefrom the Padres Exclusive Use Areas.

1.1.154“**Visitors Clubhouse**” shall mean that locker room area shown on
Exhibit D attached hereto.

1.2 Usage. Terms defined in the singular in Section 1.1 may be used in the plural. Similarly, terms defined in Section 1.1 in the plural may be used in the singular. Unless the context of this Agreement clearly requires otherwise: (a) references to any Person include such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement; (b) references to one gender include all genders; (c) ”including” is not limiting; (d) ”or” has the inclusive meaning represented by the phrase “and/or”; (e) the words “hereof”, “herein”, “hereby”, “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (f) Article, Section, clause, paragraph and Exhibit references are to this Agreement unless otherwise specified; (g) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; and (h) general or specific references to any Law means such Law as amended, modified, codified or

reenacted, in whole or in part, and in effect from time to time, unless the effect thereof is to reduce, limit or otherwise prejudicially affect any obligation or any right, power or remedy hereunder, in which case such amendment, modification, codification or reenactment will not, to the maximum extent permitted by Law, form part of this Agreement and is to be disregarded for purposes of the construction and interpretation hereof.

ARTICLE 2

USE AND OCCUPANCY

2.1 Use and Occupancy by Padres. Subject to the terms and conditions of this Agreement, as of the Commencement Date, the City hereby provides to the Padres, and the Padres hereby accept from City, the right to use and occupy all of the City Property, including the City's interest in the Ballpark Property, at the times and in the manner set forth in this Agreement. In consideration for the Padres' use and occupancy of the Ballpark Property, the Padres covenant that they will convey and deliver to the City the Padres' interests in the Ballpark Property in accordance with Section 3.1.3 and Article 25 of this Agreement. The City shall deliver to the Padres on or prior to the Effective Date a standard form ALTA policy of title insurance insuring the Padres' interest in the Usable City Property (if such policy is available), subject only to such easements, covenants, encumbrances and restrictions of record that do not interfere with the Padres' proposed use of the Usable City Property.

2.1.1 The City shall not grant or cause any Liens against the City Property without first obtaining the Padres' prior written approval.

2.2 Use and Occupancy by City: Subject to the terms and conditions of this Agreement, as of the Commencement Date the Padres hereby provide to the City, and the City hereby accepts from the Padres, the right to use and occupy all of the Usable Padres Property, at the times and in the manner set forth in this Agreement. The Padres shall deliver to the City on or prior to the Effective Date a standard form ALTA policy of title insurance insuring the City's interest in the Usable Padres Property, subject only to such easements, covenants, encumbrances and restrictions of record that do not interfere with the City's proposed use of the Usable Padres Property.

2.2.1 Because the Padres Property reverts to the City upon expiration or termination of this Agreement, as provided in Section 3.1, the Padres shall, and do hereby, grant to the City a first priority lien on all Padres Property involved in the operation of or otherwise constituting a portion of the Ballpark Property, to secure all Padres' obligations under this Agreement (subject to any notice and cure period set forth herein with respect thereto), including the Padres' obligations to purchase the Padres' interests in the Padres Property in accordance with the terms of this Agreement and the Padres' obligations to surrender the Padres' interests in the Padres Property in accordance with Article 25 of this Agreement. The Padres agree to execute and record all documents necessary to perfect the City's security interest. The City agrees, however, that (a) in the event of a Re-Entry Default, the City shall not exercise remedies pursuant to or as a consequence of said security interest other than the remedies set forth in

Sections 7.1 and 19.3 of this Agreement, (b) the lien granted to the City in this Section 2.2, and subject to receipt and approval (which approval shall be timely and shall be not unreasonably withheld) by the City of appropriate recognition and attornment agreements described below, shall be subordinate to lender and vendor liens granted by the Padres to secure obligations owed in connection with the procurement of Padres Property, or substitute liens granted to refinance or replace any such liens, without any requirement that the City execute or deliver any further documentation evidencing such subordination, (c) the Padres will be relying upon, and third parties receiving such liens shall have the right to rely upon, such subordination and the covenants of the City set forth herein, irrespective of the amount of obligations secured by such liens or the terms (e.g., interest rate, maturity, payment terms, etc.) applicable to such obligations, and (d) upon request of the Padres, the City shall execute, deliver and record such additional documentation as the Padres reasonably may request to evidence the subordination of the liens granted in favor of the City to the liens granted to any such lenders or vendors. Any agreement between the Padres, on the one hand, and a lender or vendor receiving a Lien on the other, shall include appropriate recognition and attornment covenants providing that the City may assume all rights and obligations of the Padres under such agreement if: (i) the Padres' rights to use the Ballpark Property under this Agreement are terminated as a consequence of a Padres' Default

hereunder, or (ii) the Padres' rights under the lender or vendor agreement are terminated because of the Padres' default thereunder.

2.2.2 In accordance with Section 3.1.3 of this Agreement, any Liens against the Padres Property shall be subject and subordinate to the reversion of the Padres Property of the City (unless otherwise expressly agreed in writing by the City) upon the expiration or termination of this Agreement, and any agreements granting such Liens shall so provide.

2.3 City Suite. The City shall have a right and option to direct the Padres to set aside one (1) Private Suite for use and occupancy by the City throughout the Term (the "City Suite"), on the following terms and conditions:

2.3.1 The option must be exercised by the City not later than one (1) year after the date on which the City delivers the first Project Site Notice to Proceed to Padres Construction, L.P., under the Design-Build Agreement.

2.3.2 If the City timely exercises this option, the Padres, in consultation with the City, shall designate as the City Suite a Private Suite on the Club Level between first-base and third-base with a seating capacity inside and outside of the Suite of not fewer than twenty-two (22) persons. The City Suite shall be no smaller than any other standard configuration Private Suite that is made available to be procured on a licensed basis for a full Baseball Use Season by a Person who is not an Affiliate of the Padres (it being understood that larger suites of facilities designed for banquets, large parties and the like are not to be considered for purposes of

determining the appropriate size of the City Suite pursuant to this paragraph 2.3.2).

2.3.3 If the City exercises its option to have a City Suite, then the City as an owner shall be entitled to one admission ticket for each seat in the City Suite for each Event at the Ballpark Property, including Padres Games and Events, free of charge.

2.3.4 Neither the City Suite, nor the City's right and option set forth in this Section 2.3, shall be assignable by the City to any other Person, directly or indirectly, at any time from the Effective Date until expiration or termination of the Term.

2.4 City Parking. Whether or not the City exercises its option to take a City Suite, and subject to the terms and conditions of this Agreement, the parties hereby agree that, beginning on the Commencement Date and thereafter throughout the Term of this Agreement, there shall be provided to the City the following parking rights (the "City Parking"). The City shall have the right to use and occupy the City Parking free of any obligation to pay parking fees or charges, but the City's use and occupancy shall be subject to such other reasonable rules and regulations as may be adopted from time to time by the manager of the Ballpark Property:

2.4.1 A right to use and occupy 15 VIP parking spaces for all Events at the Ballpark Property, at a location to be designated by the Padres in the immediate vicinity of the Ballpark Structure; and

2.4.2 A right to use and occupy a reasonable number of parking spaces for the reasonable number of full-time City employees working in the City Offices. The parties shall reasonably agree upon the exact number and location of the parking spaces for these City employees on or before the Commencement Date.

2.5 Padres Parking. Subject to the terms and conditions of this Agreement, as of the Commencement Date, the parties hereby agree that throughout the Term of this Agreement, there shall be provided to the Padres a right to use and occupy fifteen (15) VIP parking spaces for all Events at the Ballpark Property, at a location to be designated by the Padres in the immediate vicinity of the Ballpark Structure (the "Padres Parking"); provided, however, that there shall be no favoritism in the location of the Padres Parking compared to the City Parking. The Padres shall have the right to use and occupy the Padres Parking free of any obligation to pay parking fees or charges, but the Padres' use and occupancy shall be subject to other reasonable rules and regulations as may be adopted from time to time by the manager of the Ballpark Property.

2.6 Site Lease, Ballpark Facility Lease, Indenture and MOU.

2.6.1 This Agreement shall be subject and subordinate to all of the terms, covenants, and provisions of the Site Lease, the Ballpark Facility Lease and the Indenture, which are incorporated herein by reference.

2.6.2 The Padres shall have only the rights in respect of the City Property set forth in this Agreement. The Padres acknowledge and agree that it has reviewed all of the terms and conditions of the Site Lease, Ballpark

Facility Lease and Indenture including, but not limited to, Sections 6.03, 6.06, 7.01 and 11.05 of the Site Lease, and that this Agreement and all the terms and conditions hereof are subject to and subordinate to all of the terms and conditions of the Site Lease, Ballpark Facility Lease and Indenture, and that notwithstanding anything to the contrary herein, the City's exercise of any of its rights or duties thereunder will not constitute a breach of any of the terms of this Agreement.

2.6.3 Neither the Padres nor the City shall do or permit to be done any act or thing which will constitute a breach or violation of any of the terms, covenants, conditions or provisions of the Site Lease or the Ballpark Facility Lease.

2.7 Ballpark Land and Outfield Park Actual Parcels

2.7.1 The map attached hereto as Exhibit K generally shows the location and boundaries of the Ballpark Land as Parcels I and E and the location and boundaries of the Outfield Park Retail Parcels as Parcels R5, R4, R3, and R2. The parties intend that the Ballpark Land shall include all real property necessary or appropriate in order to construct the Ballpark Structure and Outfield Park in accordance with the Design-Build Agreement.

2.7.2 The Padres and the City shall reasonably promptly (so as not to delay the development or construction of the Ballpark Facility) cooperate to establish a final legal description for each of the Ballpark Land and the

Outfield Park Retail Parcels that is reasonably acceptable to the City and the Padres.

2.7.3 The parties recognize that during the development of the Ballpark it may become necessary or beneficial to modify the precise boundaries of the Ballpark Land or the Outfield Park Retail Parcels. Such a modification may be required to modify the common boundary between the Ballpark Land and the Outfield Park Retail Parcels or to modify the other boundaries of the Ballpark Land or the Outfield Park Retail Parcels. If, at any time before the Padres and the City agree on a final legal description for the Ballpark Land and the Outfield Park Retail Parcels, the City or the Padres determine that such a modification shall be reasonably necessary or beneficial in connection with the development on the Ballpark Land or on the Outfield Park Retail Parcels, then such party shall promptly notify the other party thereof. Promptly thereafter, the parties shall meet and confer to in good faith to determine whether to modify the boundaries of Ballpark Land and the Outfield Park Retail Parcels.

2.7.4 If, and only if, the parties agree to so modify the boundaries of the Ballpark Land or the Outfield Park Retail Parcels or agree on the final legal description of the Ballpark Land or the Outfield Park Retail Parcels (which agreement, in either case, shall not be unreasonably withheld or delayed) , then the Padres and the City Manager shall execute a

supplement to Exhibit K to memorialize such agreement, and this Agreement shall be deemed amended to reflect such agreement.

2.7.5 The parties (and the owner of any Outfield Park Retail Parcels) shall execute, acknowledge and cause to be recorded the covenants, conditions and restrictions substantially in the form attached hereto as Exhibit L (the "Initial CC&R's") in connection with the finalization of a final legal description of the Ballpark Land and the Outfield Park Retail Parcels and the conveyance of the Outfield Park Retail Parcels to the Padres Affiliate or other developer of the Outfield Park Retail Parcels.

ARTICLE 3

PADRES PROPERTY

3.1 Padres Property.

3.1.1 The Padres shall provide and bear (a) all costs of acquisition of all Padres Property on the Ballpark Land, and (b) all real property taxes and possessory interest taxes in accordance with Section 28.8. The Padres' responsibility, in their capacity as manager of the Ballpark Property, for costs of operation, maintenance, repair and replacement of all City Property and Padres Property on the Ballpark Land, is separately addressed in Article 6, Article 7 and elsewhere in this Agreement. The City shall have the right to use and enjoy the Usable Padres Property in connection with its use of the Ballpark Property for City Events, subject to the restrictions set forth herein with respect to Limited Access Areas.

- 3.1.2 The Padres shall not permit any item of Padres Property to be removed from the Ballpark Land (including, without limitation, pursuant to foreclosure or the exercise of any self-help remedy by any vendor providing financing to the Padres for any item of Padres Property) unless such item is promptly replaced with a similar item of equal or better function and quality.
- 3.1.3 Notwithstanding any provision of this Agreement to the contrary, the ownership of all items of Padres Property shall immediately and automatically be deemed transferred to the City, without further consideration, free and clear of all Liens and free and clear of any obligations whatsoever to any Person, upon the expiration of the Term or earlier termination of this Agreement for any reason other than a material default by the City. Within ten (10) Business Days after the Padres' receipt of a written request made by the City at the time of such expiration or termination or at any time thereafter, the Padres shall execute and deliver to the City any and all deeds, bills of sale, assignments, agreements or other documents (the "Transfer Documents") which the City reasonably requests to evidence the transfer of the Padres Property to the City pursuant to this Section 3.1. If the Padres fail to do so within the said ten (10) Business Days period, then the Padres shall be deemed to have unconditionally and irrevocably appointed the City as the Padres' true and lawful attorney-in-fact to execute, have acknowledged and deliver such

Transfer Documents in the name of and on behalf of the Padres. This power of attorney is coupled with an interest and is irrevocable.

- 3.1.4 Liens may be granted by the Padres against the Padres Property in accordance with Section 2.2 of this Agreement. Any such Liens shall be subject and subordinate to the reversion of the Padres Property to the City (unless otherwise expressly agreed in writing by the City) upon the expiration or termination of this Agreement, as provided in paragraph 3.1.3.
- 3.1.5 Any sale, conveyance, gift, lease, license, pledge, encumbrance or other transfer or grant of rights by the Padres in or to all or any portion of the Padres Property shall be subject and subordinate to all of the terms and provisions of this Agreement, including the prohibition against removal (unless the item is promptly replaced, as provided in paragraph 3.1.2, and the reversion of the Padres Property to the City (unless otherwise expressly agreed in writing by the City) upon the expiration or termination of this Agreement, as provided in paragraph 3.1.3. The parties' intent is that the Padres Property (or a replacement meeting the standard set forth in this Agreement), together with the City Property, be available for use throughout the Term by (a) the Padres, (b) the City, (c) any Person who acquires the Padres' rights and obligations in, to and under the Franchise and this Agreement, and (d) any Person who acquires the City's rights and obligations in, to and under this Agreement.

3.1.6 Except as otherwise expressly permitted by this Agreement, the Padres shall not sell, convey, gift, lease, license, encumber or otherwise transfer or grant rights in or to all of any portion of the Padres Property to any Person other than a Person who contemporaneously acquires all of the Padres' rights and obligations in, to and under the Franchise and this Agreement, without the City's prior written consent.

3.2 Private Suites.

3.2.1 The Padres shall have the exclusive right to grant licenses to use the Private Suites (other than any City Suite) for all Events at the Ballpark Property during the Term. The Padres agree to exercise this right in compliance with the requirements of paragraph 3.2.2, Section 15.2 and paragraph 16.1.2.

3.2.2 The Padres shall set aside two (2) Private Suites for use and occupancy by the Padres throughout the Term. The Padres as an owner shall be entitled to one admission ticket for each seat in its two Private Suites for each Event at the Ballpark Property, including City Events, free of charge.

3.2.3 Private Suite licensees shall not be admitted to any 70/30 Event or City Event without purchasing admission tickets thereto. Private Suite licensees will have the option, but not the obligation, to buy admission tickets to 70/30 Events and City Events as part of the Private Suite license package. The City agrees that admission tickets to each 70/30 Event and City Event will be made available to Private Suite licensees at a price no

greater than the Highest Ticket Price Generally Available for such Event. Except for this requirement for admission tickets to 70/30 Events and City Events, licensees shall otherwise enjoy access to their respective Private Suites year-round.

3.2.4 The Padres shall retain all revenue resulting from granting licenses to use the Private Suites, including Private Suite ownership fees, founders' fees or construction contributions associated with the purchase of such Private Suites, except for (a) City Revenue from Admission Tickets to the Private Suites for City Events, which shall be remitted to the City, (b) revenue from Admission Tickets for 70/30 Events, which shall be shared by the parties in accordance with Article 6.

3.2.5 The Padres shall determine:

- (a) the amount of all license, ownership, founders', construction and any other fees charged for the right to use the Private Suites, except the prices for admission tickets to City Events, which prices shall be determined by the City; and
- (b) the costs of amenities provided in connection with the use of the Private Suites.

3.3 Premium Seats.

3.3.1 The Padres shall have the exclusive right to grant licenses to use the Premium Seats for all Events at the Ballpark Property during the Term.

The Padres agree to exercise this right in compliance with the requirements of paragraph 3.2.2, Section 15.2 and paragraph 16.1.2.

3.3.2 Premium Seat licensees shall not be admitted to any City Event without purchasing admission tickets thereto. Premium Seat licensees will have the option, but not the obligation, to buy admission tickets to City Events as part of the Premium Seat license package. The City agrees that admission tickets to each City Event will be made available to Premium Seat licensees at a price no greater than the Highest Ticket Price Generally Available for that City Event.

3.3.3 The Padres shall retain all revenue resulting from granting licenses to use the Premium Seats, including Premium Seat ownership fees, founders' fees or construction contributions associated with the purchase of such Premium Seats, except for (a) City Revenue from Admission Tickets to the Premium Seats for City Events, which shall be remitted to the City, and (b) revenue from Admission Tickets for 70/30 Events, which shall be shared by the parties in accordance with Article 6.

3.3.4 The Padres shall determine:

- (a) the amount of all license, ownership, founders', construction and any other fees charged for the right to use the Premium Seats, except (i) the prices for admission tickets to City Events, which prices shall be determined by the City, and (ii) prices for Admission Tickets to 70/30 Events, which prices shall be

determined by mutual agreement between the City and the Padres;
and

- (b) the costs of amenities provided in connection with the use of the Premium Seats.

ARTICLE 4

TERM AND RENT

4.1 Effective Date to Initial Expiration Date.

- 4.1.1 Upon execution and delivery of this Agreement by the City and the Padres, this Agreement shall become effective as of the Effective Date. After the Effective Date, (a) with the consent of the City, which shall not be unreasonably withheld, and (b) subject to all applicable requirements under the Design-Build Agreement, the Padres shall have the right to enter onto the City Property for the purpose of completing the construction and installation of the Padres Property, furnishing and equipping the Padres Exclusive Use Areas, and engaging in such other pre-Commencement Date and pre-Opening Date activities as have been customary at Major League Baseball parks built within five (5) years prior to the Effective Date. Such early entry or occupancy shall not require the payment of Rent (until the Opening Date, as provided in Section 4.4), but all other terms of this Agreement shall be in effect during any such periods of early entry or occupancy. Notwithstanding the foregoing, the Padres shall have no right



to use or occupy the City Property for Padres Games and Events until the Commencement Date.

4.1.2 Subject to the provisions of Section 4.2, both the Padres' right to use and occupy the City Property and this Agreement shall expire on the earlier to occur of:

- (a) the date (the "Termination Date") this Agreement is terminated in accordance with its terms or is otherwise terminated by written agreement of the City and the Padres, or upon termination prior to the Commencement Date of the obligations of the parties under the MOU in accordance with the terms of the MOU or by agreement of the parties to the MOU; or
- (b) the date (the "Initial Expiration Date") that is the later of:
 - (i) twenty-two (22) years after the Commencement Date, provided, however that if such date occurs during the course of a Major League Baseball Season, then upon the end of that Major League Baseball Season; or
 - (ii) the earlier of (a) the expiration of the term of the initial Bonds financing (and any refinancing of such Bonds, provided that such refinancing does not increase the term of the financing instrument or adversely affect in any other way the Padres' obligations), or (b) thirty (30) years after the Commencement Date; provided, however, that if such

date occurs during the course of a Major League Baseball Season, then upon the end of that Major League Baseball Season.

4.2 Options to Extend.

4.2.1 Provided this Agreement has not been terminated in accordance with its terms or has not otherwise been terminated by written agreement of the City and the Padres, subject to the conditions set forth in paragraph 4.2.2:

- (a) the Padres shall have the option to extend this Agreement and the Padres' right to use the Usable City Property for an additional five (5) year term commencing the day after the Initial Expiration Date; provided, however, that if the last day of such five (5) year term occurs during the course of a Major League Baseball Season, then until the end of that Major League Baseball Season (the "First Extension Term"); and
- (b) the Padres shall have the option to extend this Agreement and the Padres' right to use the Usable City Property for a second additional five (5) year term commencing the day after the expiration of the First Extension Term; provided, however, that if the last day of such additional five (5) year term occurs during the course of a Major League Baseball Season, then until the end of that Major League Baseball Season (the "Second Extension Term").

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4.2.2 The Padres may exercise the options to extend this Agreement as set forth in paragraph 4.2.1 only by delivering to the City written notice of intent to renew no later than three hundred sixty five (365) days prior to the last day of the then-current Term, and only if, at the time of exercise, the Padres have not received from the City a written notice of a default under this Agreement which remains uncured at the time of exercise.

4.3 Resulting Term. The period between and including the Effective Date and the Initial Expiration Date, together with the First Extension Term, if applicable, and the Second Extension Term, if applicable, shall, collectively, constitute the "Term" of this Agreement.

4.4 Rent.

4.4.1 In accordance with the schedule for payments set forth in paragraph 4.4.3, the Padres shall pay the City fixed rent ("Rent") for the City Property at the rate of five hundred thousand dollars (\$500,000) for each Fiscal Year, as such amount is adjusted from time to time pursuant to paragraph 4.4.2; provided, however, that Rent due for: (a) the Fiscal Year that includes the Opening Date shall be prorated (based upon a 365-day year) and shall only be due and payable for the period from the Opening Date through the following October 31 (inclusive); and (b) the last Fiscal Year of the Term, shall be prorated (based upon a 365-day year) and shall only be due and payable for the period of such Fiscal Year included within the Term.

4.4.2 On the fifth (5th) anniversary of the Commencement Date, and on every fifth (5th) anniversary thereafter during the Term, the Rent then in effect shall be adjusted upward by the amount of the percentage increase, if any, in (i) the CPI for the period which includes January 1 of the Fiscal Year of such anniversary, over (ii) the CPI for the period which includes January 1 five (5) years earlier. Rent shall not under any circumstances be adjusted downward.

4.4.3 Rent for each Fiscal Year, except the Fiscal Year that includes the Opening Date and the last Fiscal Year of the Term, shall be due and payable in two (2) equal installments on June 30 of such Fiscal Year and on the following December 31. Rent for the Fiscal Year that includes the Opening Date shall be due and payable in two (2) equal installments on the date that is 30 calendar days after the Opening Date and on the following December 31. Rent for the last Fiscal Year of the Term shall be due and payable as follows:

- (a) if the last day of the Term is on or before June 30 of such Fiscal Year, then Rent for such Fiscal Year shall be due and payable in one (1) installment on the last day of the Term; or
- (b) if the last day of the Term is after June 30 of such Fiscal Year, then Rent for such Fiscal Year shall be due and payable in two (2) equal installments on June 30 of such Fiscal Year and the last day of the Term.

ARTICLE 5

USE OF THE BALLPARK PROPERTY

5.1 Padres' Use. Subject to all limits and conditions imposed upon the Padres in this Agreement, the Padres shall be entitled to use the Ballpark Property (other than the City Exclusive Use Areas) for such Events and activities as may be permitted by Law, including:

- 5.1.1 up to one hundred twenty-five (125) days during each calendar year included in the Term for Padres Games and Events;
- 5.1.2 the year-round operation, Maintenance and Repair of the Ballpark Property;
- 5.1.3 the installation and construction of Improvements;
- 5.1.4 the occupancy and operation of the Padres Offices for general office and administrative purposes;
- 5.1.5 the sale of food and alcoholic and non-alcoholic beverages, souvenirs and other items normally considered "concessions";
- 5.1.6 those activities permitted under Sections 3.2 and 3.3 regarding Private Suites and Premium Seats;
- 5.1.7 the sale of advertising as provided in Article 10; and
- 5.1.8 any and all other activities which, from time to time during the Term, are associated with, are customarily conducted in connection with, or are related to, the conduct of the business of a Major League Baseball team.

5.2 Limitations on Padres' Use. Notwithstanding any other provisions in this Agreement, the Padres' possession and use of the Ballpark Property shall be subject to the following limitations:

5.2.1 The Padres shall not occupy or use the Ballpark Property (or permit the use or occupancy of the Ballpark Property) for any purpose or in any manner that violates: (i) any applicable Law; (ii) this Agreement; (iii) the Site Lease, the Ballpark Facility Lease and due Indenture; or (iv) any easement, covenant, restriction or other instrument to which this Agreement and the Ballpark Property are subject or bound as of the Effective Date or to which the Padres have given their written consent.

5.2.2 The Padres shall not hold or sponsor any Non-Padres Baseball Event, the conduct of which would present a clear and present danger of material damage to the Ballpark Property, as demonstrated by damage caused at other Major League Baseball parks or comparable large public or private facilities as a result of the conduct of similar events, provided that the refusal to hold or sponsor such Event would not expose the Padres to liability for violation of Law.

5.2.3 The Padres shall not schedule or hold at the Ballpark Property, without first obtaining the City's prior written consent, any Padres Game or Event that (i) is a Non-Padres Baseball Event; (ii) does not immediately precede or follow a Major League Baseball Game or other baseball game played within the Ballpark Property, and (iii) is reasonably estimated to attract

more than ten thousand (10,000) spectators on any day that any Event has been previously scheduled at Qualcomm Stadium. The City shall not unreasonably withhold or delay such consent.

5.2.4 The Padres shall not hold or sponsor any football game at the Ballpark Property.

5.3 City's Use. Subject to all limits and conditions imposed upon the City in this Agreement, the City shall be entitled to use the Ballpark Property (other than the Padres Exclusive Use Areas) for such events and activities as may be permitted by Law, including:

5.3.1 up to two hundred forty (240) days during each calendar year included in the Term for City Events;

5.3.2 the installation and construction of Improvements to the City Exclusive Use Areas at reasonable times and after reasonable notice to the Padres as manager of the Ballpark Property; and

5.3.3 the occupancy and operation of the City Exclusive Use Areas for their intended purposes.

5.4 Limitations on City's Use. Notwithstanding any other provisions in this Agreement, the City's possession and use of the Ballpark Property shall be subject to the following limitations:

5.4.1 The City shall not be permitted to use any portion of the Ballpark Property for City Events during the Baseball Use Season (other than the City Exclusive Use Areas), unless the City has obtained the Padres' prior

written consent thereto. The Padres shall not unreasonably withhold or delay such consent; provided, however, that in no event shall it be considered unreasonable for the Padres to withhold their consent if, until the Team is mathematically eliminated from post-season play for such Baseball Use Season, the proposed City Event could possibly conflict with any post-season Major League Baseball Game in which the Team could possibly play.

5.4.2 The City shall not hold or sponsor any City Event, the conduct of which would present a clear and present danger of material damage to the Ballpark Property, as demonstrated by damage caused at other Major League Baseball parks or comparable large public or private facilities as a result of the conduct of similar Events, provided that the refusal to hold or sponsor such Event would not expose the City to liability for violation of Law.

5.4.3 The City shall not hold or sponsor any high school or amateur softball or baseball game at the Ballpark Property, without first obtaining the Padres' prior written consent thereto. The Padres shall not unreasonably withhold or delay such consent.

5.4.4 The City shall not hold or sponsor any professional softball game or baseball game at the Ballpark Property.

5.4.5 The City shall not hold or sponsor any football game at the Ballpark Property.

5.5 Use of Clubhouses. The parties agree that in the event that one or more clubhouses are required in connection with a City Event or a 70/30 Event, clubhouse facilities at the Ballpark Property shall be used as follows:

5.5.1 If only one clubhouse is required, the Auxiliary Clubhouse shall be used.

5.5.2 If two clubhouses are required, the Auxiliary Clubhouse shall be divided, and both portions thereof shall be used.

5.5.3 If three clubhouses are required, both portions of the divided Auxiliary Clubhouse and the Visitors Clubhouse shall be used.

5.6 Other Uses. At any time and from time to time during the Term, the parties may mutually agree upon permitted uses of the Ballpark Property by the City, the Padres or other Persons, in addition to those set forth in this Article 5. As to each party, such agreement shall be a matter within its sole and absolute discretion.

ARTICLE 6

SCHEDULING AND ACCOUNTING

6.1 Cooperation in Scheduling. The parties acknowledge that, within the framework established by this Article 6, the scheduling of Events at the Ballpark Property must be a cooperative endeavor. There may be occasions on which more than one (1) Event may be held at the Ballpark Property on a single day. There may be occasions on which a party who has previously reserved a date, or who has an unexpired priority right to reserve a date, is willing and able, in the exercise of its discretion, to reschedule it, or to forego its unexpired priority right. The City and the Padres agree to recognize and, in

good faith, attempt to accommodate the legitimate interests of the other with respect to the scheduling of Events at the Ballpark Property.

6.2 Master Calendar and Other Records. Throughout the Term, the following general rules related to scheduling records and accounting shall apply:

6.2.1 As part of the Padres' management responsibilities under this Agreement, the Padres shall establish and maintain a master calendar for Events at the Ballpark Property. At least monthly throughout the Term, and more frequently if so requested by the City, the Padres shall provide the then current calendar to the City, disclosing all Events (whether Padres Games and Events, City Events or 70/30 Events) which have been scheduled at the Ballpark Property.

6.2.2 As part of the Padres' management responsibilities under this Agreement, the Padres shall establish and maintain an accounting system that tracks Incremental Ballpark Revenues and Incremental Ballpark Expenses separately from its Joint Ballpark Ownership Expenses.

6.2.3 Nothing in this Section 6.2 shall alter or impair either party's separate obligations to bear costs and expenses related to the use of the Ballpark Property, or a share of such costs and expenses, as set forth elsewhere in this Agreement.

6.3 Four Essential Categories of Events. The rules governing the scheduling of Events at the Ballpark Property can best be understood by sorting Events under this Agreement into the following four categories:

- 6.3.1 Major League Baseball Games, discussed first, because of their highest priority, in Section 6.4 below, and Padres-Sponsored Baseball Events, described in Section 1.1.115. An important characteristic shared by Major League Baseball Games and Padres-Sponsored Baseball Events is that 100% of their costs and expenses are borne entirely by the Padres. Additional priority and conflict-resolution rules are also in Sections 6.5 and 6.6 below;
- 6.3.2 Co-Owner's Everyday Events discussed in Section 6.7 below, together with City Events discussed in Section 6.12, and also together with Padres Games and Events other than the Major League Baseball Games and Padres-Sponsored Baseball Events already addressed in Section paragraph 6.3.1 above. An important characteristic shared by Co-Owner's Everyday Events, City Events and those remaining Padres Games and Events is that 100% of their costs and expenses are borne entirely by one party or the other;
- 6.3.3 Small Events, discussed in Section 6.8 below. An important characteristic of a Small Event is that while its Net Incremental Revenue is shared by the parties in a 70%-to-30% or 30%-to-70% ratio, the City is protected against bearing any Net Incremental Loss from Small Events.
- 6.3.4 Significant Events, discussed in Section 6.9 below. An important characteristic of a Significant Event is that its Net Incremental Revenue and Net Incremental Loss are shared by the parties in a 70%-to-30% or

30%-to-70% ratio. Because Small Events and Significant Events both make reference to 70%-to-30% or 30%-to-70% ratios, they are sometimes referred to together as "70/30 Events."

6.4 Major League Baseball Scheduling. Throughout the Term, Major League Baseball Games shall have an absolute priority over any other Event which the parties may want to schedule at the Ballpark Property, unless otherwise agreed by the Padres in their sole and absolute discretion.

6.4.1 In order to allow the City to plan around such Major League Baseball Games, each year throughout the Term, the Padres shall provide written notice to the City of both (i) the draft Major League Baseball schedule for the ensuing Major League Baseball Season within ten (10) Business Days after receipt thereof by the Padres, and, (ii) the final Major League Baseball schedule for the ensuing Major League Baseball Season within ten (10) Business Days after receipt thereof by the Padres. The parties recognize, however, that the Major League Baseball schedule for post-season Major League Baseball Games will not be available to either the Padres or the City until late in the Major League Baseball Season, and that regular season Major League Baseball Games may occasionally have to be rescheduled because of rainouts or other reasons; provided, however, that in rescheduling games that have been rained out or that for other reasons requiring rescheduling, the Padres shall make a reasonable good faith effort not to displace a previously scheduled City Event and/or 70/30

Event. If either party schedules any Event during the Baseball Use Season, even if such party schedules its Event in compliance with the scheduling provisions set forth in this Article 6, nevertheless any Major League Baseball Game which becomes scheduled shall have absolute priority and shall supersede the previously scheduled Event. This priority shall be exercised by the Padres' delivery of written notice to the City.

6.4.2 At the City's request after its receipt of any Major League Baseball schedule, the Padres shall meet and confer with the City, at a reasonable time and place, regarding the City's scheduling wishes in response to the Major League Baseball schedule, as more particularly described in Section 6.5 below.

6.4.3 For all City Events during the Baseball Use Season, the City shall disclose the foregoing Major League Baseball scheduling priority to the other contracting Persons, and shall include in all such contracts a provision permitting (at no cost to the Padres) cancellation of the contract, or relocation of the event or program to a different venue, if the Padres exercise the Major League Baseball Game scheduling priority.

6.5 Additional Scheduling Priorities.

6.5.1 During the Off-Season, the City shall have scheduling priority for City Events.

6.5.2 During the Baseball Use Season, the Padres shall have scheduling priority for Padres Games and Events (in addition to the absolute priority for Major League Baseball Games provided in Section 6.4).

6.5.3 The scheduling priorities in this Section 6.5 shall prevail over the scheduling of Co-Owner's Everyday Events.

6.6 Civic Impact Events and Other Conflicts.

6.6.1 By their nature, Civic Impact Events may require planning and scheduling years in advance of their presentation. Both parties share a civic pride in bringing Civic Impact Events to the City.

6.6.2 Both parties may desire to schedule Civic Impact Events from time to time, but may find such scheduling impeded by the absolute priority for Major League Baseball Games set forth in Section 6.4, and the seasonal priorities of the parties set forth in Section 6.5. As an example, the City, in response to a draft Major League Baseball schedule for the ensuing Major League Baseball Season, may want the Padres to seek a revision of that draft schedule from Major League Baseball.

6.6.3 In situations like those described in this Section 6.6, while the scheduling priorities set forth in Sections 6.4 and 6.5 shall continue to apply, the parties nevertheless agree that, at the request of either party, they shall meet and confer at reasonable times and places during the Term to consider whether such Civic Impact Events might be accommodated. The other party's wishes shall be a factor that each party shall consider, in its

sole discretion, in deciding whether to depart from, or to seek permission from Major League Baseball or other Persons to depart from, the scheduling priorities set forth in Sections 6.3 and 6.4. The City recognizes, however, that even if the Padres conclude that they will seek a change in a Major League Baseball schedule, the final decision on such a matter rests with Major League Baseball.

6.7 Co-Owner's Everyday Events.

6.7.1 From time to time throughout the Term, each party may request the scheduling of the Ballpark Property for a Co-Owner's Everyday Event (as hereinafter defined), in connection with activities engaged in by its own personnel and invited guests. In order to qualify as a "Co-Owner's Everyday Event," the Event:

- (a) must involve the use of the Ballpark Property in connection with activities engaged in by a party's own personnel and invited guests, as distinguished from uses by or at the behest of other Persons;
- (b) must involve either no Incremental Ballpark Revenues, or negligible Incremental Ballpark Revenues (such as commissions on payments for catering services);
- (c) must involve either (i) no Incremental Ballpark Expenses at all, or (ii) Incremental Ballpark Expenses for which the party engaging in such Event accepts sole responsibility; and

(d) must not interfere with the conduct of any other Event.

6.7.2 Co-Owner's Everyday Events will be scheduled by the Padres as manager of the master calendar.

6.8 Small Event Scheduling.

6.8.1 The term "Small Events" shall mean those 70/30 Events (subject to the Allocation by Formula set forth in Section 6.10 below), such as receptions and meetings, which (i) require use and occupancy of only a small portion of the Ballpark Property and (ii) are subject to regular user charges established by the Padres at rates reasonably calculated to be sufficient at least to cover costs, modified from time to time by the Padres in light of experience and market conditions.

6.8.2 The parties shall seek to book Small Events at the Ballpark Property, and the Padres as managers of the master calendar shall schedule such Events, but no advance notice to the City of Small Events shall be required.

6.8.3 City requests for the scheduling of Small Events shall be made in writing to the Padres. The Padres shall have the right to direct that such Small Events be treated, instead, as Significant Events for purposes of this Agreement. This right is the Padres' protection against the risks associated with the Padres' bearing of Net Incremental Losses from Small Events alone, in light of the Padres' agreement that the City is to bear no Net Incremental Losses whatsoever from Small Events. If the Padres wish to exercise the right to direct that a Small Event be treated, instead, as a

Significant Event for purposes of this Agreement, the Padres shall do so by giving written notice to the City within ten (10) Business Days after the Padres' receipt of the City's scheduling request regarding such Small Event.

6.9 Significant Event Scheduling.

6.9.1 The term "Significant Events" shall mean those 70/30 Events (subject to the Allocation by Formula set forth in Section 6.10 below) which (i) are not Small Events and (ii) are not within the exceptions set forth in paragraph 6.9.2 below.

6.9.2 The following Events are excluded from the term "Significant Events":

- (a) Major League Baseball Games (for which the benefits and burdens of all Incremental Ballpark Revenues and Incremental Ballpark Expenses, if any, shall be the Padres' alone);
- (b) Other Padres-Sponsored Baseball Events (for which the benefits and burdens of all Incremental Ballpark Revenues and Incremental Ballpark Expenses shall be the Padres' alone);
- (c) The Co-Owner's Everyday Events (for which the benefits and burdens of all Incremental Ballpark Revenues and Incremental Ballpark Expenses shall be the Padres' alone if they are the user or occupant for such Event, or the City's alone if it is the user or occupant for such Event);

(d) Opt-Out Events described in paragraph 6.9.6 below (for which the benefits and burdens of all Incremental Ballpark Revenues and Incremental Ballpark Expenses shall be the City's alone if the Padres opt out, or the Padres' alone if the City opts out).

6.9.3 At any time throughout the Term, the City may propose in writing to the Padres as managers of the master calendar that Significant Events be scheduled at the Ballpark Property. At any time throughout the Term, the Padres may propose in writing to the City that Significant Events be scheduled at the Ballpark Property.

6.9.4 The parties shall meet regularly throughout the Term, with such frequency as they may mutually and reasonably agree, to discuss the anticipated mechanics and consequences, including without limitation (i) the master calendar and all pending proposals for the scheduling of Significant Events at the Ballpark Property, (ii) whether novelties shall be sold at such Significant Events and to cooperate in designating locations for novelty vendors, and (iii) the advertising opportunities presented by such Significant Events, if any, and cooperation in obtaining title sponsors and temporary advertising for such Significant Events, provided that such title sponsorship or temporary advertising does not conflict with exclusive advertising arrangements entered into by the Padres for the Ballpark Property.

6.9.5 At each such meeting or in advance thereof, the Padres shall provide to the City a written good-faith estimate of the Incremental Ballpark Expenses which the Padres anticipate may be incurred for each proposed Significant Event; provided, however, that the Padres shall be allowed at least ten (10) Business Days after its receipt or delivery of each written proposal for a Significant Event in which to prepare an estimate for such Significant Event. In addition, at each such meeting or in advance thereof, each party shall provide to the other a written good-faith estimate of the Incremental Ballpark Revenues which such party anticipates may be realized as a result of every Significant Event proposed by such party; provided, however, that each party shall be allowed at least ten (10) Business Days after its receipt or delivery of each written proposal for a Significant Event in which to prepare an estimate for its proposed Significant Events. The foregoing estimates shall not limit in any way the right of either party to receive its share of actual Incremental Ballpark Revenues, or the responsibility of either party for its share of actual Incremental Ballpark Expenses, as set forth in Section 6.11 below.

6.9.6 Based upon the written good-faith estimates of Incremental Ballpark Revenues and Incremental Ballpark Expenses referred to in paragraph 6.9.5, upon any other factor which a party may wish to consider (including its own judgment as to the experience, reputation or financial capability of any proposed user of the Ballpark Property), and in its sole

and absolute discretion, each party may “opt out” from participating in the Significant Event and the resulting Incremental Ballpark Revenues and Incremental Ballpark Expenses related to such Significant Event (through the mechanism of the Allocation by Formula as set forth in Section 6.10 below), by giving written notice to the other party specifying the particular Significant Event (an “Opt-Out Event”) which the notifying party wants to remove from the Allocation by Formula, within ten (10) Business Days after the notifying party’s receipt or delivery of the written estimates for such Significant Event referred to in paragraph 6.9.5 above.

6.9.7 If both parties give timely written notice of their decision to “opt out” from participating in the Incremental Ballpark Revenues and Incremental Ballpark Expenses related to such Significant Event, the Significant Event shall not be scheduled.

6.10 Allocation by Formula.

6.10.1 For purposes of the Allocation by Formula under this Agreement, the use of the Ballpark Property shall be divided into two distinct time periods: (a) the “City Split Season” (from the day after the end of the Major League Baseball Season of each calendar year to February 28 or 29 of the following year), and (b) the “Padres Split Season” (from March 1 of each calendar year through the end of the Major League Baseball Season of that calendar year).

6.10.2 For each City Split Season during the Term:

- (a) the "Net Incremental Revenue" (where Incremental Ballpark Revenues exceed Incremental Ballpark Expenses) from Significant Events for that entire Season shall be allocated seventy percent (70%) to the City, and thirty percent (30%) to the Padres;
- (b) the "Net Incremental Loss" (where Incremental Ballpark Revenues are less than Incremental Ballpark Expenses) from Significant Events for that entire Season shall be allocated seventy percent (70%) to the City, and thirty percent (30%) to the Padres;
- (c) the Net Incremental Revenue from Small Events for that entire Season shall be allocated seventy percent (70%) to the City, and thirty percent (30%) to the Padres; and
- (d) the Net Incremental Loss from Small Events for that entire Season shall be allocated one hundred percent (100%) to the Padres, and the City shall bear no portion thereof.

6.10.3 For each Padres Split Season during the Term:

- (a) the Net Incremental Revenue from Significant Events for that entire Season shall be allocated thirty percent (30%) to the City, and seventy percent (70%) to the Padres;
- (b) the Net Incremental Loss from Significant Events for that entire Season shall be allocated thirty percent (30%) to the City, and seventy percent (70%) to the Padres;

- (c) the Net Incremental Revenue from Small Events for that entire Season shall be allocated thirty percent (30%) to the City, and seventy percent (70%) to the Padres; and
- (d) the Net Incremental Loss from Small Events for that entire Season shall be allocated one hundred percent (100%) to the Padres, and the City shall bear no portion thereof.

6.11 Accounting and Payments for Events.

6.11.1 For each Significant Event, (i) within ten (10) Business Days after the conclusion of the Event, the Padres shall calculate the Net Incremental Revenue or Net Incremental Loss for such Event and shall report to the City the results of such calculation, and (ii) within twenty (20) Business Days after the conclusion of the Event, the Padres shall pay to the City the amount of the City's allocated share of any such Net Incremental Revenue, or the City shall pay to the Padres the City's allocated share of any such Net Incremental Loss, as the case may be (subject to adjustment at the end of each Split Season pursuant to Section 6.13 below).

6.11.2 For Small Events, (i) within ten (10) Business Days after the end of each month during the Term, the Padres shall calculate the Net Incremental Revenue or Net Incremental Loss for the aggregate of all Small Events held during the preceding month (even though the City is to bear no share of Net Incremental Losses from Small Events) and shall report to the City the results of such calculation, and (ii) within twenty (20) Business Days

after the end of such month, the Padres shall pay to the City the amount of the City's allocated share of any such Net Incremental Revenue, or shall bear alone the Net Incremental Losses from Small Events (subject to adjustment at the end of each Split Season pursuant to Section 6.13 below).

6.11.3 For each Co-Owner's Everyday Event, Incremental Ballpark Expenses, if any, shall be billed to the party responsible for hosting such Co-Owner's Everyday Event on a current basis, and shall be paid by the City or the Padres, as the case may be, within twenty (20) Business Days after such party's receipt of the billing.

6.12 Padres Assistance and Event Accounting and Payments with City Events. The Padres will provide reasonable and good faith assistance to the City in its conduct of City Events. Such assistance shall include the following activities:

6.12.1 In such ways as the City may reasonably request from time to time, the Padres shall cooperate with programs adopted by the City to maximize its net revenues from City Events; provided, however, that such programs shall not obligate the Padres to incur any additional unreimbursed costs or expenses, in excess of those which the Padres are obligated to incur as manager of the Ballpark Property pursuant to this Agreement.

6.12.2 The Padres shall use commercially reasonable efforts to sell admission tickets to the Private Suites and Premium Seats for all City Events, and shall comply with all reasonable directions from the City with respect

thereto; provided, however, that such reasonable directions shall not obligate the Padres to incur any additional unreimbursed costs or expenses, in excess of those which the Padres are obligated to incur as manager of the Ballpark Property pursuant to this Agreement.

6.12.3 The Incremental Ballpark Revenues referred to in this Article 6 include, but are not limited to:

- (a) all Admission Ticket Proceeds from Events; plus
- (b) all concession commissions payable in connection with Events (except concession commissions payable from the sale of Padres-related merchandise at Events, including City Events, which concession commissions shall be retained by the Padres); and
- (c) all Net Parking Revenues generated through use of the Public Parking Facilities for such Events.

6.12.4 The Incremental Ballpark Expenses referred to in this Article 6 include:

- (a) all Incremental Ballpark Expenses that are known, and a good faith estimate of those Incremental Ballpark Expenses that are unknown, for such Events.

6.12.5 The reports to be made by the Padres to the City under this Article 6

- (i) shall be in the form of a written statement setting forth in reasonable detail the calculation of the following amounts (as appropriate to the nature of the proceeds, commissions or payments being made), together with a certificate of the Chief Financial Officer or more senior executive

of the Padres certifying that the information contained in such written statement is true and accurate, and (ii) to the extent applicable to the report in question, shall include the following information, unless otherwise agreed by the parties:

- (a) all Admission Ticket Proceeds from such Event;
- (b) all concession commissions payable in connection with such Event;
- (c) all concession commissions payable from the sale of Padres-related merchandise at such Event;
- (d) all parking revenues generated through use of the Public Parking Facilities for such Event;
- (e) any other Incremental Ballpark Revenues not specifically listed above;
- (f) all fees, operating expenses and other costs paid by the Padres to the parking operators under all applicable parking operator agreements and attributable to the parking revenues generated from such Event;
- (g) all Incremental Ballpark Expenses incurred for such Event; and
- (h) any and all other financial information requested by the City to the extent reasonably necessary or appropriate in order for the City to monitor and maintain the tax-exempt status of the Bonds, including a cumulative total of revenues and expenses necessary for the City

to account for revenues and expenses to maintain tax-exempt status of the Bonds.

6.13 Reconciliation. Upon either party's reasonable determination that any report or other information submitted by the Padres to the City described in this Article 6 requires any reconciliation (based upon final figures that become available at the end of a Split Season or other accounting period or for any other reason), or that any updating or correction is required to any such report or other information (for any reason), such party may submit a revised statement to, or request a revised statement from, the other party. In addition, all reports and other information submitted by the Padres to the City described in this Article 6 shall be subject to the City's audit rights as set forth in Section 28.5.

ARTICLE 7

MANAGEMENT, MAINTENANCE, REPAIRS AND IMPROVEMENTS

7.1 Ballpark Management.

7.1.1 Subject to the provisions of this Agreement, the Padres shall be responsible for all Ballpark Management (including performing those Ballpark Management obligations set forth in this Article 7) unless such responsibility is terminated by the City pursuant to paragraph 7.1.6.

7.1.2 If, during the Term, the City determines that the Padres have, on two (2) occasions within any calendar year, failed to timely perform the Padres' Ballpark Management obligations set forth in Sections 7.3 through 7.13,

7.15 through 7.16, 8.1, and 8.4 through 8.9 (the “Material Ballpark Management Obligations”) in material respects, the City shall deliver written notice to the Padres specifying the two (2) material defaults which the City believes have occurred in the Padres’ performance of Material Ballpark Management Obligations. Unless contesting such notice is expressly waived in writing by the Padres, the City’s determination shall be contested via the arbitration process described in Section 28.1 below.

7.1.3 The Padres shall have the right to cure the two (2) alleged defaults in such a notice from the City, as follows:

- (a) The Padres shall have the right to cure such alleged defaults in such a notice from the City at any time within thirty (30) calendar days after the Padres’ receipt of such notice (subject to extension for Force Majeure);
- (b) Provided, however, with respect to any default that cannot reasonably be cured within thirty (30) days, the Padres shall have one hundred eighty (180) calendar days after the Padres’ receipt of the City’s notice (subject to extension for Force Majeure) in which to effectuate the cure so long as the Padres commence such cure within thirty (30) days (subject to extension for Force Majeure) and diligently and continuously proceed in a reasonable manner to complete the same thereafter in order to effectuate such cure within such time period (subject to extension for Force Majeure); and

(c) Provided, further, that if a reasonably prudent manager of the Ballpark Property, acting in a commercially reasonable manner, could not reasonably cure the defaults within one hundred eighty (180) calendar days after the Padres' receipt of the City's notice (subject to extension for Force Majeure), then the Padres shall have such additional time as would reasonably be necessary for a reasonably prudent manager of the Ballpark to effectuate the cure, so long as the Padres commence such cure within thirty (30) days (subject to extension for Force Majeure) and diligently and continuously proceed in a reasonable manner to complete the same thereafter as soon as reasonably possible.

7.1.4 If the Padres cure the two (2) alleged defaults as aforesaid, the City cannot terminate the Padres' Ballpark Management responsibilities based upon them. If the defaults are material, however, the date on which they were committed remains relevant, because the City may include one or both of them in any future written notice to the Padres specifying two (2) material defaults which the City believes have occurred in the Padres' performance of Material Ballpark Management Obligations within any calendar year.

7.1.5 At any time after the City's delivery to the Padres of a notice specifying a material default to the Padres, either the City or the Padres may submit the matters stated in such notice to the binding arbitration process described in Section 28.1 below. The issues to be determined in such proceeding shall

be (i) whether the Padres have failed to timely perform the Padres' Material Ballpark Management Obligations on the two (2) occasions within any calendar year alleged in the City's notice, and (ii) if so, whether the Padres either have cured such defaults, or have commenced to cure such default and since then have diligently and continuously proceeded in a reasonable manner to complete the same, within the time and in the manner allowed by paragraph 7.1.3 above.

7.1.6 If the final decision rendered in the proceeding determines (i) that the Padres did fail to timely perform the Padres' Material Ballpark Management Obligations on the two (2) occasions within any calendar year as alleged in the City's notice, and (ii) that the Padres failed to cure such default, or to commence to cure such default and then diligently and continuously proceed in a reasonable manner to complete the same, within the time and in the manner allowed by paragraph 7.1.3 above, then and only then, the City shall have the right (exercisable by delivering written notice to the Padres) to terminate the Ballpark Management responsibilities of the Padres under this Agreement and in place of the Padres to retain a nationally recognized management company to manage the Ballpark Property. If the final decision rendered in the proceeding fails to make any of the foregoing determinations, then the City shall have no right to terminate the Ballpark Management responsibilities of the Padres under this Agreement; provided, however, that the arbiter's

determination on the issue described in clause (i) of paragraph 7.1.5 above shall not affect the City's other rights or remedies under this Agreement.

In the event of any termination of the Padres' Ballpark Management Responsibilities in accordance with this paragraph 7.1.6, the City shall cause the replacement manager to provide to the Padres, as a continuing owner of a portion of the Ballpark Property with obligations hereunder to contribute to the costs of maintaining and operating the same, the following rights: (i) rights of inspection equivalent to those rights granted to the City as a non-manager owner under Section 7.20, (ii) rights to information equivalent to those rights granted to the City as a non-manager owner under Section 28.5, (iii) rights to entry equivalent to those rights granted to the City as a non-manager owner under Article 21, and (iv) rights to effect emergency repairs equivalent to those rights granted to the City as a non-manager owner under paragraph 7.9.2.

7.1.7 If the date upon which any termination of the Padres Ballpark Management responsibilities under paragraph 7.1.6 would be effective falls within any Major League Baseball Season during the Term, the effective date of such termination shall be the date of the Team's final home game of such Major League Baseball Season. Any such termination of Ballpark Management responsibilities shall have no effect upon the Padres' tenancy, Rent and other rights and obligations hereunder, including the Padres' obligations, which shall remain in full force and

effect throughout the Term, to pay their share of the costs of Maintenance, Repairs, Joint Ballpark Ownership Expenses, Capital Expenditures and Improvements to the Ballpark Property as and to the extent provided in this Agreement, including as a Joint Ballpark Ownership Expense the City's costs to hire and maintain a substitute manager.

7.2 Ballpark Management Contracts.

- 7.2.1 The Padres may engage other Persons to provide Ballpark Management services in accordance with the terms and conditions of this Agreement. Subject to the terms hereof (including Sections 15.2 and 16.1), the Padres may, at the Padres' option, establish or contract with a separate management company which is an Affiliate of the Padres, for the purpose of providing Ballpark Management services in accordance with the terms and conditions of this Agreement; provided, however, that the terms of any contract with such an Affiliate, taken as a whole, shall be no less favorable than could reasonably be obtained on an arms' length basis from an independent management company not an Affiliate of the Padres.
- 7.2.2 To ensure that a contract with an Affiliate of the Padres is "no less favorable" than could reasonably be obtained on an arms' length basis from an independent management company, upon written request by the City, the Padres shall obtain for the City, from a nationally recognized facility operator, a letter setting forth its conclusion to that effect. Any costs reasonably incurred for such a letter shall be a Joint Ballpark

Ownership Expense. If the City prefers a letter or report from a nationally recognized firm of certified public accountants, rather than a letter from a nationally recognized facility operator, the City may require the Padres to obtain it from a nationally recognized firm of certified public accountants mutually and reasonably approved by the parties. In that event, both the City and the Padres shall be bound by the conclusion reached in the letter or report, and any costs incurred for such letter or report shall be borne (i) solely by the City, if the conclusion reached is that the contract, taken as a whole, is "no less favorable" than could reasonably be obtained on an arms' length basis from an independent management company not an Affiliate of the Padres, or (ii) solely by the Padres, if the conclusion reached is that the contract, taken as a whole, is "less favorable" than could reasonably be obtained on an arms' length basis from an independent management company not an Affiliate of the Padres.

7.2.3 Any rights fees paid by third-party contractors for the acquisition of rights to provide Ballpark Management services shall be retained by the Padres.

7.3 Playing Field Maintenance and Repair. On a year-round basis, the Padres shall be responsible for performing and completing all day-to-day landscaping and Maintenance of the Playing Field and the other portions of the Ballpark Property and obtaining all supplies in connection with such day-to-day landscaping and Maintenance, including:
(a) all necessary preparation and conditioning of the Playing Field before and during all Events, and (b) all landscaping and Maintenance (including sodding and seeding) as may

be required in the Padres' reasonable judgment after all Events in order to restore the Playing Field to Major League Baseball condition appropriate for a First-Class Facility. The costs and expenses incurred for such year-round Maintenance shall constitute Joint Ballpark Ownership Expenses. Apart from routine Maintenance, if any damage is done to the Playing Field in the course of an Event, the costs and expenses incurred for the Repair of such damage shall constitute Incremental Ballpark Expenses.

7.4 Cleaning and Trash Removal. The Padres shall provide ongoing sweeping and trash removal services, and shall provide Maintenance (including cleaning) of the Ballpark Property after all Events, and at all other times, as necessary, during the Term, so as to Maintain the Ballpark Property in a safe and First-Class manner.

7.5 Utilities. The Padres shall be responsible for contracting with utility companies to provide all utilities to be consumed or used in or on the Ballpark Property or in connection therewith (including without limitation, gas, steam, electricity, water, sewer, telephone, cable and trash collection) during the Term. Any rights fees or other revenue which may be generated by arrangements for the provision of such utilities, if any, shall be retained by the Padres. The parties shall endeavor to avoid waste in the use of such utilities, in the interest of conserving resources. If there is any interruption in utility services affecting the Ballpark Property not caused by the City or its employees, agents or representatives, the City shall not be responsible for such interruption, but shall endeavor to actively assist the Padres in arranging, with the appropriate providers of such utilities, for the prompt and complete restoration of such service. The Padres shall

provide, Maintain, Repair and regularly test the emergency electrical back-up systems for the Ballpark Property.

7.6 Game and Event Operations. On the dates of all Events that are open to the public and that use the Playing Field or seating areas within the Ballpark Property, beginning with the time of day by which an admission ticket to such Events is required in order for the public to enter any portion of the Ballpark Property:

7.6.1 Except for matters for which the City is responsible under paragraph 7.6.2 below, the Padres shall be responsible for: (a) providing and supervising all personnel within the Ballpark Structure, including ushers; (b) providing crowd control and management within the Ballpark Property; (c) providing and supervising first-aid personnel to operate the first-aid facilities of the Ballpark Property; (d) providing emergency medical assistance during such Events and cooperating with the City in respect thereof; and (e) providing all other services and materials necessary to fulfill the Padres' obligations under this Agreement.

7.6.2 The City shall be responsible for all usual and customary City operations in connection with all Events, including traffic and public safety personnel outside the Ballpark Structure in accordance with current practice at Qualcomm Stadium as of the Effective Date.

7.7 Security.

7.7.1 The Padres shall provide such security guards and night watchmen as may reasonably be necessary in order to effectively provide twenty-four (24)

hour per day, year-round, protection and security of the Ballpark Property and individuals on the Ballpark Property.

7.7.2 In connection with all Events, the City shall be responsible for the usual and customary City operations and personnel referred in paragraph 7.6.2. The City's traffic and public safety personnel shall not be stationed for work at Events within the Ballpark Structure, except in response to particular concerns about public safety as determined by the Chief of Police.

7.7.3 If either the City or the Padres requires more than "usual and customary" City operations or personnel in connection with any Event, and intends to have the Padres bear the cost or expense of such additional operations or personnel, the rates to be charged by the City for such operations or services shall be reasonably agreed to by the parties on a case-by-case basis.

7.7.4 It is the intent of the parties that normal police services provided with respect to the Outfield Park (e.g., when the Outfield Park is open to the public other than in connection with an Event) shall not be charged to the Padres or considered an Incremental Ballpark Expense.

7.8 Capital Expenditure Budget.

7.8.1 The parties intend that, upon completion of construction of the Ballpark Property pursuant to the Design-Build Agreement, the Ballpark Property shall serve as a complete, functioning facility, and that subsequent

Improvements thereto be made only pursuant to an Approved Capital Expenditure Budget mutually approved by the parties, except in response to emergencies as set forth in Section 7.9 below.

7.8.2 The Padres shall present a proposed Capital Expenditure Budget to the City on or before March 1 of each year during the Term, to allow the City to include it in the City's annual budget approval process for the following City's fiscal year. The Padres thereafter may present amendments to any previously Approved Capital Expenditure Budget to the City at any other time during the Term as well. Regarding the Improvements identified in a proposed Capital Expenditure Budget:

- (a) Any such Improvements, whether involving a Material Contract or not, and whether interior or exterior, structural or non-structural, which would adversely change the essential aesthetic nature of the Ballpark Property or have a material adverse effect on the structure or systems of the Ballpark Property or change the essential nature of Ballpark Property and the purpose for which it was intended to be used, shall be permitted only with the prior written approval of the City.
- (b) Any such Improvements involving a Material Contract, including any change order that, standing on its own, would constitute a Material Contract, shall be permitted only with the prior written approval of the City (provided that such prior written approval

shall not be required for any Improvement funded by an advance made by the City Manager pursuant to paragraph 7.8.4 of this Agreement).

- (c) Any such Improvements not involving any Material Contract and for which the costs are fully covered either by the Capital Expenditure Reserve Fund or by the Padres alone, shall appear in a proposed Capital Expenditure Budget, but shall be deemed approved by the City, unless such Improvements would adversely change the essential aesthetic nature of the Ballpark Property or have a material adverse effect on the structure or systems of the Ballpark Property or change the essential nature of Ballpark Property and the purpose for which it was intended to be used.

7.8.3 The Padres' proposed Capital Expenditure Budgets shall include:

- (a) a description of the Improvements requiring the proposed Capital Expenditure;
- (b) an estimate of the costs thereof; and
- (c) a proposed schedule for the construction or installation of such Improvements.

7.8.4 Within thirty (30) days after the City's receipt of a proposed Capital Expenditure Budget from the Padres, the City shall respond to the Padres, in writing, with its conditional approval or disapproval of the proposal (except as to matters deemed approved). Other than for matters deemed

approved pursuant to this Agreement, any such approval shall be conditioned upon approval by the City Council in its budget approval process. If the City disapproves, its response shall be accompanied by a statement of reasons for such disapproval. The City may condition its approval of any proposed Capital Expenditure Budget upon such additional matters as the City may deem necessary or appropriate, in its sole but good faith discretion, including, if applicable, (i) special forms of insurance appropriate to the construction, (ii) special approval rights for the City over particular contracts, (iii) special approval rights for the City over the engagement of key architectural, construction, design personnel and other Consultants for the Improvements, (iv) bonds or other credit assurances, (v) requirements for City review and approval of plans, specifications and permits, (vi) provisions protecting the City against obligations to remit payments or to bear liabilities not otherwise covered by this Agreement, and (v) such other matters as may be related to the proposed activity of construction or installation of the Improvements. Upon approval of a Capital Expenditure Budget, the City Manager, or his designee, at the City Manager's discretion, from time to time may advance amounts not to exceed the amount then existing in the Capital Expenditure Reserve Fund, which the Padres may expend on any item in the Approved Capital Expenditure Budget in that City's fiscal year, without any requirement that the Padres obtain any further approvals from the City.

The Padres shall, within ten (10) Business Days after the close of the City's fiscal year, submit to the City all documentation supporting the expenditures made from such advances.

7.8.5 Any proposed Capital Expenditure Budget requiring City approval may be approved or disapproved by the City in its sole and absolute discretion, with two exceptions, as to which the City agrees that its approval shall not be unreasonably withheld or delayed:

- (a) In response to emergencies, addressed in Section 7.9 below; or
- (b) For Improvements necessary in order to maintain the then-existing components of the Ballpark Property as a First-Class Facility.

7.8.6 After the completion of any work on Improvements involving a Material Contract, the Padres shall promptly provide to the City a copy of any "as-built" plans and specifications, or updates to previously provided plans and specifications, which have been provided by architectural, construction, design personnel or other Consultants to the Padres.

7.8.7 A proposed Capital Expenditure Budget which has received the requisite City approval or deemed approval pursuant to this Section 7.8 will be referred to in this Agreement as an "Approved Capital Expenditure Budget." For example, a proposed Capital Expenditure Budget which is deemed approved, because it consists entirely of Improvements not involving any Material Contract and meeting the other requirements of

paragraph 7.8.2(c) above, shall thereby be deemed an Approved Capital Expenditure Budget.

7.8.8 A Capital Expenditure shall be considered an "Approved Capital Expenditure" if it:

- (a) is authorized to be made in an Approved Capital Expenditure Budget; or
- (b) does not involve any Material Contract and meets the other requirements of paragraph 7.8.2(c) above; or
- (c) is made in response to emergencies, addressed in Section 7.9 below;

provided, however, that no Capital Expenditure shall qualify as an Approved Capital Expenditure, whether involving a Material Contract or not, and whether interior or exterior, structural or non-structural, to any area of the Ballpark Property, if such Capital Expenditure adversely changes the essential aesthetic nature of the Ballpark Property or has a material adverse effect on the structure or systems of the Ballpark Property or change the essential nature of Ballpark Property and the purpose for which it was intended to be used, without prior written approval by the City.

7.9 Emergency Maintenance, Repairs and Improvements.

7.9.1 The Padres shall provide for all necessary emergency Maintenance, Repairs and Improvements which directly affect the public's safe access to

or use of the Ballpark Property, including those that may involve Material Contracts.

7.9.2 In the event of an emergency requiring either Maintenance and Repair or an Improvement requiring a Capital Expenditure not identified in the applicable Approved Capital Expenditure Budget, the Padres shall promptly notify the City after the discovery of the emergency or need for such Maintenance, Repair or Improvement. If the Padres fail to timely effect the emergency Maintenance, Repair or Improvement, then the City shall promptly notify the Padres in writing of such failure, and the City may (in addition to any other rights which it may exercise hereunder), at its election, make the emergency Maintenance, Repair or Improvement at commercially-reasonable rates and advance the costs for doing so. The City shall thereupon promptly notify the Padres, in writing, of the nature of the work performed by the City (or its agents or Consultants) and the cost and expense incurred by the City in performing such work. The Padres shall promptly reimburse the City for the Padres' share of the cost and expense incurred by the City in making the emergency Maintenance, Repair or Improvement. In the case of emergency Maintenance or Repair, the City's cost and expense shall be considered a Joint Ballpark Ownership Expense, and the share to be reimbursed by the Padres shall be based upon the provisions of this Agreement defining the Padres' obligation for Joint Ballpark Ownership Expenses. In the case of an

emergency Improvement requiring a Capital Expenditure not identified in the applicable Approved Capital Expenditure Budget, the City's cost and expense shall be considered a Capital Expenditure, to be reimbursed first from the Capital Expenditure Reserve Fund, and only thereafter by the Padres.

7.10 Notice to City of Material Defects, Damage or Destruction. The Padres shall notify the City, by written notice, preceded by oral notice if written notice alone is not practicable, of material defects in, damage to or destruction of any part of the Ballpark Property, or material dangers or hazards on the Ballpark Property, promptly after the discovery of such conditions by the Padres.

7.11 Obligations Regarding Damaged Property.

7.11.1 If any component of the Ballpark Property becomes Damaged Property due to the gross negligence or willful misconduct of the Padres or the Padres' partners, officers, employees, agents or contractors, then:

- (i) notwithstanding Section 7.9, the Padres shall promptly repair, restore or replace such Damaged Property at the Padres' sole cost and expense and the Padres shall be entitled to reimbursement for such costs and expenses from the proceeds of applicable insurance described in Article 17; and
- (ii) notwithstanding Article 8, such costs and expenses shall not be deemed Joint Ballpark Ownership Expenses.

7.11.2 If any component of the Ballpark Property becomes Damaged Property due to the gross negligence or willful misconduct of the City or the City's

officers, employees, agents or contractors, then: (i) the City shall promptly repair, restore or replace such Damaged Property at the City's sole cost and expense and the City shall be entitled to reimbursement for such costs and expenses from the proceeds of applicable insurance described in Article 17; and (ii) notwithstanding Article 8, such costs and expenses shall not be deemed Joint Ballpark Ownership Expenses.

7.12 Ownership of Improvements. Each Improvement made to the Ballpark Property, whether by the Padres pursuant to an Approved Capital Improvement Budget, or in response to an emergency pursuant to Section 7.9, or by the City in response to an emergency pursuant to Section 7.9, shall become part of the Ballpark Property and shall be owned as follows:

7.12.1 The Improvement shall become part of the City Property, and title thereto shall be held by the City, to the extent that the costs therefor were borne by the City; and

7.12.2 The Improvement shall become part of the Padres Property, and title thereto shall be held by the Padres (subject to Article 3 above), to the extent that the costs therefor were borne by the Padres.

7.13 Improvements to Offices.

7.13.1 The Padres may make any interior Improvements to the Padres Offices (which costs and expenses shall be deemed a Joint Ballpark Ownership Expense or a Capital Expenditure for which reimbursement may be sought or advanced from the Capital Expenditure Reserve Fund), on the condition

that such Improvements do not adversely change the essential aesthetic nature of the Ballpark Property or have a material adverse effect on the structure or systems of the Ballpark Property or change the essential nature of Ballpark Property and the purpose for which it was intended to be used.

7.13.2 The City may make any interior Improvements to the City Offices (which costs and expenses shall be deemed a Joint Ballpark Ownership Expense or a Capital Expenditure for which reimbursement may be sought or advanced from the Capital Expenditure Reserve Fund), provided that such improvements have been included within an Approved Capital Expenditure Budget. The City shall have the right from time to time to propose such Improvements for inclusion in an Approved Capital Expenditure Budget, and the Padres shall consider such requests in good faith, it being understood that the Padres may not decline to include such Improvements in an Approved Capital Expenditure Budget if such Improvements (a) do not adversely change the essential aesthetic nature of the Ballpark Property or have a material adverse effect on the structure or systems of the Ballpark Property or change the essential nature of Ballpark Property and the purpose for which it was intended to be used and (b) do not mandate a finish standard that is greater than the finish standard for interior Improvements within the Padres Offices.

7.14 No Material Adverse Effect from Improvements. If the City reasonably believes that the Padres' making of any of the Improvements described in Section 7.12 would have a Material Adverse Effect on the City, the parties shall meet, confer and reasonably restructure the transaction in such a manner that (i) the Improvements may be made without such a Material Adverse Effect on the City, and (ii) the restructuring does not result in the imposition of additional costs on either party.

7.15 Unapproved Improvements.

7.15.1 If the Padres make an Improvement to any part of the Ballpark Property which requires approval under this Agreement, without obtaining all such required approvals from the City, the City shall have the right to determine whether such Improvements shall remain part of the Ballpark Property or be removed, and to notify the Padres in writing of such determination, within sixty (60) days after the date on which the City acquires actual knowledge of the construction or installation of the unauthorized Improvement. If the City fails to deliver any written notice of its determination to the Padres within the said sixty (60) day period, the City shall be deemed to have determined that such Improvements shall remain part of the Ballpark Property. If the City gives timely written notice to the Padres that the unauthorized Improvements shall be removed, the Padres, at their sole cost and expense, shall promptly cause such removal, and shall restore the Ballpark Property to its condition prior to any such Improvements.

7.15.2 If the Padres make an Improvement to any part of the Ballpark Property which did not require approval under this Agreement or could be made with deemed approval under this Agreement, and the result of such Improvement is that above-standard Maintenance or Repair costs are incurred, the Padres alone shall bear such above-standard Maintenance or Repair costs.

7.15.3 The Padres agree that they will not unreasonably separate contracts for Improvements so as to make them less-than-Material Contracts, thereby avoiding the approval requirements in this Agreement.

7.15.4 The City agrees that it will not unreasonably assert that an Improvement requires approval under this Agreement, by unreasonably aggregating contracts together, which the Padres in good faith believed to be less-than-Material Contracts.

7.16 Condition of Improvements at End of Term

7.16.1 In consideration for the Padres' use and occupancy of the Ballpark Property, the Padres covenant that at the conclusion of the Term, the Padres shall ensure through an independent qualified third party maintenance and construction engineer reasonably approved by the City that all obligations regarding Maintenance, Repair and Improvements required to be performed by the Padres under this Agreement have been completed, that there are no deferred Maintenance items and that the Ballpark Property is fully functional for its intended use. If all such

obligations have not been completed at the conclusion of the Term, the City shall have the right to require the Padres to promptly complete such obligations, in addition to all other remedies and rights the City may have. If all such obligations have not been completed within three (3) months after the expiration of the Term, the City shall have the right to complete such obligations and charge the Padres for the cost thereof.

7.17 Performance of Maintenance, Repairs and Improvements.

- 7.17.1 The Padres shall use reasonable efforts to cause all Maintenance, Repairs and Improvements, including those done in emergencies under Section 7.9, to be performed promptly (and, if set forth in an Approved Capital Expenditure Budget, within the schedule for completion thereof as set forth in such Approved Capital Expenditure Budget), diligently, and in a good and workmanlike manner, in such a manner as to not cause damage to any part of the Ballpark Property, and in accordance with all applicable Laws (including the procurement of any required governmental permits). The Padres shall be responsible for timely completion of: (i) the development of all plans, designs, schemes, drawings and programs for all Improvements, including those done in emergencies under Section 7.9, and (ii) the selection of required Consultants for all Improvements, including those done in emergencies under Section 7.9.
- 7.17.2 The Padres shall use reasonable efforts to plan, schedule and conduct all Maintenance, Repairs and Improvements so as to prevent or at least

minimize (i) inconvenience to any patrons, (ii) any reduction in seating capacity at the Ballpark Property, and (iii) interference with the City's or Padres' use and enjoyment of the Ballpark Property.

7.17.3 For any Improvement to be constructed or installed at the Ballpark Property under a Material Contract, the Padres shall provide written notice to the City at least ten (10) Business Days prior to commencing such construction or installation, or delivery of any construction materials for such Improvement to the Ballpark Property.

7.17.4 The Padres shall have the right to approve, and to execute in its name, all contracts that may be required in connection with any Maintenance, Repairs and Improvements; provided, however, that all Material Contracts for Maintenance, Repair or Improvement (including any change order that, on its own, would qualify as a Material Contract) shall require the prior written approval of the City which approval (a) shall not be unreasonably withheld or delayed and (b) shall be deemed to have been given by the City for a Material Contract for an Improvement (i) if Capital Expenditures with respect to the Improvement constitute Approved Capital Expenditures in accordance with paragraph 7.8.8 of this Agreement or (ii) the costs of the Improvements are to be paid from an advance made by the City Manager pursuant to Section 7.8.4. If the City has not delivered a written disapproval to the Padres with respect to a Material Contract submitted to the City for approval, within ten (10)

Business Days after receipt thereof by the City, accompanied by a statement of reasons for such disapproval, such Material Contract shall be deemed to have received the prior written approval of the City.

Notwithstanding the foregoing, this paragraph 7.17.4 shall not be deemed to require the Padres to obtain the City's written approval for bulk purchases of individual items, even if the contract for such bulk purchase is a Material Contract.

7.17.5 In connection with all Maintenance, Repairs and Improvements, the Padres shall use good-faith efforts to maximize the use of local contractors, subcontractors and workers, and shall:

- (a) not discriminate against any employee or applicant for employment on any basis prohibited by law;
- (b) provide equal opportunity in all employment practices;
- (c) comply with the provisions of the City of San Diego equal employment opportunity program set forth in the City of San Diego's Municipal Code, Chapter II, Article 2, Division 27;
- (d) submit to the City either a work force report or an equal employment opportunity plan, to the extent required by Section 22.2705 of the City of San Diego Municipal Code;
- (e) permit the City's Equal Employment Opportunity Contractor Program staff to monitor and review compliance with the equal

opportunity employment provisions provided in this paragraph 7.17.4; and

- (f) provide the City with all reports required by Law regarding compliance with this paragraph 7.17.4.

7.18 Limitation of Responsibility. Neither the making of any payment by the City under Sections 8.2 or 8.3; nor the disbursement of any payment to the Padres from the Capital Expenditure Reserve Fund, shall constitute or be interpreted as either (a) an approval or acceptance by the City of the work done through the date of such payment or disbursement, or (b) a representation or indemnity by the City to any party against any deficiency or defect in the work or against any breach of any contract. Inspections and approvals of the plans and specifications, the workmanship and materials used in any Maintenance, Repair or Improvement and the exercise of any other right of inspection, approval or inquiry granted to the City in this Agreement are acknowledged to be solely for the protection of the City's interest, and under no circumstances shall they be construed to impose any responsibility or liability of any nature whatsoever on the City to any Person. No payment by the City or disbursement from the Capital Expenditure Reserve Fund by the City shall constitute a representation by the City as to the nature of any Maintenance, Repair or Improvement, its construction or its intended use for the Padres or for any other Person, nor shall it constitute an indemnity by the City to the Padres or to any other Person against any deficiency or defect in any Maintenance, Repair or Improvement, or against any breach of contract.

7.19 Payment of Claims and Removal of Liens.

- 7.19.1 The Padres shall cause all valid claims against the Padres, the City or the Ballpark Property for labor done and material and services furnished at the request of the Padres, for or in connection with any Maintenance, Repair or Improvement affecting the Ballpark Property, to be fully paid and discharged in a timely manner, and shall take all reasonable steps necessary to promptly remove all claims of Liens against the Ballpark Property or any rights or interests appurtenant to the Ballpark Property.
- 7.19.2 The Padres shall not suffer or permit any Liens to be enforced against the Ballpark Property by reason of (i) work done by the Padres or caused to be done by the Padres in or to the Ballpark Property, and (ii) materials or services furnished for or in connection with such work at the request of the Padres.
- 7.19.3 If any mechanic's or material supplier's Lien is filed against the Ballpark Property on account of any (i) work done by the Padres or caused to be done by the Padres in or to the Ballpark Property, or (ii) materials or services furnished for or in connection with such work at the request of the Padres, then, within ten (10) days thereafter, the Padres shall immediately give the City written notice thereof and either: (A) promptly cause the same to be removed of record, or (B) post a bond in the amount of one hundred fifty percent (150%) of the amount of such Lien, in form and substance reasonably acceptable to the City, unless any foreclosure action to enforce such a Lien actually commences, in which case the Padres shall

cause such Lien to be removed of record or post such bond within five (5) Business Days after the commencement of such foreclosure action. The Padres shall indemnify and defend the City and hold it harmless from any costs, expenses or actions in connection with any such Liens. If the Padres fail to remove any Lien or pay any claim on the Ballpark Property or provide a bond or deposit as required by this Section, the City may pay such Lien or claim, or may contest the validity of the Lien or claim, and the Padres shall pay all costs and expenses of such contest, including the City's reasonable attorneys' fees, and reimburse the City for the amount of the City's payment of such Lien or claim. Expenses incurred by the Padres under this Section 7.19 shall be treated as Joint Ballpark Ownership Expenses (to the extent that the work on which the claim is based is properly characterized as Maintenance or Repair), or as Capital Expenditures (to the extent that the work on which the claim is based is properly characterized as an Improvement).

7.20 Inspection by the City.

7.20.1 To ensure that the integrity of the design of the Ballpark Property is maintained, and ensure that the Ballpark Property and all Improvements are properly Maintained and Repaired as a First-Class Facility throughout the Term, the City shall have the right, at its sole cost and expense, to inspect the Ballpark Property and all Improvements, at least quarterly, at times reasonably agreed to by the parties. If any such time cannot be

agreed to by the parties, the City shall be entitled to inspect the Ballpark Property and all Improvements upon five (5) calendar days' prior written notice delivered to the Padres, and the Padres shall cooperate with and assist the City during the course of the inspection.

7.20.2 During any inspection conducted by the City pursuant to paragraph 7.20.1, the City shall have the right to inspect the entire Ballpark Property and all Improvements, and shall comply with all security provisions regarding access to the Ballpark Property and all Improvements in conducting such inspections. The Padres shall, as part of such security provisions, provide the City access to conduct inspections, and shall cooperate fully with the City in its conducting such inspections. In the course of any such inspection, the City may hire, at its sole cost and expense, mechanical, structural or electrical engineers, or other experts to assist in making a determination that the Ballpark Property and all Improvements have been Repaired, Maintained and Improved as a First-Class Facility. If the City provides its written consent, the Padres may retain in the Padres' name any engineers or experts designated by the City to assist in the inspection, and the City shall promptly reimburse the Padres for the cost of any such engineers or experts.

7.21 Operations and Maintenance Manuals.

7.21.1 At least three (3) months prior to the Opening Date, or as soon thereafter as practicable, the Padres shall present to the City a preliminary draft of a

Ballpark Operations Guidelines and Policy Manual (the "Operations Manual"), reflecting the Padres' proposed plan for implementing the proper operation of the Ballpark Property. The Padres shall solicit and obtain comments from the City to such preliminary draft. The Padres shall complete and deliver a final Operations Manual to the City no later than the last day of the first Major League Baseball Season during the Term.

7.21.2 No later than three (3) months prior to the Opening Date, or as soon thereafter as practicable, the Padres shall present to the City a preliminary draft of a Maintenance and Procedures Manual (the "Maintenance Manual") which details proposed policies and practices the Padres intend to use to monitor and Maintain the major mechanical and electrical equipment included within the Ballpark Property. The Padres shall solicit and obtain comments from the City to such preliminary draft. Thereafter, no later than the last day of the first Major League Baseball Season during the Term, the Padres shall complete and deliver a final Maintenance Manual to the City, detailing the routine and normal monitoring and Maintenance procedures adopted by the Padres for such major mechanical and electrical equipment.

ARTICLE 8

OWNERSHIP AND OPERATING EXPENSES

8.1 Joint Ballpark Ownership Expenses. Subject to the City's obligation to pay a share of Joint Ballpark Ownership Expenses and its other obligations under this Agreement, the Padres shall be responsible for the payment of the Joint Ballpark Ownership Expenses associated with the Maintenance, Repair, operation, use and ownership of the Ballpark Property, including all fixtures, equipment and systems included therein.

8.2 City Share of Joint Ballpark Ownership Expenses.

8.2.1 On or before December 15 in the Fiscal Year preceding the Fiscal Year which, in the Padres' good-faith estimate, is expected to include the Commencement Date, and on or before December 15 in each Fiscal Year during the Term thereafter, the Padres shall deliver to the City the Padres' good-faith written estimate (each, a "Joint Expense Estimate") of: (i) the Joint Ballpark Ownership Expenses for the upcoming Fiscal Year; and (ii) the City Share of Joint Ballpark Expenses for such Fiscal Year.

8.2.2 Pursuant and subject to the terms of Section 8.3 below, for each Fiscal Year, the City shall pay to the Padres the amount (the "City Share of Joint Ballpark Expenses") equal to the lesser of:

(a) seventy percent (70%) of the Joint Ballpark Ownership Expenses for such Fiscal Year (provided, however, that if the period from the Commencement Date to the end of the Fiscal Year which includes

the Commencement Date is less than 270 calendar days, then such percentage instead shall be forty percent (40%); or

(b) the City's Joint Expense Cap for such Fiscal Year.

8.2.3 For purposes hereof, the "City Joint Expense Cap" has the following meaning:

(a) For the Fiscal Year that includes the Commencement Date, the City Joint Expense Cap shall be three million five hundred thousand dollars (\$3,500,000); and

(b) For each subsequent Fiscal Year during the Term, the City Joint Expense Cap in effect for the previous Fiscal Year shall be adjusted upward by the amount of the percentage increase, if any, in (i) the CPI for the period which includes January 1 in such Fiscal Year, over (ii) the CPI for the period which includes January 1 in the previous Fiscal Year. The City Joint Expense Cap shall not under any circumstances be adjusted downward.

8.3 Payment of City Share of Joint Ballpark Expenses.

8.3.1 For the Fiscal Year that includes the Commencement Date, based on the Padres' Joint Expense Estimate for such Fiscal Year, the City shall pay to the Padres an amount equal to the estimate of the City Share of Joint Ballpark Expenses in two (2) equal installments, on July 1 of such Fiscal Year and November 1 of such Fiscal Year.

- 8.3.2 For each subsequent Fiscal Year, based on the estimate of the City Share of Joint Ballpark Expenses set forth on the Padres' Joint Expense Estimate for each such Fiscal Year, the City shall pay to the Padres an amount equal to the estimate of the City Share of Joint Ballpark Expenses in two (2) equal installments, on February 1 of such Fiscal Year (or three (3) months after the start of the Padres' tax fiscal year) and August 1 of such Fiscal Year (or six (6) months after the first payment).
- 8.3.3 Within sixty (60) days after the end of each Fiscal Year, the Padres shall deliver to the City a final reconciliation (a "Reconciliation") of (i) all Joint Ballpark Ownership Expenses actually incurred during the preceding calendar year, and (ii) the amount of the City Share of Joint Ballpark Expenses for such calendar year, showing with reasonable specificity all computations relating thereto as may be reasonably requested by the City, together with a certificate of the Chief Financial Officer or more senior executive for the Padres certifying that the information contained in such Reconciliation is true and accurate. If, with respect to any Fiscal Year, the actual amount of the City Share of Joint Ballpark Expenses is less than the total amount of payments previously made by the City to the Padres pursuant to this Section 8.3 in respect of such Fiscal Year, then the Padres shall pay the City the amount of such difference within twenty (20) Business Days after the date on which the Padres deliver the relevant Reconciliation to the City. If, with respect to any Fiscal Year, the actual

amount of the City Share of Joint Ballpark Expenses is greater than the total amount of payments previously made by the City to the Padres pursuant to this Section 8.3 in respect of such Fiscal Year, then the City shall pay the Padres the amount of such difference within twenty (20) Business Days after receiving such Reconciliation and request for payment (provided that such payment shall not be required to the extent that it will cause the total payments made by the City to the Padres pursuant to this Section 8.3 for said Fiscal Year to exceed the City Joint Expense Cap for said Fiscal Year).

8.4 Incremental Ballpark Expenses.

8.4.1 Notwithstanding any provision in this Agreement to the contrary: (i) the City shall be responsible for all Incremental Ballpark Expenses associated with all City Events; and (ii) the Padres shall be responsible for all Incremental Ballpark Expenses associated with all Padres Games and Events.

8.4.2 The City shall be responsible for all usual and customary City operations in connection with all Events, including traffic and public safety personnel outside the Ballpark Structure in accordance with current practice at Qualcomm Stadium as of the Effective Date.

8.5 Capital Expenditures.

8.5.1 Subject to the provisions in this Article 8, Approved Capital Expenditures shall be paid for in the first instance with funds on deposit in the Capital

Expenditure Reserve Fund; provided, however, that, except during the last twelve (12) months of the Term, the parties shall not effect any proposed withdrawal of funds from the Capital Expenditure Reserve Fund to the extent that, after giving effect to the proposed withdrawal, the balance in the Capital Expenditure Reserve Fund will be less than \$250,000. The Padres shall be responsible for the timely payment of: (i) all Approved Capital Expenditures that cannot be paid out of the then-remaining balance in the Capital Expenditure Reserve Fund; and (ii) the cost of all Improvements to the Padres Offices.

8.5.2 Any Approved Capital Expenditures that are paid by the Padres, as evidenced by appropriate receipts or other evidence of payment requested by the City, shall be treated as an interest-free advance from the Padres to the Capital Expenditure Reserve Fund. Such loan shall be repaid to the Padres as soon as possible thereafter from future deposits into the Capital Expenditure Reserve Fund, if any, provided that no such repayment shall be made to the extent such repayment causes the balance in the Capital Expenditure Reserve Fund to drop below \$500,000, except at the expiration of the Term, when the Capital Expenditure Reserve Fund may drop to zero. To the extent the amount of any such loan remains unpaid and the Capital Expenditure Reserve Fund has dropped to zero at the expiration of the Term, the Padres right to repayment shall terminate and



the City shall be entitled to retain the benefit of any unpaid portion of the Padres' loan.

8.6 Capital Expenditure Reserve Fund.

8.6.1 The City shall establish a system to account for, and shall maintain records of all funds deposited into or withdrawn from, the Capital Expenditure Reserve Fund, together with all interest and investment earnings on such funds.

8.6.2 Interest income and investment earnings generated by the Capital Expenditure Reserve Fund shall constitute part of such fund.

8.6.3 The Padres shall not grant or permit any Lien on its interest in and to the Capital Expenditure Reserve Fund or any sums contained therein or interest earned thereon.

8.6.4 During the Term of this Agreement, all funds in the Capital Expenditure Reserve Fund shall belong to the City, subject to the terms of this Agreement. Upon the expiration of the Term or the earlier termination of this Agreement for any reason, and repayment of any interest-free advance from the Padres to the Capital Expenditure Reserve Fund pursuant to Section 8.5 above, all funds then remaining in the Capital Expenditure Reserve Fund shall belong to the City.

8.7 Deposits into the Capital Expenditure Reserve Fund.

8.7.1 The City shall make deposits into the Capital Expenditure Reserve Fund as required under Section 9.7.

8.7.2 The Padres shall reimburse the Capital Expenditure Reserve Fund for any amounts taken therefrom for any Capital Expenditures to the extent that the Padres receive funds from any third-party source (including insurance proceeds and recovery from third parties) to reimburse the Padres therefor.

8.8 Investment of Funds in the Capital Expenditure Reserve Fund. The City shall have the exclusive right to direct the investment of all funds in the Capital Expenditure Reserve Fund, on the condition that such funds may be invested only in those investments in which the City is permitted to invest its own funds pursuant to the laws of the State of California and the City's internal investment guidelines, subject to any additional investment restrictions set forth in any documents executed and delivered by the City, the Agency, CCDC or PFFA in connection with any public financing related to the City Property, including any Bond Indenture.

8.9 Disbursements from the Capital Expenditure Reserve Fund.

8.9.1 The Capital Expenditure Reserve Fund may be drawn only upon the signature of the designated signatory or signatories of the Padres and the City.

8.9.2 Subject to the provisions of this Agreement:

- (a) the Padres shall be entitled to use funds from the Capital Expenditure Reserve Fund for the payment of Approved Capital Expenditures; and
- (b) the Padres may, in their sole discretion, elect either (i) to perform any work requiring Capital Expenditure and seek reimbursement

from the Capital Expenditure Reserve Fund after completion, or
(ii) to seek advances from the Capital Expenditure Reserve Fund to
pay for such Capital Expenditures as the work progresses.

8.9.3 Except with respect to disbursements made to effect advances made under
Section 7.8.4 and disbursements made pursuant to paragraph 8.9.10 below,
no funds shall be disbursed from the Capital Expenditure Reserve Fund
unless such disbursement is approved in writing by both the Padres and
the City, which shall not be unreasonably withheld or delayed by either
party. For each disbursement sought by the Padres, the Padres shall
submit a written request for payment to the City (each, a "Request for
Payment") that:

- (a) contains a reasonably detailed itemization of the costs and
expenses incurred in connection with each Approved Capital
Expenditure that is the subject of such request for payment;
- (b) includes any applicable schedules of values included in the
relevant contract documents relating to any work for which such
payment is requested;
- (c) includes such documents and other data substantiating the Padres'
right to payment as the City may reasonably require, including
copies of requisitions or invoices from contractors, architects,
material suppliers or other Persons;
- (d) reflects applicable retainages;

- (e) contains a separately itemized statement of any allowances included in the request for payment with supporting data attached;
- (f) contains a certification of the Padres that the information contained in such request is true and accurate; and
- (g) contains a certification by the Padres that all work on the subject Approved Capital Expenditure for which payments have previously been made from the Capital Expenditure Reserve Fund is free and clear of all Liens in favor of any and all contractors, subcontractors, material suppliers, other Consultants or other Persons making a claim by reason of having provided labor, materials or equipment relating to such work.

8.9.4 The City may, but shall have no obligation to, verify the accuracy of any information contained in any Request for Payment or verify that such Request for Payment complies with the applicable contract documents.

8.9.5 Requests for Payment for Capital Expenditures made or to be made to Consultants or other third-parties providing work or incurring expenses that are the subject of such Request for Payment, shall not include requests for amounts the Padres do not intend to pay to the such Consultant or other third-parties, because of a dispute or any other reason.

8.9.6 Within twenty (20) Business Days after receipt of any Request for Payment, the City shall: (i) approve the Request for Payment and disburse funds from the Capital Expenditure Reserve Fund to the Padres for such

amount as the City reasonably determines is properly due, and/or

(ii) notify the Padres in writing of the City's reasons for withholding such approval with respect to any portion of such Request for Payment and not disbursing funds in respect thereof.

8.9.7 The City's approval of any Request for Payment shall not be deemed a representation by the City that: (A) the City has made any investigation regarding the accuracy of the information contained in the Request for Payment or compliance with any applicable contract documents; (B) the City has inspected the quality or quantity of the work for which such Request for Payment is made; (C) the City has reviewed any construction means, methods, techniques, sequences or procedures in connection with any work that is the subject of such Request for Payment; (D) the City has reviewed requisitions from subcontractors or material suppliers or any other data to substantiate the applicant's right to payment; or (E) the City has ascertained how or for what purpose the applicant for payment has previously used funds disbursed from the Capital Expenditure Reserve Fund. Additionally, the City's approval of any Request for Payment shall not be deemed a waiver by the City with respect to any right set forth in this Agreement, in any contract between the Padres and any Consultant, or in any subcontract related thereto.

8.9.8 The City may withhold the approval of any Request for Payment if the Request for Payment fails to satisfy the requirements of this Section 8.9.

- 8.9.9 If any work or materials related to any Approved Capital Expenditure does not conform in a material respect to the plans and specifications thereto previously approved by the City, or does not conform to sound building practices, or otherwise departs from any of the requirements of this Agreement, the City may require the work to be stopped, removed or corrected, as appropriate, and may withhold disbursements.
- 8.9.10 The Padres shall promptly pay the appropriate architects, contractors, construction managers or other Consultants or Persons who performed the work or provided the materials that were the subject of the approved Request for Payment.
- 8.9.11 The City shall be entitled to withdraw funds from the Capital Expenditure Reserve Fund to reimburse the City for Reimbursable Costs, but only after ten (10) Business Days' prior written notice to the Padres, and then only if the Padres do not respond in writing to the City within such ten (10) Business Day period, objecting to the City withdrawal, accompanied by a written statement of the Padres' reasons for the objection.
- 8.9.12 If the City withholds its approval of any Request for Payment, or if the Padres object to a City withdrawal of funds from the Capital Expenditure Reserve Fund, or if the parties are otherwise engaged in a dispute with one another under this Section 8.9, which after good faith efforts is not resolved, the dispute shall be resolved by the binding arbitration process described in Section 28.1 below.

ARTICLE 9

[INTENTIONALLY OMITTED]

ARTICLE 10

CONCESSIONS

10.1 Padres' Rights. Subject to the provisions hereof, the Padres shall have the right and obligation to select concessionaires for the Ballpark Property, negotiate and enter into concession agreements for the Ballpark Property to provide concession services for all Events occurring during the Term. To the extent legally permitted, the Ballpark Property concessionaires selected by the Padres shall have the exclusive right to offer concession services within the Ballpark Property, including the walkways surrounding the admissions gates within the Ballpark Property. Subject to Sections 10.2 and 10.3, the Padres will determine the products sold by the concessionaire(s) and the prices and quality of all products sold by the concessionaire(s).

10.2 Concessionaire Agreements. Subject to the provisions of Sections 15.2 and 16.1, the Padres may enter into one or more concession agreements providing that: (a) the concessionaire(s) will provide comparable points of sale and service and will pay the same rate of commission under the same terms and conditions for City Events and Significant Events as for Padres' Games and Events; and (b) at the concessionaire(s) sole cost and expense, the concessionaire(s) will clean and maintain the concession areas. As used in the preceding sentence, the word "comparable" is not intended to mean simple numerical equality, but rather shall permit adjustments in number and location giving due

regard to size of crowds, to the nature of Events and to other factors affecting concession sales and services.

10.3 City Events. Notwithstanding any other provision herein to the contrary:

10.3.1 The City shall have the right, without the obligation to pay any fee, commission or other amount to the Padres or any other Person, to sell its novelties at any and all City Events, at prices determined by the City after consultation with the Padres; and

10.3.2 Before the Padres approve any product for sale at any City Event or the price for any such product (other than the novelties to be sold by the City at City Events, which do not require Padres' approval (as set forth in paragraph 10.3.1), the Padres shall solicit and obtain the City's comments with respect thereto.

10.3.3 The City and the Padres shall cooperatively determine the desirability of novelty vendors at City Events and the location(s) and manner of sale of novelties at each such City Event, with a view toward maximization of service and net revenue.

10.4 Concession Fees and Commissions.

10.4.1 Except as set forth in paragraph 10.4.2, all fees paid by any concessionaire for the right to sell any kind of food, beverage or novelties within the Ballpark Property during the Term shall be retained by the Padres.

10.4.2 All concession commissions payable in connection with concessions at Padres' Games and Events shall be retained by the Padres. All concession

commissions payable in connection with concessions at City Events shall be remitted to the City in accordance with Section 6.12, but in no event shall the City's commissions on general concession sales and retail sales (but not including commissions with respect to restaurant and catering sales) be less with respect to any Padres Fiscal Year than the amount equal to the weighted average of thirty-five percent (35%) of the gross receipts (after deduction therefrom for taxes, credit card service charges and other deductions customary in the industry with respect to concession sales) with respect to all general concession and retail items sold by the concessionaire(s) at City Events in such Padres Fiscal Year.

10.5 Additional Improvements. If any concessionaire engaged by the Padres requires support facilities additional to those already encompassed in the Ballpark Property, then the Padres and such concessionaire shall be responsible for constructing, equipping, Maintaining and Repairing such support facilities, and such activities shall be subject to all the provisions hereof as if the Padres performed such Improvements, Repairs or other work except, and notwithstanding any provision herein, the concessionaire or the Padres shall be solely responsible for all costs and expenses of such construction, equipping, Maintaining and Repairing (and removing if necessary) such support facilities.

10.6 Environmental Responsibilities. The Padres shall require its concessionaires to adhere to the EHC Agreement and to otherwise encourage its concessionaires to demonstrate environmental awareness and compliance by managing their operations to

include recycled and recyclable paper and plastic products and to not use any toxic cleaners in their operations and otherwise practice on-going environmental awareness.

ARTICLE 11

ADVERTISING AND SIGNS

11.1 Advertising and Signs.

11.1.1 The Padres shall have the exclusive right to sell advertising within all parts of the Ballpark Property, including, subject to all applicable Laws, advertising outside the Ballpark Structure, and on the exterior of the Ballpark Structure and/or its systems. The parties acknowledge that interior-facing signage within the Ballpark Property, including interior-facing signage within the Ballpark Structure, is exempt from the City's applicable sign ordinance.

11.1.2 All advertising sold or otherwise provided by the Padres for display on or within the Ballpark Property shall be displayed at all Events, unless the Padres and the relevant advertiser agree otherwise, and may not be covered or obstructed without the Padres' consent.

11.1.3 Notwithstanding any provision herein, the Padres shall be solely responsible (and may not use funds from the Capital Expenditure Reserve Fund) for the installation, Maintenance, Repair or replacement of any signage installed by the Padres that is not included in the original program for the Ballpark Property approved by the City in writing.

11.2 Sponsors and Prohibited Competitors.

11.2.1 No City Event shall have a "Prohibited Competitor" as a title sponsor. For purposes of this Agreement, a "Prohibited Competitor" is (i) a competitor of any exclusive Ballpark Property advertiser or sponsor, or (ii) a competitor in an established product category for which an exclusive Ballpark Property advertiser or sponsor contract is contractually set to expire within one hundred eighty (180) calendar days after the date of the notice provided for in paragraph 11.2.2 and for which the Padres are actively seeking an extension of the then existing advertiser or sponsor or a replacement advertiser or sponsor.

11.2.2 Not more than one year nor less than ninety (90) days before a proposed City Event, the City shall give written notice to the Padres of the identity of any proposed title sponsor of such Event. Within ten (10) Business Days after receipt of such notice, the Padres shall reply in writing to the City, stating whether the title sponsor proposed by the City is a Prohibited Competitor.

11.2.3 On request by the City from time to time during the Term, the Padres will provide to the City a list of (i) all advertisers or sponsors holding exclusive rights related to the Ballpark Property, (ii) the product categories in which they hold such exclusive rights, and (iii) the expiration dates of the contracts under which they hold such exclusive rights. If such information is considered proprietary or confidential by the Padres, then it shall be handled by the parties in the manner set forth in Section 28.11 below.

11.2.4 No sponsor of a City Event shall remove or obstruct any advertising sold by the Padres for display on or within the Ballpark Property without the Padres' prior written consent.

11.2.5 Neither the City nor any sponsor of a City Event shall display temporary advertising signage of any type that conflicts with any of the Padres' advertising contracts for the Ballpark Property. The City shall afford the Padres the opportunity to review all proposed temporary advertising at City Events at least ten (10) Business Days prior to the date of any such City Event. Provided that the City gives proper notice pursuant to this paragraph and the Padres have not informed the City of a conflict prohibited by this paragraph, the City may sell temporary advertising meeting the requirements of this Section 11.2 for a City Event and may retain the revenue therefrom. The City will cause all such temporary advertising to be removed immediately after such City Event.

11.2.6 The Padres shall have the right to apply the provisions of this Section 11.2 not just to City Events, but to all Events at the Ballpark Property (other than Civic Impact Events approved for the Ballpark Property in accordance with Section 6.6).

11.3 Other Advertising. The Padres may conduct, or permit to be conducted, at the Ballpark Property, any and all other forms of advertising, including any advertising to be worn or carried by the Padres' or any concessionaire's personnel, promotional events sponsored by advertisers, logos or other forms of advertising to be affixed to or included

with cups, hats, t-shirts, and other concession items or giveaways, real time signage on television broadcasts, and any and all other forms of such advertising or promotion.

ARTICLE 12

BROADCAST FEES

12.1 Definition of Broadcast Fees. "Broadcast Fees" shall mean all rights and other fees and arrangements relating to the production and distribution of Events for commercial television, non-commercial television (by over-the-air, cable or otherwise) and internet access, including direct sales of advertising by the Padres or the City, as appropriate, radio broadcast or any other media fees and revenues, and any income attributable to such broadcasts (whether in or out of the local market).

12.2 Ownership of Broadcast Fees. All Broadcast Fees related to Padres' Games and Events shall be retained and exclusively controlled by the Padres. Broadcast Fees for all City Events shall be retained and exclusively controlled by the City.

ARTICLE 13

EXCLUSIVE VENUE, NON-RELOCATION OF TEAM

AND SALE OF FRANCHISE

13.1 Exclusive Venue.

13.1.1 Except as set forth in paragraph 13.1.2 and Articles 23 and 24, the Padres shall not allow any Major League Baseball Game in which the Team acts as the host team for its opponent (*i.e.*, the Team takes the field in the first half of each inning and bats in the last half of each inning of such baseball game) (each, a "Home Game") to be played after the Opening Date and

for the remainder of the Term in any facility other than the Ballpark Property without first obtaining the written approval of the City, which approval the City may withhold in its sole and absolute discretion. Except as otherwise provided herein, after the Opening Date and for the remainder of the Term the Padres shall play all of their Home Games at the Ballpark Property.

13.1.2 Notwithstanding paragraph 13.1.1, the Padres may, without the City's consent:

- (a) during each Major League Baseball Season included in the Term, play up to three (3) Home Games outside the continental United States;
- (b) play one home series not to exceed five (5) Major League Baseball Games in Asia during the period commencing on the first day of the first Major League Baseball Season after the Commencement Date and ending three (3) years after that date, and during each successive three (3) year period thereafter; provided, however, that the Padres may not, without the City's prior written consent, play a home series in Asia in any Season immediately following a Season in which the Padres played a home series in Asia; and
- (c) play Home Games at a facility other than the Ballpark Property if any Governmental Authority with jurisdiction over the Ballpark

Property and its use prohibits such use on the basis of health or safety risks attendant to such use.

13.2 No Relocation of Team. During the period after the Opening Date and for the remainder of the Term, the Padres shall not relocate the Team (and shall not permit the Team to be relocated) to a location other than the City of San Diego, California.

13.3 Sale of Franchise. The Padres have the right to transfer ownership of the Padres' franchise during the Term to the extent permitted by Major League Baseball, without the City's consent; provided, however, that in connection with such sale, the new franchise owner must (i) concurrently acquire all of the Padres rights and obligations in, to and under the Franchise and this Agreement, and (ii) concurrently agree in writing, in form and substance reasonably acceptable to the City, to assume all of the Padres' obligations under this Agreement for the remainder of the Term.

ARTICLE 14

RIGHT OF FIRST REFUSAL AND EXCLUSIVE NEGOTIATION

14.1 Right of First Refusal. If during the Term of this Agreement, the City proposes to make an offer to any third party (a "Transferee") to sell the City Property (or the City's interest in the Site Lease) or receives an offer from any Transferee to purchase the City Property (or the City's interest in the Site Lease), which offer the City intends to accept, prior to making or accepting such offer the City will deliver to the Padres a written offer (an "Offer") to sell the City Property (or the City's interest in the Site Lease) to the Padres on the same terms and conditions on which the City desires to sell the City Property (or the City's interest in the Site Lease) to such Transferee. The Padres must

deliver to the City a written acceptance or rejection of an Offer within ninety (90) days after the Padres' receipt of such Offer. Failure to deliver to the City such acceptance or rejection within such ninety (90)-day period shall be deemed a rejection of the City's Offer and the City shall thereupon be entitled to proceed with its sale to the Transferee upon the terms and conditions of the Offer.

14.2 Exclusive Negotiation.

14.2.1 If during the Term of this Agreement, the Padres shall in good faith desire to purchase the City Property (or the City's interest in the Ballpark Facility Lease), the Padres shall deliver a written notice thereof to the City. If at any time during the Term of this Agreement, the City contemplates a sale of the City Property (or the City's interest in the Ballpark Facility Lease), the City shall deliver written notice thereof to the Padres. During the sixty (60)-day period following either: (i) the City's receipt of the Padres' written notice of the Padres' good-faith desire to purchase the City Property (or the City's interest in the Ballpark Facility Lease), or (ii) the Padres' receipt of the City's written notice that the City is contemplating a sale of the City Property (or the City's interest in the Ballpark Facility Lease), as appropriate, the City will negotiate exclusively and in good faith with the Padres to sell the City Property (or the City's interest in the Ballpark Facility Lease), subject to all requirements of applicable Law.

14.2.2 The Padres shall not deliver to the City any notice invoking the sixty (60)-day exclusive negotiation period set forth in paragraph 14.2.1: (i) at any

time after receiving an Offer under Section 14.1 until six (6) months after the date of the Offer or the City withdraws or changes the terms on which it proposes to sell the City Property (or the City's interest in the Site Lease) to the Transferee, whichever date shall first occur; or (ii) more than one (1) time in any six (6) month period.

ARTICLE 15

BONDS

15.1 Bond Constraints.

15.1.1 Other than payments required to be made under this Agreement or expressly agreed to in writing by the City, the parties agree that they shall structure their affairs such that any payments made or to be made by the Padres to, or for the benefit of, the City shall not be considered used, directly or indirectly, to pay principal of, or interest on, the Bonds for purposes of the private security or payment test of Section 141(b)(2) of the Internal Revenue Code, where failing to meet the foregoing standard would have a Material Adverse Effect on the City, unless the City's prior written consent to such payment has been given. Such payments may include, but are not limited to:

- (a) Payments for the lease or purchase of property from the City or any related party of the City;
- (b) Payments for services provided by the City or any related party of the City, other than payments of generally applicable taxes; and

- (c) Payments to third parties that directly or indirectly benefit the City or any related party of the City.

15.1.2 If the City reasonably believes that the Padres' making of any of payment described in paragraph 15.1.1 would have a Material Adverse Effect on the City, the parties shall meet, confer and reasonably restructure the payment in such a manner that (i) such payment or an equivalent payment may be made without such a Material Adverse Effect on the City, and (ii) the restructuring does not result in the imposition of additional costs on either party.

15.2 Tax-Exempt Status of Bonds. The parties share a commitment to avoid adversely affecting the tax-exempt status of the Bonds under federal law, agree to comply with the covenants set forth in paragraph 15.1.2 in order to avoid any such adverse effect, and agree that neither party shall take any action during the Term that reasonably could adversely affect the tax-exempt status of the Bonds under federal law.

ARTICLE 16

ADDITIONAL CONDITIONS AND OBLIGATIONS

16.1 Third-Party Agreements.


16.1.1 Subject to the terms hereof, the Padres may enter into agreements with third parties in respect of the operation of the Ballpark Property. All such agreements which are Material Contracts shall comply with the following provisions:

- (a) shall be in writing;

- (b) shall not extend beyond the Term;
- (c) shall expressly state that upon a material default by the Padres under this Agreement, the City may:
 - (i) deliver written notice of termination to all parties to such agreement, in which case such agreement shall be deemed terminated as of the date set forth therefor in the City's notice; or
 - (ii) deliver written notice to all parties to such agreement that the City elects to have the Padres' rights and future obligations under such agreement assigned to the City, in which case such rights and obligations shall be deemed assigned to the City (without the need for obtaining any party's consent thereto) effective as of the date set forth therefor in the City's notice, provided that, as of the effective date of the assignment to the City, the City assumes all of the Padres' obligations under such agreement; and shall further expressly state that upon any such assumption by the City, the Padres are released from all obligations with respect to the period after the effective date of the assumption; and
- (d) shall expressly state that the City is a third-party beneficiary under such agreement.

16.1.2 If the City requests a Bond Counsel Opinion in respect thereof, then, at the City's expense, the City shall cause its bond counsel to render a Bond Counsel Opinion with respect to any proposed Material Contract of the Padres within ten (10) Business Days after notification by the Padres to the City of such proposed Material Contract. If such Bond Counsel Opinion concludes that such proposed Material Contract will cause the Bonds not to qualify for tax-exempt status under federal law, then the Padres shall not enter into such Material Contract. If no such Bond Counsel Opinion is received by the City and delivered to the Padres within such ten (10) Business Day period, then this condition shall be deemed to have been satisfied, the Padres may enter into the Material Contract, and the City shall be estopped from claiming that the execution or performance of such Material Contract has a Material Adverse Effect on the City. While allowing the Padres to enter into the Material Contract in such circumstances, and sparing the Padres from any claim of default for doing so, the City does not thereby waive its right to meet, confer and reasonably restructure the transaction properly entered into by the Padres, as expressly provided in this Agreement.

16.2 Compliance With Laws. At all times during the Term, the Padres shall comply with all Laws applicable to the Padres' use of the Ballpark Property (including obtaining any and all licenses and permits necessary in connection therewith).



16.3 Maintenance of Good Standing in League. The Padres or the Padres' successors in interest shall be the owner of the Franchise, through which the Team is authorized to play Major League Baseball within the boundaries of the City, and the Padres or the Padres' successors in interest shall maintain the Franchise in good standing with the National League (or successor league in which the Padres are a member) and the Office of the Commissioner of Baseball.

16.4 Outfield Park CCRs. The parties together constitute the "Ballpark Owner" as that term is defined in the Outfield Park CCRs. Any other capitalized terms used in this Section 16.4 that are not defined in this Agreement shall have the meanings assigned to such terms in the Outfield Park CCRs executed in accordance with paragraph 2.7.5 of this Agreement. With respect to said Outfield Park CCRs:

16.4.1 The Padres are hereby granted the exclusive right during the Term to exercise the rights of the Ballpark Owner under said Outfield Park CCRs, including:

- (a) the right to exercise the Ballpark Owner's easement rights under said Outfield Park CCRs; provided, however, that the City retains its own right to use such easements for Events, consistent with this Agreement;
- (b) the right to hold Events in the Baseball Event Area of the Outfield Park; provided, however, that the City retains its own right to use the Non-Baseball Event Area for Events, consistent with this Agreement;

- (c) the right to name the Ballpark Property, the Outfield Park, any portions thereof and any Improvements thereon, and to retain the proceeds from such Naming Rights, consistent with this Agreement;
- (d) the right to designate the members of the Architectural Committee allocated to the Ballpark Owner;
- (e) the right to adopt signage criteria for the entire Project Premises, as defined in the Outfield Park CCRs, and to disapprove of any signage involving a Prohibited Competitor; provided, however, that the foregoing shall not affect or impair the City's own enforcement of its Laws and ordinances related to signage, to the extent applicable to the signage at the Project Premises;
- (f) the right to vote the interests of the Ballpark Owner under Article 4 of the Outfield Park CCRs; and
- (g) plenary rights to perform all other acts permitted or required of the Ballpark Owner thereunder;

provided, however, that, except with the consent of the City, which shall not be unreasonably withheld, the Padres shall not exercise the rights of the Ballpark Owner under the Outfield Park CC&Rs, (i) so as to effect a modification or termination of the Outfield Park CC&Rs, (ii) in a manner which is not reasonably consistent with the provisions of this Agreement, or (iii) in a manner that would adversely change the aesthetic nature of the Ballpark Property or have a material adverse effect on the structure or systems of the Ballpark Property or



change the essential nature of the Ballpark Property and the purpose for which it was intended to be used. Further, nothing in this Section 16.4.1 is intended to abrogate the right of the City to exercise its police powers. The Padres shall act reasonably and cooperatively to keep the City generally informed with respect to matters pertinent to the administration and implementation of the Outfield Park CCRs. Such steps shall include permitting the City to participate in meetings and discussions pertaining to the Outfield Park CCRs, to the extent reasonably requested by the City.

16.4.2 The Padres hereby assume all of the obligations of the Ballpark Owner under the Outfield Park CCRs; provided, however:

- (a) as to the monetary obligations of the Ballpark Owner thereunder, including obligations to pay Common Maintenance Area Costs under the Outfield Park CCRs, that any payments made by the Padres in fulfillment of such obligations shall be considered either Joint Ballpark Operating Expenses or Incremental Ballpark Expenses or Capital Expenditures, as the facts of the matter warrant, and the ultimate responsibility for such monetary obligations shall be determined according to the provisions of this Agreement regarding the parties' respective responsibilities for Joint Ballpark Operating Expenses or Incremental Ballpark Expenses or Capital Expenditures, as the case may be;
- (b) as to the obligation to indemnify other parties to the Outfield Park CCRs in connection with Events, there shall be contribution and

cross-indemnification rights between the parties to this Agreement for any payments made by the Padres in fulfillment of such indemnity obligations, consistent with the this Agreement, so that, for example, the ultimate responsibility in cases involving a party's own gross negligence or willful misconduct will be governed by the provisions of this Agreement, and the costs borne in other cases may be considered Incremental Ballpark Expenses, as the facts of the matter warrant.

16.4.3 Regarding the monetary obligations of the Ballpark Owner to pay assessments for Common Maintenance Area Costs under the Outfield Park CCRs, the parties are cognizant of the fact that an Affiliate of the Padres may own portions of the Outfield Park Retail Parcels under the Outfield Park CCRs. Accordingly:

- (a) The payments made by any Affiliate of the Padres who owns any portion of the Outfield Park Retail Parcels under the Outfield Park CCRs shall be accounted for or credited as payments made by the Padres under this Agreement, toward either Joint Ballpark Operating Expenses, or Incremental Ballpark Expenses or Capital Expenditures, as the case may be, but only to the extent that such payments would properly have been permitted in such category, had they been made by the Padres themselves under this Agreement; and

- (b) The foregoing payments from the owner of portions of the Outfield Park Retail Parcels under the Outfield Park CCRs shall continue to be accounted for or credited in the foregoing manner only so long as an Affiliate of the Padres is the owner of such portions of the Outfield Park Retail Parcels.

ARTICLE 17

INSURANCE AND SUBROGATION

17.1 Term of Insurance. As manager of the Ballpark Property, at or prior to the Commencement Date, the Padres shall obtain (or cause to be obtained), and shall thereafter maintain (or cause to be maintained) in full force and effect throughout the Term, the insurance set forth in this Article 17. The City shall have the right to require that such insurance be obtained prior to the Commencement Date, or the Padres may elect to obtain such insurance prior to the Commencement Date, in order to assure that there is no lapse in insurance coverage between: (a) the insurance the Padres and the Padres' Affiliates are required to provide and maintain pursuant to the Design-Build Agreement, and (b) the insurance the Padres are required to provide and maintain pursuant to this Agreement; and in either case, notwithstanding any other provision of this Agreement to the contrary, the costs of obtaining such insurance shall constitute a Joint Ballpark Ownership Expense, even though incurred before the Commencement Date.

17.2 Types of Insurance. In accordance with Section 17.1, the Padres shall obtain and maintain throughout the Term sufficient insurance to satisfy the requirements of the Bond

Documents, including the Ballpark Facility Lease and the Indenture and the following specific requirements:

- 17.2.1 Commercial general liability insurance covering the Ballpark Property and the operations with respect thereto, with broad form property damage coverage for personal injury, bodily injury, death, property damage, products/completed operations, premises, operations, elevators, broad form contractual liability (including coverage for tort liability of another Person to pay for bodily injury, death and property damage to a third Person) and fire legal liability, providing coverage with a combined single limit of \$1,000,000 per occurrence.
- 17.2.2 Excess liability insurance on an "occurrence" form providing a combined bodily injury and property damage limit of \$50,000,000 per occurrence, subject to annual aggregate of \$50,000,000.
- 17.2.3 Comprehensive business automobile insurance for bodily injury and property damage providing coverage to a combined single limit of \$1,000,000 per occurrence covering all of the Padres owned, hired and non-owned automobiles.
- 17.2.4 Property insurance upon the City Property in the name of the City, PFFA, the Trustee (to the extent required by the Indenture), and upon the Padres Property in the name of the Padres with the City, PFFA, and the Trustee (to the extent required by the Indenture), named as a loss payees, as their interests may appear, which:

- (a) shall include coverage for:
 - (i) all HVAC, scoreboard and electrical systems and equipment, boilers, and all other personal property, fixtures, computers, machinery and equipment located on the Ballpark Land;
 - (ii) all materials and supplies of any nature that are located on the Ballpark Land and all materials and supplies of any nature to be used on the Ballpark Land, whether located on the Ballpark Land, in transit, or temporarily stored elsewhere;
- (b) shall be on an "all-risk of loss" form (and shall include coverage for earthquakes consistent with the requirements of the Design-Build Agreement, and notwithstanding anything to the contrary in the Bond Documents, fire, lightning, and flood damage) with extended coverage endorsement covering the risk of vandalism and malicious mischief, sprinkler system leakage and boiler loss (it being understood, however, that unavailability of earthquake insurance shall be considered an event of Force Majeure for so long as it is unavailable);
- (c) shall be for an amount at least equal to the greater of:
 - (i) the full replacement cost of the Ballpark Property without deduction for depreciation, which amount shall be

determined at reasonable intervals at the request of the City by appraisal or evaluation conducted by the insurer or other appraiser, engineer or other Person mutually acceptable to the City, the insurer and the Padres; or

- (ii) the then-current principal amount of outstanding Bonds; and

(d) unless otherwise approved in writing by the City (which approval shall not be unreasonably withheld or delayed), may contain deductibles not exceeding the lesser of:

- (i) the maximum amount of the deductibles (if any) permitted by the Bond Documents (so long as any Bonds remain outstanding); or
- (ii) \$250,000 (adjusted upward at the end of the fifth Fiscal Year included in the Term, and on every fifth Fiscal Year thereafter during the Term, but never downward, by the amount of the percentage increase, if any, in the CPI for the period which includes January 1 of the Fiscal Year for which the adjustment is then being made over the CPI for the period which includes January 1 of the Fiscal Year five (5) years earlier).

17.2.5 To the extent required by the State of California, workers compensation insurance covering all employees of the Padres, with a minimum of \$1,000,000 of employer's liability coverage.

17.2.6 Use and occupancy insurance to the extent required in Section 6.03(a)(ii) of the Ballpark Facility Lease.

17.2.7 Such other insurance as the Padres determine appropriate in the exercise of the Padres' reasonable business judgment. The Padres shall promptly notify the City of any such additional insurance and permit the City to review the policies therefor.

17.3 Additional Insurance Specifications.

17.3.1 All forms of insurance required by this Article 17 (including all exclusions in such policies) shall be normal and customary for a First-Class Facility or other comparable large public or private facilities, unless otherwise mutually agreed by the parties, which agreement shall not be unreasonably withheld or delayed.

17.3.2 All insurance required by this Article 17 shall be carried only by responsible insurance companies that have been given at least an "A-VII" rating by AM BEST, that are licensed to do business in the State of California.

17.3.3 All policies of insurance required by this Article 17 (other than workers' compensation insurance policies) shall name the City, the Agency, CCDC, PFFA, the Trustee (to the extent required by the Indenture), and their

respective officers, directors, employees, attorneys, agents and representatives as additional insureds, as their interests may appear.

17.3.4 All policies of insurance required by this Article 17 shall expressly provide, and endorsements shall be submitted to the City to the effect that:

- (a) such policies are primary and non-contributing to any insurance that may be carried by the City, the Agency, CCDC, and PFFA;
- (b) such policies cannot be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by certified mail from the insurer to the City; and
- (c) all deductibles on any policy of insurance required to be provided by the Padres under this Article 17 are the responsibility of the Padres.

17.3.5 All insurance required by this Article 17 may be provided by a "blanket" or "umbrella" insurance policy, to the extent available to the parties, provided that (i) the policy or a certificate for the policy specifies amount of the total insurance allocated to the Ballpark Property, (ii) such amount allocated to the Ballpark Property shall not be subject to reduction on account of claims made with respect to other properties, and (iii) the policy shall otherwise comply with all requirements of this Article 17.

17.3.6 Consideration shall be given by both parties to obtaining insurance through the pooled coverages available to the City, as well as through other programs available to the parties as mutually agreed to from time to

time. In particular, the City agrees that to the extent requested by the Padres, the City shall cooperate in arranging for the insurance coverages described in Section 17.2.4 to be procured through City pooled insurance arrangements.

17.4 Underlying Insurance.

17.4.1 In connection with any Capital Expenditure or Improvement to the Ballpark Property requiring mutual approval by the parties, either party may require, as a condition to its approval, that appropriate insurance coverages and indemnifications be obtained from the contractors and design professionals who will be performing work on that particular Capital Expenditure or Improvement. Coverage in an amount not less than customarily provided, pursuant to generally applicable City standards, shall be considered appropriate hereunder. The City shall inform the Padres on or before the Commencement Date of the City standards for such insurance and shall promptly notify the Padres of any changes in such City standards.

17.4.2 Except as provided in paragraph 17.4.1 above, the Padres shall be responsible for requiring such insurance and indemnifications (if any) as the Padres deem appropriate from contractors, design professionals, subcontractors, concessionaires, users of the Ballpark Property for Events other than Major League Baseball Games, and other third parties performing services related to the use, operation or management of the

Ballpark Property in order to protect the interests of the City, the Agency, CCDC, PFFA, the Trustee (to the extent required by the Indenture), and their respective officers, directors, employees, attorneys, agents and representatives.

17.4.3 From time to time during the Term, the parties' risk managers or insurance brokers may meet to consider recommending to the parties a comprehensive program for insurance and indemnifications to be obtained from contractors, design professionals, subcontractors, concessionaires, users of the Ballpark Property for Events other than Major League Baseball Games, and other third parties performing services related to the use, operation or management of the Ballpark Property. The parties agree to act in good faith and to exercise reasonable business judgment in deciding whether to adopt such a program or to amend such a program previously adopted. If the parties do agree to adopt such a program, or to amend a program previously adopted, the Padres shall be responsible for carrying out its terms, and paragraph 17.4.2 above shall be deemed amended to that extent.

17.5 Evidence of Insurance. A certified copy of the all policies of insurance required under this Article 17, or certificates evidencing the existence thereof, in such form as the City may reasonably request (provided that such form is reasonably obtainable from the insurer), shall be delivered to the City by the Padres upon the Commencement Date or such other date as such insurance coverage is required hereunder.

17.6 Annual Review. The insurance policies required hereunder shall be reviewed by the City and the Padres annually during the Term, and with respect to each existing policy not less than thirty (30) days prior to its respective termination date, in order to determine the adequacy of the coverage amounts relative to the requirements hereunder.

17.7 Waiver of Subrogation. All insurance policies required to be provided hereunder shall be endorsed to provide that any release from liability of, or waiver of claim for, recovery from any party entered into in writing by the insured thereunder prior to any loss or damage shall not affect the validity of said policy or the right of the insured to recover thereunder. Such insurance policies shall further provide that the insurer waives all rights of subrogation which such insurer might have against the Padres, the City, the Agency, CCDC, PFFA, the Trustee (to the extent required by the Indenture), and their respective officers, directors, employees, attorneys, agents and representatives. Without limiting any release or waiver of liability or recovery contained in any other provision of this Agreement, but rather in confirmation and furtherance thereof, each of the parties hereto waives all claims for recovery from the other party for any loss or damage to any of its property or damages as a result of liability or other loss of the types covered in this Article 17, insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance policies.

17.8 City's Governmental Immunity. The parties recognize and acknowledge that: (a) the City is a California governmental entity within the scope and purview of certain laws granting governmental immunity to the City, and (b) the City has not taken steps, by resolution or otherwise, to waive any such governmental immunity.

17.9 Acknowledgements of Bond Covenants and Application of Insurance Proceeds.

So long as any Bonds remain outstanding, the proceeds of any claims made under the insurance policies required by Section 17.2 or Section 17.4 shall be disbursed or otherwise applied in accordance with Section 23.3.1 of this Agreement.

ARTICLE 18

INDEMNIFICATION

18.1 Indemnification by the Padres. The Padres hereby agree to indemnify, defend and hold harmless the City, the Agency, CCDC, PFFA, the Trustee (to the extent required by the Indenture), and their respective directors, officers, employees, agents, attorneys, consultants, financial advisors and representatives, and underwriters and their agents and their attorneys (collectively, the "City Parties"), from and against any and all liabilities, claims, demands, obligations, losses, actions and causes of action whatsoever, including reasonable attorneys' fees and expenses, arbitration or court costs, and costs and expenses incurred in investigating, preparing or defending against any arbitration, litigation, claim, action, suit, proceeding or demand of any kind or character (collectively, "Losses"), arising out of, related to, or in connection with: (a) the failure of the Padres to perform the Padres' obligations (including their Ballpark Management obligations) under this Agreement; (b) the Padres' breach of any of the representations or warranties of the Padres set forth in this Agreement; or (c) any negligence or willful misconduct on the part of the Padres, or the Padres' partners, officers, employees, agents, attorneys, consultants, financial advisors or representatives (collectively, the "Padres Parties"); provided, however, that the Padres' duty to indemnify, defend and hold the City Parties

harmless shall not be applicable to matters covered by the City's indemnity of the Padres Parties as set forth in Section 18.2 below.

18.2 Indemnification by the City. The City hereby agrees to indemnify, defend and hold the Padres Parties harmless from and against any and all Losses arising out of, related to, or in connection with: (a) the failure of the City to perform the City's obligations under this Agreement; (b) the City's breach of any of the representations or warranties of the City set forth in this Agreement; or (c) any negligence or willful misconduct on the part of the City Parties; provided, however, that the City's duty to indemnify, defend and hold the Padres Parties harmless shall not be applicable to matters covered by the Padres' indemnity of the City Parties as set forth in Section 18.1 above.

18.3 Procedures for Indemnification. Any party eligible for indemnification under Sections 18.1 or 18.2 (each, the "Indemnified Party") shall give notice to the party obligated under such Section (each, an "Indemnifying Party") to indemnify such Indemnified Party each time that the Indemnified Party becomes aware of any fact or circumstance which would reasonably be expected to give rise to an obligation to indemnify under such Section 18.1 or 18.2, which notice shall be accompanied by a copy of any claim made which may result in such obligation to indemnify. If such notice is not given within thirty (30) days after the Indemnified Party becomes aware of any such fact or circumstance, the Indemnified Party shall not be entitled to recover from the Indemnifying Party the amount of any Losses which would not have been incurred by the Indemnified Party, but for the Indemnified Party's failure to provide such notice in a timely manner. The Indemnifying Party shall have the right and obligation to assume the

defense or settlement of any such claim in respect of which it is obligated to provide indemnity hereunder, provided that the Indemnifying Party shall not settle or compromise any such claim without the Indemnified Party's prior written consent thereto (which shall not be unreasonably withheld or delayed), unless the terms of such settlement or compromise discharge and release the Indemnified Party from any and all liabilities and obligations thereunder. Notwithstanding the foregoing, the Indemnified Party at all times shall have the right, at its option and expense, to participate fully in the defense or settlement of such claim, and if the Indemnifying Party does not proceed diligently to commence to defend or settle such claim within thirty (30) days after its receipt of notice of the assertion or commencement thereof, then the Indemnified Party shall have the right, but not the obligation, to undertake the defense or settlement of such claim for the account and at the risk of the Indemnifying Party, and the Indemnifying Party shall be bound by any defense or settlement that the Indemnified Party may make to such claim, which is confirmed by a court after a hearing first noticed to the Indemnifying Party. The parties agree that, for the purpose of enforcing any right of indemnity hereunder, the Indemnified Party may join the Indemnifying Party in any third-party claim as to which such right of indemnity would or might apply. The parties shall cooperate fully in defending or settling any third-party claim.

18.4 Waivers for Insurance. The City on its own behalf and on behalf of the City Parties, and the Padres on their own behalf and on behalf of the Padres Parties, each hereby waives all rights of recovery against the other as an Indemnifying Party, to the

extent that the waiving party has valid and collectible insurance covering the Losses sustained.

18.5 Survival. The obligations set forth in this Article 17 shall survive the expiration of the Term or earlier termination of this Agreement for any reason.

ARTICLE 19

DEFAULT AND REMEDIES

19.1 Default by the Padres. The occurrence of any one or more of the following events constitutes a default by the Padres under this Agreement (a "Padres Default"):

19.1.1 Failure by the Padres at any time to pay any sums payable by the Padres to the City hereunder if such failure continues for more than twenty (20) days after notice from the City that such payment is due.

19.1.2 Failure by the Padres to observe or perform any other covenant, agreement, condition or provision of this Agreement, if such failure continues for more than thirty (30) days after written notice of such failure is given to the Padres by the City; provided, however, that the Padres shall not be in default with respect to matters that cannot be reasonably cured within thirty (30) days, so long as the Padres have promptly commenced such cure and diligently proceed in a reasonable manner to complete the same thereafter.

19.1.3 The Padres admit in writing the Padres' inability to pay the Padres' debts as they mature, or make an assignment for the benefit of creditors, or apply for or consent to the appointment of a trustee or receiver for the

Padres or for any item of Padres Property or any significant part of the Padres' other property.

19.1.4 A trustee or receiver is appointed for the Padres or for any item of Padres Property or any significant part of the Padres' other property and is not discharged within ninety (90) days after such appointment.

19.1.5 Bankruptcy, reorganization, receivership, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any federal or state bankruptcy law, or similar law for the relief of debtors, are instituted by or against the Padres, and, if instituted against the Padres, are allowed against the Padres or are consented to by the Padres or are not dismissed within ninety (90) days after such institution.

19.2 City's Remedies. If a Padres Default occurs, in addition to any other rights or remedies the City may have at law or in equity (subject, however, to Section 19.3 below), the City shall have the following rights (also subject to Section 19.3 below), until such time as such Padres Default has been fully cured:

19.2.1 The City may enforce the provisions of this Agreement and may enforce and protect the rights of the City hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including:

- (a) recovery of monetary damages (including consequential damages) and all moneys due and not yet paid from the Padres under any of the provisions of this Agreement;
- (b) all California statutory remedies; and
- (c) any other relief or remedies to the extent permitted by law; by filing a cause of action or actions for such damages, equitable relief, of other appropriate remedies or relief from the Padres in any court of competent jurisdiction.

19.2.2 The Padres' right to repayment of any interest-free advance they have made to the Capital Expenditure Reserve Fund shall be tolled, while the City's rights with respect to such Fund shall proceed unabated, including:

- (a) a right of offset in favor of the City, against any obligation the City otherwise might have to make deposits or payments into the Capital Expenditure Reserve Fund, as expressly provided in this Agreement;
- (b) and a right held by the City, with priority over any comparable right held by the Padres, to disbursements of funds from the Capital Expenditure Reserve Fund, as reimbursement for expenses incurred from the Capital Expenditure Reserve Fund by the terms of this Agreement.

19.2.3 After the time when the City has given notice and any applicable cure period has expired, if any sums payable by the Padres shall remain due

and payable, or after the time for performance by the Padres of any other term, covenant, provision or condition of this Agreement, or before the expiration of that time in the event of a bona fide emergency (in which case the City shall only be required to give such notice as is reasonable and practical under the circumstances), the City may, at the City's election (but without obligation), make any payment required of the Padres under this Agreement, or perform or comply with any term, covenant, provision or condition imposed on the Padres under this Agreement, as the City deems advisable. The City shall be reimbursed for the amount so paid, plus the cost of such performance or compliance, plus interest on such sums at the Default Interest Rate (collectively, "Reimbursable Costs"), in the following manner, at the City's election:

- (a) Reimbursement may be obtained directly from the Padres. If the City delivers written notice to the Padres that the City desires reimbursement directly from the Padres, the Padres shall pay to the City the amount of all Reimbursable Costs set forth in such notice within thirty (30) days after the Padres' receipt of such notice.
- (b) If and only if the payment or cost of performance or compliance borne by the City, had such payment or cost been borne by the Padres instead, would properly have been reimbursable to the Padres from the Capital Expenditure Reserve Fund, then the City may, upon written notice to the Padres at any time or from time to

time, obtain reimbursement of all Reimbursable Costs set forth in such notice directly from the Capital Expenditure Reserve Fund.

- (c) If and only if the payment or cost of performance or compliance borne by the City, had such payment or cost been borne by the Padres instead, would properly have been characterized as a Joint Ballpark Ownership Expense, then the City may, upon written notice to the Padres at any time or from time to time, obtain reimbursement of all Reimbursable Costs set forth in such notice by way of charge, set-off or application of the amount thereof against all or any sums which the City would otherwise have been obligated to pay toward Joint Ballpark Ownership Expenses.

19.2.4 No payment to the City of Reimbursable Costs or performance by the City of any obligation of the Padres hereunder shall constitute a waiver of default or of any remedy for default.

19.2.5 If any default by the Padres in violation of the terms of this Agreement results in a default by the City on any of its obligations under the Bonds, the City may, in addition to any other remedies it may have hereunder, recover from the Padres any consequential damages suffered by the City as a result of such default, including all sums which the City shall be held liable to pay to any city, state or federal taxing authority, or any holders of the Bonds, to the extent such sums exceed the amount which the City would have been liable to pay in the absence of such default by the Padres.

19.2.6 The Padres acknowledge that the City will be irreparably harmed by the Padres' breach of Sections 13.1, 13.2 or 13.3 and accordingly, the Padres acknowledge and agree that:

- (a) the City does not have an adequate remedy at law for such breach; and
- (b) in the event of such breach, the City shall, without posting any bond, be entitled to seek and obtain an injunction from any court of competent jurisdiction, to enjoin any violation of Sections 13.1, 13.2 or 13.3.

19.3 City's Termination Rights and Limitations.

19.3.1 This Agreement sets forth the terms and conditions on which the Padres have (i) the right to and obligation to use and occupy the Usable City Property throughout the Term, and (ii) the right and obligation to manage the Ballpark Property as the sole and exclusive on-site manager of the Ballpark Property throughout the Term. The parties agree that the City may terminate the management relationship set forth in clause (ii) above (provided that the City complies with the requirements of Section 7.1 above in connection therewith, and retains a nationally-recognized management company to manage the Ballpark Property as required therein), separate and apart from its termination of the use and occupancy relationship set forth in clause (i) above.

19.3.2 In consideration for the Padres' substantial investment in the Padres Property, the City agrees that, notwithstanding any other provision in this Agreement to the contrary, the City's right and remedy of effecting any termination of the Padres' management rights under this Agreement shall arise only if the arbitrator(s), pursuant to the binding arbitration process described in Section 28.1 below, determined that the Padres have failed to timely perform the Padres' Material Ballpark Management Obligations twice within a single calendar year, and that the time provided in this Agreement to cure such defaults has expired without their being cured. The Padres' commission of defaults as to which such a finding is made will be referred to herein as a "Re-Entry Default."

19.3.3 Upon the commission of a Re-Entry Default by the Padres in performing the Padres' Ballpark Management obligations, the City may terminate the Padres' Ballpark Management obligations in accordance with paragraph 7.1.6. Termination of the Padres' Ballpark Management obligations pursuant to paragraph 7.1.6 shall not terminate this Agreement or relieve the Padres of any of their other obligations under this Agreement, including their obligation to use and occupy the Ballpark Property for the Term, and to bear the Padres' net share of the costs of all Repairs, Improvements, Maintenance and operations of the Ballpark Property, including the Padres' net share of the cost to employ and retain a



replacement manager until the expiration or termination of this Agreement.

19.3.4 Upon the commission of a Re-Entry Default by the Padres in performing the Padres' Ballpark Management obligations and a termination of the Padres' Ballpark Management obligations as aforesaid, the City shall have the right either (i) to terminate any Material Contract entered into by the Padres for the performance of Maintenance, Repairs, Improvements, Ballpark Management, parking or concessions related to the Ballpark Property, or (ii) to cause the Padres to assign to the City, or a independent third party manager, the Padres' rights and obligations arising from and after the date of assignment under any such Material Contract entered into by the Padres for the performance of Maintenance, Repairs, Improvements, Ballpark Management, parking or concessions related to the Ballpark Property, provided that, as of the effective date of the assignment to the City, the City assumes all of the Padres' obligations under such Material Contract, and shall further expressly state that upon any such assumption by the City, and provided further that the Padres are released from all obligations with respect to the period after the effective date of the assumption. The foregoing rights of termination or assignment shall not, however, extend to any contracts for naming rights, advertising or sponsorships, the rights to which shall remain with the Padres, albeit



subject to judicial process to a like extent as any other unpledged asset which may now or hereafter be owned by the Padres.

19.3.5 No termination of any or all of the Padres' rights under this Agreement shall deprive the City of any of its remedies or actions against the Padres for past or future rent or other sums due from the Padres hereunder, nor shall the bringing of any action for rent or other sums or other Padres Default be construed as a waiver of the right to obtain possession of the Ballpark Property.

19.3.6 The City may exercise any of its other remedies hereunder without exercise of its right to terminate hereunder. No action on the part of the City shall be deemed to be a termination of this Agreement unless expressly stated by the City to be intended to be a termination.

19.4 Default by City. The occurrence of any one or more of the following events constitutes a default by the City under this Agreement (a "City Default"):

19.4.1 Failure by the City to pay any material sums payable by the City to or on behalf of the Padres hereunder if such failure continues for more than twenty (20) days after notice from the Padres that any such payment is past due.

19.4.2 Failure of the City to observe or perform any other material covenant, agreement, condition or provision of this Agreement if such failure continues for more than thirty (30) days after notice of such failure is given to the City by the Padres; provided, however, that the City shall not

be in default with respect to matters that cannot be reasonably cured within thirty (30) days, so long as the City has promptly commenced such cure and diligently proceeds in a reasonable manner to complete the same thereafter.

19.4.3 A trustee or receiver is appointed for the City or for a significant part of its property and is not discharged within ninety (90) days after such appointment.

19.4.4 Bankruptcy, reorganization, receivership, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any federal or state bankruptcy law, or similar law for the relief of debtors, are instituted by or against the City, and, if instituted against the City, are allowed against it or are consented to by it or are not dismissed within ninety (90) days after such institution.

19.5 Padres' Remedies. If a City Default occurs, in addition to other rights or remedies the Padres may have at law or equity, the Padres shall have the following rights:

19.5.1 The Padres may enforce the provisions of this Agreement and may enforce and protect the rights of the Padres hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of monetary damages (including consequential damages) and all moneys due or accrued or accruing and not yet paid from the City under any of the provisions of this Agreement,

all California statutory remedies, or any other relief or remedies to the extent permitted by law, by filing a cause of action or actions for such damages, equitable relief, of other appropriate remedies or relief from the City in any court of competent jurisdiction.

19.5.2 After the time when the Padres have given notice and any applicable cure period has expired, if any sums payable by the City shall remain due and payable, or after the time for performance by the City of any other term, covenant, provision or condition of this Agreement (the result of which failure the Padres reasonably believe will have a Materially Adverse Effect), or before the expiration of that time in the event of a bona fide emergency (in which case the Padres shall only be required to give such notice as is reasonable and practical under the circumstances), the Padres may, at the Padres' election (but without obligation), make any payment required of the City under this Agreement, or perform or comply with any covenant or condition imposed on the City under this Agreement, as the Padres deem advisable. The Padres shall be reimbursed for all Reimbursable Costs. If the Padres deliver written notice to the City that the Padres desire reimbursement for Reimbursable Costs, then the City shall pay to the Padres the amount of all Reimbursable Costs set forth in such notice within thirty (30) days after the City's receipt of such notice.

19.5.3 No payment to the Padres of Reimbursable Costs, or performance by the Padres of any obligation of the City hereunder shall constitute a waiver of default or of any remedy for default.

19.5.4 No termination of any or all of the City's rights under this Agreement shall deprive the Padres of any of their remedies or actions against the City for sums due from the City hereunder.

19.5.5 Upon the occurrence of a second uncured material City Default of material covenants under this Agreement within a single calendar year, the Padres may at their discretion terminate this Agreement.

19.6 Rights of Set-Off; Phase I Hotel Set-Off

19.6.1 Upon any breach of this Agreement by either the City or the Padres, the non-breaching party may set-off such damages as it reasonably determines was sustained, against such payments as the non-breaching party owes or will owe to the other party under this Agreement (including, without limitation, the City Share of Joint Ballpark Ownership Expenses, Incremental Ballpark Expenses associated with City Events and Rent payable by the Padres). Notwithstanding the foregoing, (a) the Padres shall have no set-off right against City Event and 70/30 Event revenues, (b) the City shall not have the right to effect a set-off as a consequence of a failure of the Padres to complete the Phase I Hotels except pursuant to Section 19.6.2, and (c) nothing in this Section 19.6.1 is intended to exculpate a party for damages suffered by the other party (including

interest at the Default Rate) in the event that it affirmatively is determined by a court or arbiter, as provided herein, that the first party wrongfully effected a set-off under this Section 19.6.1 or Section 19.6.2.

19.6.2 The parties further acknowledge and agree that under Section XXXI.A of the MOU, the Padres agreed to cause the development of certain hotel improvements within Phase I by March 31, 2002. By letter dated March 30, 1999 from the Padres to the City contemplated by Section XXXI.A. of the MOU, the Padres agreed that unless otherwise agreed by the City, these hotel improvements would consist of a 500-room "Ballpark" hotel (tentatively planned to be located on or about Parcel F of the map attached hereto as Exhibit K), a 200-room "AmeriSuites" (or similarly branded) hotel (tentatively planned to be located on or about Parcel G on the map attached hereto as Exhibit K) and a 150-room "Boutique" hotel (tentatively planned to be located on or about Parcel B on the map attached hereto as Exhibit K). These three hotel projects sometimes are referred to herein as the "Phase I Hotels." Under the terms of the MOU, the Padres' obligation to cause the development of the number of rooms planned for inclusion in the Phase I Hotels is subject to credit, in accordance with the MOU, for any hotel rooms developed in any Substitute Ancillary Development ("Hotel Credit"). In order to provide the City with enhanced assurance as to the performance by the Padres of these agreements, the parties agree as follows: if any of the Phase I Hotels

is not complete (as evidenced by a certificate of occupancy) by the date (the "Phase I Hotel Setoff Trigger Date") which is six months after the Commencement Date, then the City shall be entitled to a setoff against the City's obligation hereunder to pay its City Share of Joint Ballpark Expenses for such Fiscal Year and any subsequent Fiscal Year in accordance with this paragraph 19.6.2. The setoff shall be calculated on a hotel by hotel basis, and the amount of the setoff for each respective Phase I Hotel for a given Fiscal Year shall be the highest amount of Transient Occupancy Tax revenue projected for such Phase I Hotel for such Fiscal Year as set forth in Exhibit M attached hereto; provided, however, that:

- (a) no setoff shall be provided for a particular Phase I Hotel for any Fiscal Year if a certificate of occupancy has been issued for that Phase I Hotel prior to the start of said Fiscal Year;
- (b) the Transient Occupancy Tax projected on Exhibit M for any particular period shall be abated for purposes of this calculation on a prorata daily basis for the number of days in that Fiscal Year from and after the day, if any, in such Fiscal Year upon which a certificate of occupancy is issued for that Phase I Hotel;
- (c) for the Fiscal Year which contains the Phase I Hotel Setoff Trigger Date (and for any prior Fiscal Year, if applicable), the calculation of the setoff for each respective Phase I Hotel shall exclude any

projected Transient Occupancy Tax attributable to any period prior to the Phase I Hotel Setoff Trigger Date;

- (d) if the Padres are entitled to a Hotel Credit for any particular Phase I Hotel in a Fiscal Year, the amount of the setoff for such Phase I Hotel, as calculated above, shall be reduced by the amount of Transient Occupancy Tax generated by any hotel rooms that constitute the Hotel Credit, but the amount of such reduction shall be limited to the portion of said Transient Occupancy Tax generated during the portion of said Fiscal Year, if any, that precedes the issuance of a certificate of occupancy for said Phase I Hotel; and
- (e) any setoff called for by this paragraph 19.6.2 shall be reduced to the extent necessary to assure that the setoff does not result in any Bonds becoming taxable for federal income tax purposes.

19.7 Remedies Not Exclusive. No right or remedy herein conferred upon, or reserved to the City or the Padres is intended to be exclusive of any other right or remedy, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law, or in equity or by statute.

19.8 Default Interest. In the event that the City fails or the Padres fail to pay any payment required hereunder when due, then, without limiting any other rights of the other party, the failing party shall be liable for and shall pay to the other party, interest thereon at the Default Interest Rate.

ARTICLE 20

PROTECTION OF THE PADRES' RIGHTS

The City covenants that if, and so long as, the Padres are not in material default of their material obligations under this Agreement beyond any applicable cure periods set forth in this Agreement, the Padres shall be entitled to utilize and exercise the Padres' rights under this Agreement during the Term without hindrance or interference by the City or by any other Person lawfully claiming the same by, through, or under the City, subject to the covenants, agreements, terms, provisions and conditions of this Agreement and all Laws.

ARTICLE 21

RIGHT OF ENTRY

Notwithstanding any other provision of this Agreement, the City and its agents and representatives, with notice to the Padres, shall have reasonable rights of access and entry into and upon the Ballpark Property during the Term for any valid purpose, provided any such entry does not unreasonably interfere with the Padres' operations. The City shall comply with all security provisions regarding access to the Ballpark Property. The Padres shall, as part of such security provisions, provide for City access and shall cooperate fully with the City in its entry into and upon the Ballpark Property.

ARTICLE 22

SUBORDINATION AND ATTORNMENT

22.1 Subordination. This Agreement is subject and subordinate to all Laws (including applicable licenses, permits and certificates of occupancy), and all provisions of the Ballpark Facility Lease and Site Lease, and to all covenants, conditions, declarations,

encroachments, restrictions, reservations, rights, rights of way and easements of record as of the Effective Date. The Padres and the City shall subordinate this Agreement and their respective rights hereunder to the Outfield Park CCRs.

22.2 Attornment.

22.2.1 The Padres agree that in the event the City transfers its ownership interest in the City Property, the Padres will pay to such transferor all Rent subsequently payable hereunder. Further, the Padres agree that in the event the City transfers its interest in the City Property, then the Padres will attorn to such transferee and will recognize such purchaser or other transferee as the City under this Agreement, provided however that the City's obligations under paragraphs 7.6.2 and 8.4.2 and Section 28.7 shall continue to be obligations of the City for the remainder of the Term. Any attornment to a purchaser or transferee pursuant to this Section shall occur automatically, but the Padres shall on request by and without cost to the City or any purchaser or transferee execute, acknowledge and deliver any instruments evidencing such attornment; provided, however, that such attornment shall be not be effective unless and until such purchaser or transferee shall agree with the Padres in writing that the Padres' possession of the City Property and the rights and privileges under this Agreement shall not be impaired or disturbed on account of any such transfer.



22.2.2 The City agrees that it shall cause the Recognition and Attornment Agreements to be executed and delivered on or before the Effective Date.

ARTICLE 23

UNTENANTABILITY

23.1 Alternate Site. If the Ballpark Property is rendered unusable for its intended purpose ("Untenantable") in whole or in any material part (as defined in paragraph 24.1.1), then for the period of such Untenantability, the Padres shall be entitled to hold Home Games at an alternate site located within the City and County of San Diego unless no alternate site mutually agreed upon by both parties to be reasonably acceptable is available within the City and County of San Diego, in which case such alternate site may be located outside the City and County of San Diego. Notwithstanding any provisions herein to the contrary, any such period of Untenantability shall not give the Padres any right to terminate this Agreement, unless: (a) the Ballpark Property is rendered Untenantable in whole or in any material part (as defined in paragraph 23.1(a)) within the last five (5) years of the Term and a new agreement or extension of this Agreement for at least an additional five (5) years has not been entered into with the Padres or their successors in interest; (b) the City in its sole discretion determines that there is no financially feasible plan to reconstruct the Ballpark Property to meet the standards of a First-Class Facility and to complete such reconstruction within three (3) years after the date the Ballpark Property is declared Untenantable; or (c) the City fails within six (6) months after the commencement of the period of Untenantability

to commit to the reconstruction of the Ballpark Property to meet the standards of a First-Class Facility, or so commits but thereafter fails to continually and diligently pursue such reconstruction efforts.

23.2 Continuing Obligations. Any period of Untenantability shall not relieve the Padres of any of its necessary Ballpark Management obligations hereunder insofar as the same are reasonably and mutually agreed upon by the parties.

23.3 Rebuilding Obligations.

23.3.1 If the Ballpark Property is damaged or destroyed by a casualty covered by any insurance policy required hereunder, and proceeds to replace the damaged or destroyed Ballpark Property are paid under such insurance policy after, such insurance proceeds as are paid under a policy required by the Bond Documents shall be administered by the Trustee in accordance with the terms of the Bond Documents. Proceeds from any other insurance policy shall be deposited into an account, jointly in the names of the City and the Padres, established for the payment of costs to repair such damage or destruction in accordance with the Lease and the Indenture (the "Restoration Account"). Net Proceeds of any insurance claim (other than claims under any business interruption insurance policy) payable to the City or the PFFA shall be applied pursuant to the Lease and the Indenture. The Padres shall rebuild all damaged or destroyed portions of the Ballpark Property, to the extent such insurance proceeds are made to the Padres sufficient to effectuate such rebuilding. To the extent such

insurance proceeds made available to the Padres are insufficient to cover the costs of any repair, restoration or replacement of any Damaged Property, then such costs shall be allocated as may be mutually agreed by the parties at that time. In the event that the Bond Documents require the City to use the proceeds of insurance to rebuild or repair the City Property, the Padres shall use their proceeds to rebuild or repair Padres Property.

23.3.2 To the extent the Ballpark Property is not rebuilt following damage or destruction thereof, all insurance proceeds in the Restoration Account shall be distributed in accordance with the Indenture.

ARTICLE 24

EMINENT DOMAIN

24.1 Termination for Condemnation.

24.1.1 In the event that any material part of the Ballpark Property shall at any time during the Term be taken by exercise of the power of eminent domain ("Condemnation"), whether by formal condemnation proceedings or by purchase under threat of exercise of the power of eminent domain proceedings, this Agreement shall terminate on the date on which possession is required to be delivered to the condemning authority. As used herein, a "material part" shall mean any loss of Ballpark Property seating in excess of a number of seats having a face ticket price equal to 10% or more of the aggregate face ticket price of all seats in the Ballpark Property, or a loss of any material portion of the Ballpark Property.

24.1.2 Notwithstanding paragraph 24.1.1, the Padres may elect in the Padres' sole discretion to treat any loss as not a "material part" of the City Property, and this Agreement will not terminate upon such Condemnation. The Padres must make any such election in a writing delivered to the City within sixty (60) days after an award of immediate possession of the condemned portion of the City Property to the condemning authority. If this Agreement terminates pursuant to the provisions of paragraph 24.1.1, all rights, obligations and liabilities of the parties hereto shall end as of the effective date of such termination, without prejudice to any rights which have accrued prior to such termination.

24.2 Performance of Work. If there shall be a Condemnation and this Agreement shall not terminate as a result thereof in accordance with the provisions of Section 24.1, the Padres shall endeavor to perform any and all work necessary to restore the Ballpark Property to a complete architectural unit suitable for the Padres' use in as expeditious a manner as possible, with the costs of such restoration to be borne as agreed to by the City and the Padres; provided, however that the Padres shall have no obligation to perform such restoration unless and until an agreement regarding costs is reached.

24.3 Use of Condemnation Award or Settlement Proceeds. All proceeds of any condemnation award or settlement shall be applied as set forth in Article VI of the Indenture.

24.4 Temporary Taking.

24.4.1 In the event of any temporary taking of the City Property or any portion thereof for public use, this Agreement shall not terminate by reason thereof, and the rights and obligations of the parties shall continue in full force and effect as provided herein except, that during any period of a temporary taking of the Ballpark Property or a material part thereof (as defined in paragraph 24.1.1): (i) the Padres shall be entitled to hold its Home Games at an alternate site located within the City and County of San Diego unless no reasonably acceptable alternate site is available within the City and County of San Diego, in which case such alternate site may be located outside the City and County of San Diego, and (ii) the Padres shall be relieved of the Padres' Ballpark Management responsibilities (including costs) to the extent such management responsibilities are inconsistent with the terms of the taking.

24.4.2 The Padres shall be entitled to make a separate claim against the condemning body for an award of any damages sustained by it as a result of such temporary taking.

ARTICLE 25

SURRENDER AND ABANDONMENT

25.1 Surrender. Upon the expiration of the Term or earlier termination of this Agreement for any reason, the Padres shall peaceably deliver up and surrender the Ballpark Property to the City in good order, Maintenance, and Repair, ordinary wear and

tear excepted (to the extent consistent with maintaining a First-Class Facility). The Padres shall surrender to the City all keys for the Ballpark Property at the place then fixed for the receipt of notice by the City, and shall notify the City in writing of all combinations of locks, safes and vaults, if any. The Padres' obligations to observe and perform the covenants set forth in this Article 25 shall survive the expiration of the Term or earlier termination of this Agreement for any reason.

25.2 Abandonment. The Padres shall not vacate or abandon the Ballpark Property at any time during the Term. If the Padres so vacate or abandon the Ballpark Property or are dispossessed of the Ballpark Property by process of law, then all remedies available to the parties shall be those provided in Article 19.

ARTICLE 26

REPRESENTATIONS BY THE PADRES

The Padres represent and warrant as follows, as of the date hereof:

26.1 Valid Existence. The Padres are a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware, and are in good standing under the laws of the State of California. The Padres have full partnership power to own the Padres Property and conduct their business as presently conducted.

26.2 Power; No Limitation on Ability to Perform. The Padres have full partnership power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and provisions of this Agreement, and all transactions contemplated hereby, to the extent required to be carried out or performed by the Padres. Assuming the Padres obtain the consent of the Office of the Commissioner of Major League Baseball,

and the National League, if such consent is required, neither the Padres' partnership agreement or certificate of limited partnership, nor any rule, policy, constitution, by-law or agreement of the National League or the Office of the Commissioner of Baseball, nor any other agreement, applicable Law or other rule in any way prohibits, limits or otherwise affects the right or power of the Padres to enter into and perform all of the terms and provisions of this Agreement and all transactions contemplated hereby.

Neither the Padres, any of its partners (general or limited), nor any owners of partnership interests in any of the Padres' partners (general or limited) are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of (except the approval(s) of the National League and the Office of the Commissioner of Baseball), or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by the Padres of this Agreement or any of the transactions contemplated hereby.

26.3 Valid Execution. The execution and delivery of this Agreement by the Padres have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of the Padres, enforceable against the Padres in accordance with its terms. Upon execution and delivery of this Agreement, the Padres shall provide to the City a written resolution of the Padres' partners authorizing the execution of this Agreement. Promptly after the execution of this Agreement, the Padres shall seek the written approval from the National League and the Office of the

Commissioner of Baseball approving the execution, delivery and performance by the Padres of this Agreement and the transactions contemplated hereby.

26.4 Defaults. The execution, delivery and performance of this Agreement (a) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (i) any agreement, document or instrument to which the Padres is a party or by which the Padres' assets may be bound or affected, (ii) any Law applicable to the Padres, or (iii) the partnership agreement or certificate of limited partnership of the Padres, and (b) do not and will not result in the creation or imposition of any Lien upon the assets of the Padres.

26.5 Team Ownership. The Padres own the Team as of the date hereof.

26.6 Compliance With Laws. The Padres are in compliance with all Laws applicable to the Padres' use of the Ballpark Property.

26.7 Maintenance of Good Standing in League. The Padres are the owner of the Franchise, through which the Team is authorized to play Major League Baseball within the boundaries of the City, and the Padres and the Franchise are in good standing with the National League and the Office of the Commissioner of Baseball.

ARTICLE 27

REPRESENTATIONS BY THE CITY

The City represents and warrants as follows, as of the date hereof:

27.1 Valid Existence. The City is a corporate body and a political subdivision of the State of California.

27.2 Power; No Limitation on Ability to Perform. The City has the power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and provisions of this Agreement, and all transactions contemplated hereby, to the extent required to be carried out or performed by the City. The City is not bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same.

27.3 Valid Execution. The execution and delivery of this Agreement by the City has been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms. Upon execution hereof, the City shall provide to the Padres an ordinance or resolution of the City, as applicable, authorizing the execution and delivery of this Agreement and the transactions contemplated hereby.

27.4 Defaults. The execution, delivery and performance of this Agreement (a) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (i) any agreement, document or instrument to which the City is a party or by which the City's assets may be bound or affected, or (ii) any Law applicable to the City, and (b) do not and will not result in the creation or imposition of any Lien upon the assets of the City.

ARTICLE 28

MISCELLANEOUS

28.1 Arbitration.

28.1.1 Notwithstanding any other provision to the contrary in this Agreement, the arbitration procedures set forth in this Section 28.1 shall be the binding means for resolving disputes between the Padres and the City regarding (i) whether any Repair is necessary to maintain the Repair Standard, (ii) whether any proposed repair is unnecessary to maintain the Repair Standard, (iii) whether a proposed Repair is a Capital Expenditure, (iv) the matters related to Ballpark Management described in Section 7.1, (v) disbursements from the Capital Expenditure Reserve Fund described under Section 8.9, (vi) matters related to termination under Section 19.3, and (vii) any other matter that is expressly made subject to the binding arbitration process described in this Section 28.1 (each a "Dispute").

28.1.2 If either the City or the Padres submit a Dispute to binding arbitration in accordance with Section 7.1 or Section 8.9, then such arbitration shall be limited to resolving the Dispute and any procedural or evidentiary issues that may arise in attempting to resolve the Dispute.

28.1.3 Upon the occurrence of a Dispute, either the City or the Padres may commence arbitration proceedings set forth in this Section 28.1 by written demand to the other party with a copy to the American Arbitration Association ("AAA"). AAA shall provide to the parties, within fifteen (15) days after such demand, a list containing five (5) potential qualified and available arbiters. To be qualified, an arbiter must have at least ten (10) years of substantial experience in professional sports facilities



management or real estate development and finance matters, as appropriate, and have no prior business or professional relationship with the City or the Padres. To be available, an arbiter must generally be available to conduct the arbitration within the fifteen (15)-day period following selection of the arbiter. The parties, beginning with the Padres, shall each strike from such list one name in turn until only one (1) name remains. If it is one party's turn and that party does not strike a name within three (3) Business Days, then that turn is forfeited, and the other party shall be permitted to: (A) strike a name on behalf of the forfeiting party, and (B) strike a name on its own behalf pursuant to its regular turn. When only one (1) name remains, the remaining individual shall be the single arbiter.

28.1.4 In respect of any arbitration conducted pursuant to this Section 28.1:

- (a) the arbitration shall occur in San Diego, California;
- (b) the arbitration shall be governed by the laws of the State of California and shall be conducted in accordance with the Commercial Arbitration Rules of AAA;
- (c) the arbiter shall not discuss the arbitration or any part thereof with any of the parties ex parte;
- (d) the prevailing party shall be entitled to arbitration costs and reasonable attorneys' fees incurred by such party in connection with such arbitration proceedings. The "prevailing party" shall be

the party whose major arguments or positions taken in the proceeding could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues, in the final decision of the arbiter;

- (e) the arbitration shall be commenced within thirty (30) days after the selection of the arbiter;
- (f) the arbiter shall express its decision in a writing delivered to both parties, within ten (10) days after the close of the presentation of evidence by both parties to the arbitration, which writing shall explain the reasons for the decision; and
- (g) there shall be no right to appeal from the final decision of the arbiter in any arbitration conducted hereunder, except on those grounds as may be set forth under applicable California law.

28.1.5 Judgment upon any decision rendered by an arbiter pursuant to an arbitration under this Section 28.1 may be entered in any court having jurisdiction pursuant to Section 28.27 and enforced in the manner judgments of said court are normally enforced.

28.2 No Smoking Ballpark. The Ballpark shall be operated as a "No Smoking Ballpark" in accordance with applicable City ordinances.

28.3 Fireworks.

28.3.1 For Major League Baseball Games and Padres-Sponsored Baseball Events, the Padres shall be permitted to utilize the Ballpark Property for

fireworks and other pyrotechnic (i.e. concussion) displays, subject to the following limitations:

- (a) No more than three 30-minute and ten 10-minute fireworks and other pyrotechnic displays shall occur during any single Major League Baseball Season;
- (b) Fireworks and other pyrotechnic displays may occur only on Opening Day, the last day of the Major League Baseball Season, Friday and Saturday evenings, Memorial Day, Independence Day, Labor Day, one Mexican national holiday, playoff games, World Series games and All-Star games;
- (c) Theatrical fireworks displays of no more than thirty (30) seconds' duration will be allowed following home-team victories and home runs at each baseball event; and
- (d) All fireworks and other pyrotechnic displays must comply with all applicable City ordinances and Laws.

28.3.2 For non-Padres Games and Events, fireworks and other pyrotechnic displays shall require the consent of both parties and shall be subject to applicable City ordinances and Laws.

28.4 Affordable Family Baseball Programs. The Padres will make every reasonable effort to keep Major League Baseball an affordable family recreation activity at the Ballpark Property and will provide attractive and meaningful programs designed to keep Major League Baseball affordable for families in San Diego, including providing senior,

military and children discount programs during each year of the Padres' occupancy of the Ballpark Property.

28.5 Audit Rights.

28.5.1 Throughout the Term of this Agreement, at the City's cost and expense (except as otherwise set forth below in this Section 28.5), the City shall have the right, at the Padres Offices at the Ballpark Property or at some other location agreed upon by the parties, upon reasonable notice, to review and audit all books, records and data of the Padres and their Affiliates, and all books, records and data of contractors and subcontractors to which the Padres themselves have access, which relate to any computation or report contemplated by this Agreement or are otherwise pertinent to this Agreement. Such books, records and data shall be retained by the Padres for at least three (3) years after the end of the Fiscal Year to which they relate, including the last Fiscal Year of the Term of this Agreement.

28.5.2 Such a City review or audit may be performed by the City's internal staff or by advisors or an independent certified public accounting firm. The results from such a City review or audit shall be definitive and binding on both the City and the Padres (an "Audit"), provided that the Padres shall have the right to appeal any determination of the City's internal audit review to the City Council, in which case the City Council's determination shall be binding.

28.5.3 Any review or audit related to this Agreement must be conducted in such a manner as to preserve all proprietary and confidential information, in all books, records and data of the Padres, their contractors and subcontractors, to the maximum extent permitted by Law, as more particularly provided in Section 28.12 below.

28.5.4 If, as a result of an Audit, or mutual agreement between the parties, or decision by a court of competent jurisdiction, a determination is made that the amount set forth in any Reconciliation or in any certificate delivered to the City under this Agreement is erroneous and that such error resulted in an overpayment by the City to the Padres or an underpayment by the Padres to the City, then:

- (a) the Padres shall promptly (and in any event within thirty (30) Business Days after the determination) remit payment to the City of the amount so overpaid or underpaid, plus interest thereon at the Default Interest Rate; and
- (b) if the amount so overpaid or underpaid (i) is at least \$50,000 (adjusted upward at the end of the fifth Fiscal Year included in the Term, and on every fifth Fiscal Year thereafter during the Term, but never downward, by the amount of the percentage increase, if any, in the CPI for the period which includes January 1 of the Fiscal Year for which the adjustment is then being made over the CPI for the period which includes January 1 of the Fiscal Year five

(5) years earlier), (ii) constitutes more than twice the amount of the out-of-pocket costs incurred by the City in reviewing the Padres' books and records and assuring such errors are corrected (the "City Audit Costs"), and (iii) constitutes more than five percent (5%) of the amount actually payable, then in such a case, the Padres shall also promptly reimburse to the City all City Audit Costs incurred in connection with the determination of the amount so overpaid or underpaid.

28.6 Naming Rights. The Padres shall have the exclusive right to solicit for and enter into agreements granting Persons rights to have a name or names associated with all or any portion of the Ballpark Property ("Naming Rights"), on the condition that: (a) the Padres' right to so solicit and enter into any such agreement, and the Naming Rights granted to any Person shall not extend beyond the Term; (b) the City may elect that any such agreement or Naming Right is not terminable by the City upon default by the Padres under this Agreement; and (c) each name associated with all or any portion of the Ballpark Property shall be tasteful and not be a cause for embarrassment to the City. To confirm the City's approval as to tastefulness and non-embarrassment, prior to entering into any such agreement the Padres shall obtain the City's written consent to such name, which consent will not be unreasonably withheld or delayed. The Padres shall cause all such agreements and grants of Naming Rights to be subject to the terms and conditions of this Agreement and the City's rights with respect thereto under this Agreement. The

Padres shall be entitled to retain all funds derived before or during the Term from the sale of Naming Rights.

28.7 Limitation on New Taxes. For the duration of the Term, if the City imposes, either directly or indirectly, any new or increased taxes, fees or assessments against the Padres with respect to the Ballpark Property (such as new or increased admission, ticket or entertainment taxes, sales taxes on admissions or tickets, parking taxes, transportation taxes or assessments, utility taxes, facility benefit assessments, possessory interest taxes or personal property taxes) above and beyond those already required to be paid under or already established by existing law as of August 4, 1998, then the Padres shall receive full credit for the amounts of such new or increased taxes, fees or assessments paid by the Padres against sums otherwise owed to the City under this Agreement or any Development Agreement or Disposition and Development Agreement between the City and the Padres, if any (or other consideration in the event such sums are not sufficient to offset the required credit). The previous sentence shall not apply to (a) any new or increased taxes, fees or assessments already required to be paid under or already established by existing law as of August 4, 1998; (b) any assessments imposed pursuant to a favorable vote of taxpayers or property owners within an assessment district including the Ballpark Property, in which the Padres participate as a voter with respect to the Ballpark Property; and (c) any new or increased taxes, fees or assessments which are "generally applicable." In order to qualify as "generally applicable," a new or increased tax, fee or assessment (1) must apply City-wide; (2) must be payable by a substantial

number of taxpayers in addition to the Padres; and (3) must not be an admission, ticket, entertainment or similar tax, fee or assessment.

28.8 Possessory Interest Taxes. The use and occupancy of the Ballpark Property may create possessory interests subject to taxation by the State of California. The City, Agency, CCDC and PFFA shall have no liability for such possessory interest taxes. All such possessory interest taxes shall be the sole responsibility of the Padres (and shall not be considered Joint Ballpark Ownership Expenses).

28.9 Drafting of Agreement. No ambiguity contained in this Agreement shall be construed against either the City or the Padres because the City and the Padres have jointly participated in the drafting of this Agreement and neither, considered alone, can be considered as its drafter.

28.10 Material Adverse Effect. The Padres will comply in all material respects with the Padres' covenants set forth in this Agreement regarding actions by the Padres which the City reasonably believes would have a Material Adverse Effect upon the City.

28.11 Proprietary or Confidential Information. Unless specifically asserted by the Padres to the contrary, the City may assume that all books, records and data provided by the Padres to the City pursuant to this Agreement do not contain proprietary or confidential information, and, accordingly, that such books, records and data may be copied or excerpted by the City at its cost and expense (except as otherwise set forth below in this Agreement). If the Padres do assert, however, that specifically identified books, records or data provided by the Padres to the City contain proprietary or confidential information, then the City and the Padres shall mutually and reasonably

agree on a procedure by which (i) the City may nevertheless review or audit all such information as may be pertinent to this Agreement, but (ii) by limitation upon the City's right to copy or excerpt such books, records or data, or in other ways reasonably approved by the parties and their counsel, the proprietary or confidential nature thereof may be preserved to the maximum extent permitted by Law.

28.12 No Waiver. No waiver by either the City or the Padres of any breach of obligations, agreements, or covenants herein shall be a waiver of any subsequent breach of any obligation, agreement or covenant, nor shall any forbearance by either the City or the Padres to seek a remedy for any breach by the other party be a waiver by such party of any rights or remedies with respect to such or any subsequent breach, nor shall any express waiver by either the City or the Padres be deemed to apply to any other existing or subsequent right to remedy any default by the other party, nor shall any waiver by either party of any default or breach by the other party in the performance of any of the covenants or obligations of such other party under this Agreement be deemed to have been made by the party against which the waiver is sought to be charged unless contained in a writing executed by such party.

28.13 No Joint Venture. Nothing in this Agreement shall be construed as creating a joint venture or partnership between the City and the Padres. To the extent that the Padres perform Ballpark Management activities hereunder, the Padres shall be an independent contractor of the City.

28.14 Statement of Performance. Each party shall, within 10 days after the request therefor by the other party, deliver to the other party a statement certifying that this



Agreement is in full force and effect, that this Agreement is unmodified, or if modified, stating any such modifications, that there are no defenses or offsets to the Agreement, or stating such defenses or offsets as are claimed, that there are no defaults hereunder, or specifying any defaults that are alleged, and specifying any further reasonable information about this Agreement, the City Property or the Padres Property that may reasonably be requested.

28.15 Notices. Any notice to be given to any party pursuant to any provision of this Agreement shall be in writing, shall be (i) hand delivered to such party, (ii) sent by telecopy to the telecopy number for such party listed below, (iii) sent by Federal Express or other nationally-recognized overnight courier service to the address of such party set forth below, or (iv) sent by or as an attachment to electronic mail (with acknowledgment of receipt) and, if hand delivered, shall be deemed received when delivered, if telecopied, shall be deemed received upon confirmation of receipt either telephonically or by facsimile, and if sent by Federal Express or other nationally-recognized overnight courier service, shall be deemed received one Business Day after having been deposited with Federal Express or other nationally-recognized overnight courier service if designated for next day delivery, and if sent by or as attachment to electronic mail, shall be deemed received upon acknowledgment of receipt. Notices shall be addressed as follows:

For the City: City Manager
 202 "C" Street, Mail Station 9A
 San Diego, California 92101
 Telecopy ()
 e-mail:



with a copy to:

City Attorney
1200 Third Avenue, Suite 1620
San Diego, California 92101
Telecopy ()
e-mail:

For the Padres: President & Chief Executive Officer San Diego Padres
8880 Rio San Diego Drive, Suite 400
San Diego, California 92108
P.O. Box 122000
San Diego, California 92112
Telecopy ()
e-mail:

with a copy to:

San Diego Padres
8880 Rio San Diego Drive, Suite 400
San Diego, California 92108
P.O. Box 122000
San Diego, California 92112
Telecopy ()
e-mail:

Any party, by notice given as provided above, may change the address or telecopy number or e-mail address to which future notices shall be sent.

28.16 Designated Agents. The City Manager shall designate a member of his staff to be the primary contact person for the Padres with respect to the Ballpark Property and who is authorized to deal with the Padres on all matters relating to this Agreement. The Padres shall designate an executive officer to be the primary contact for the City with respect to the Ballpark Property and who is authorized to deal with the City on all matters relating to this Agreement.



28.17 Assignment. The City shall consent in writing to an assignment of this Agreement to any Person who acquires the entire ownership interest in the Franchise now held by the Padres in accordance with applicable rules and regulations of the National League and the Office of the Commissioner of Baseball, and subject to the prior compliance with all the provisions of this Agreement, including the provisions of Article 12; provided, that such assignee has delivered to the City a written agreement, in form and content reasonably acceptable to the City, whereby such assignee assumes unconditionally all of the Padres' obligations hereunder for the balance of the Term and agrees to be bound hereby. Upon the effective date of any such assignment, provided the City has received from the assignee the written assumption of obligations referred to in the previous sentence in form and substance reasonably acceptable to the City, the Padres shall have no further liability hereunder for any obligations, acts or omissions relating to the period from the effective date of such assignment to the end of the Term. While the Padres are undertaking the management responsibilities set forth in this Agreement as a principal with an ownership interest in the Ballpark Property, and are providing access and services to licensees rather than leases or rentals to tenants of the Ballpark Property, nevertheless if either party concludes that any of the activities described in this Agreement should be performed by the holder of any real estate broker's license, the other party, upon request, shall cooperate in effecting an assignment to an appropriately licensed Affiliate, *nunc pro tunc*, and this Agreement shall remain in full force and effect. Except as provided in this Section 28.17, neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party.



28.18 Successors and Assigns. Subject to the provisions of Section 28.17, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

28.19 Authorized City Representative. Any action to be taken by the City hereunder may be taken by the City Manager or his or her designee, unless the City Manager elects otherwise or applicable law requires otherwise.

28.20 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person other than the parties hereto, CCDC, the Agency and PFFA and their respective successors and permitted assigns.

28.21 Costs of Legal Proceedings. If any party institutes legal proceedings with respect to this Agreement, including any arbitration proceedings as set forth in Section 28.1, the prevailing party shall be entitled to court costs and reasonable attorneys' fees incurred by such party in connection with such proceedings. The "prevailing party" shall be the party whose major arguments or positions taken in the legal proceeding could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues, in the final decision of the arbitrator(s), court or appellate court.

28.22 Entire Agreement. This Agreement, together with the Exhibits attached hereto, represents the entire agreement between the parties hereto with respect to the specific subject matter hereof, and all prior agreements, understandings or negotiations shall be deemed merged herein. If any provision of this Agreement is found to be ambiguous, however, the MOU may be of assistance in the interpretation of that ambiguity. Without limiting the foregoing, this Agreement shall not be deemed to supersede provisions of the



MOU that address subject matter not addressed herein. No representations, warranties, promises or agreements, express or implied, shall exist between the parties, except as stated herein.

28.23 Amendments. No amendments or modifications to this Agreement shall be made or deemed to have been made unless in writing executed and delivered by the party to be bound thereby.

28.24 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any Person or circumstances shall be held to be invalid or unenforceable, then the remainder of this Agreement and the application of such term, provision, condition or covenant or to Persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, provision, condition and covenant of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

28.25 Headings and Captions for Convenience. The headings and captions and contained in this Agreement are for convenience only and shall not be considered in interpreting the provisions hereof.

28.26 Exhibits Incorporated. All exhibits referred to in this Agreement shall be deemed incorporated in this Agreement by reference.

28.27 Submission to Jurisdiction. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY DOCUMENT RELATED HERETO MAY BE BROUGHT IN THE COURTS OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO OR ANY COURT OF THE UNITED STATES OF



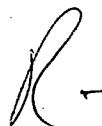
AMERICA FOR THE SOUTHERN DISTRICT OF CALIFORNIA, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF SUCH COURTS. THE PARTIES IRREVOCABLY WAIVE ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH ANY OF THEM MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF SUCH COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO EACH OF THE OTHER PARTIES AT ITS ADDRESS PROVIDED HEREIN, SUCH SERVICE TO BECOME EFFECTIVE THIRTY (30) DAYS AFTER SUCH MAILING.

28.28 Further Assurances. Each party shall from time to time, at the request of any other party, execute and deliver to such other party such documents and instruments and take such other actions as such other party may reasonably request, in order to more effectively consummate the transactions contemplated hereby.

28.29 Governing Law. This Agreement shall be interpreted and enforced according to the laws of the State of California.

28.30 Time is of the Essence. Time is of the essence in respect of each and every covenant and each and every condition in this Agreement.

28.31 Counterparts and Facsimile Delivery. This Agreement may be executed in two counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument. Execution copies of this Agreement may be delivered by facsimile and the parties hereto agree to accept and be bound by facsimile signatures hereto. The signature of any party thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of any party, any facsimile or telecopy document shall be re-executed in original form by the parties who executed the facsimile or telecopy document. No party may raise the use of a facsimile machine or telecopier or the fact that any signature was transmitted through the use of a facsimile or telecopier machine as a defense to the enforcement of this Agreement or any amendment or other document executed in compliance with this Section. This Agreement shall not become effective unless executed by the City on or before February 4, 2000.

A handwritten signature in black ink, appearing to be a stylized 'R' followed by a horizontal line.

IN WITNESS WHEREOF, the City and the Padres have executed this Agreement as of the date first above written.

THE CITY OF SAN DIEGO, CALIFORNIA

By: _____
Name: _____
Title: _____

PADRES L.P., a Delaware limited partnership

By: _____,
a _____ corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

I HEREBY APPROVE the form and legality of the foregoing Agreement, this ___ day of _____, 2000.

CASEY GWINN, City Attorney

By: _____
Leslie J. Girard
Assistant City Attorney