



County of San Diego

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DEPARTMENT of GENERAL SERVICES
5560 OVERLAND AVENUE, SUITE 410, SAN DIEGO, CA 92123

ADDENDUM NUMBER 1 REQUEST FOR PROPOSALS (RFP) FOR LEASE OF HERITAGE PARK DEVELOPER QUESTIONS 9/1/2016

QUESTIONS AND ANSWERS:

- Q1. We understand that there is an oversight agreement to protect the historic structures in Heritage Park between the County and Save Our Heritage Organization (SOHO). Would you please provide a copy of this agreement and any observation you may have as to how this agreement may affect the lease opportunity to develop and operate the six historical structures?*
- A1. There is no oversight agreement between the County of San Diego and SOHO.**
- Q2. Does the county have the last 5-10 years maintenance contracts and scopes of work for all of the building and what is the estimated annual maintenance costs for the buildings?*
- A2. There are no current maintenance contracts or scopes of work for the buildings. Since the termination of the previous lease the County has only provided maintenance on an as needed basis. In 2015 the cost to maintain the structures in their current condition and the grounds was \$131,652.**
- Q3. Exterior paint - are there any restrictions to the color selections as long as the colors meet the historic period?*
- A3. All exterior paint colors should match the paint color pallet for the historical period of the structure. Proposer should use the means and methods of painting from the historical period of the structure if possible.**
- Q4. Interior paint and decor - are there specifics or guidelines published for the look of the interior space?*
- A4. There are no published guidelines for the appearance of the interior space. All interior finishes and décor should be consistent with the historical period of the structure.**
- Q5. What is the annual costs of all electricity, gas, water and sewer service to the separate structures and the leased property?*
- A5. In 2015, the annual cost of utilities for the entire park was \$23,458. A breakdown of utility expenses for each structure is not available.**

Q6. *The County has noted their commitment to energy conservation and that the selected proposer shall be expected to cooperate with “reasonable” energy conservation practices. Is there a standard to which the County is committed to follow, such as a LEED rating, Energy Upgrade California, or as found on Energy.gov website for San Diego County: <http://energy.gov/eere/better-buildings-neighborhood-program/san-diego-county-california>. Will this project need to be in compliance with the County of San Diego Strategic Energy Plan 2015-2020? Will this project require an Operations Emissions Inventory? Please define “reasonable.”*

A6. The lease will include a provision similar to the following:

Energy Conservation by Lessee. Lessee shall be responsible for using energy conservation measures in the operation of all activities on the Premises. Lessee shall cooperate with County in all forms of energy conservation including energy-efficient lighting, heating and air-conditioning systems, and fixtures and equipment. Lessee shall comply with all existing and newly-enacted laws, regulations, policies or guidelines relating to the conservation of energy. Lessee shall comply with all reasonable requests and demands of County pertaining to the installation and maintenance of energy conservation systems, fixtures, and equipment.

Q7. *Please provide a copy of the existing lease for the McConaughy House so that we understand the conditions of the lease.*

A7. A copy of the lease for the McConaughy House is attached as “Attachment A” to this Addendum.

Q8. *The County has noted the "Temple Beth Israel shall be maintained in accordance with properties listed on the National Historic Register." Our understanding is that the Temple Beth Israel was removed from the National Register as a result of the move to Heritage Park according to Mary Ward, County Historian (deceased): http://articles.latimes.com/1989-06-29/local/me-3367_1_temple-beth-israel-san-diego-county-registered If not on the National Register what are the County's requirements for its compliance maintenance?*

A8. Temple Beth Israel was removed from the National Historic Register in 1989 when the building was relocated to Heritage Park. The County is requesting that the building be maintained to the standards of a building listed on the National Historic Register.

Q9. *Is there a deferred maintenance list or a list of those “required additional improvements” noted in the RFP?*

A9. There is not a deferred maintenance list. The lessee will be responsible for determining whether a structure requires additional improvements.

Q10. *How does the Secretary of the Interior's Standards for the Treatment of Historic Properties affect compliance preservation efforts, are the Standards to be followed or are they guidelines, please clarify? Will all work be required to have approval from the County Historic Site Board? Will there be a CEQA requirement to developing the site in accordance with*

http://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/docs/Cultural_Guidelines.pdf ?

A10. The Secretary of the Interior’s Standards for the Treatment of Historic Properties should be used as a guideline. Approval by the County Historic Site Board will not be required as the property is in the City of San Diego’s jurisdiction. The City of San Diego will be responsible for imposing CEQA requirements for any development.

Q11. Will archeology inspection be a requirement for any trenching or excavation of the site for future development?

A11. The County will not require an archeology inspection.

Q12. What is the current policy for beer, wine & alcohol on site in general and specifically during wedding receptions/events? Are there any County restrictions for service of beer & wine in each of the buildings or on site (pending ABC permit and approval)?

A12. Beer and wine is allowed per County Ordinance. Alcoholic beverages with alcohol content in excess of 20 percent by volume are not permitted unless the Department of Parks and Recreation has issued written authorization.

Q13. What is the historical period and theme of the existing structures, the website is not explicit, although the buildings date from 1887-1896: <http://www.sandiegocounty.gov/parks/heritage.html>?

A13. Please refer to Exhibit “B” Description of Improvements of the Request for Proposals. The year, architectural style and history of each building are described.

Q14. Is there a minimum or maximum term of the lease with the County?

A14. The term is to be proposed by the respondent. Per Board Policy F-51 the maximum term is 99 years.

Q15. What is the current ADA status of the site and each individual building?

A15. The current buildings will need to be brought in to ADA compliance as part of the development of the site through the City of San Diego’s approval process.

Q16. Since this is a County Park, is the Developer responsible for providing on site security in accordance with the County of San Diego Security Ordinance 9517?

A16. The County of San Diego Security Ordinance 9517 does not apply to the site as it is in the City of San Diego’s jurisdiction. Security of the site will be the responsibility of the lessee.

Q17. Who is the City Fire Department or County Fire Department contacts for compliance for the vegetation management activity necessary for fire protection purposes? Which agency controls compliance? Is the site currently in compliance?

A17. The City of San Diego Fire Department has jurisdiction of this site. To the best of our knowledge Heritage Park is currently in compliance in regards to vegetation management.

Q18. Are there any easements across the property that may limit expansion improvements?

A18. The County will be obtaining a title report to address this question.

Q19. The County has noted a “scored evaluation” criteria. Would you share how the scoring is to be rated, is this a point weighed system and if so can you please provide the rating matrix?

A19. The scoring matrix is attached as “Attachment B” to this Addendum.

Q20. Are there blueprints available for each of the structures on site?

A20. The County does not have blueprints that accurately represent the present floorplans of the structures.

Attachment "A"
Lease for McConaughy House

Begins on the following page.

COPY

**HERITAGE PARK GROUND LEASE AGREEMENT
(McCONAUGHY HOUSE)**

17537R

COPY

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HERITAGE PARK GROUND LEASE AGREEMENT
(McCONAUGHY HOUSE)

THIS LEASE, made and entered into this 16th day of June, 1981, by and between the COUNTY OF SAN DIEGO, a political subdivision of the State of California, hereinafter called "County", and DANIEL F. BAMBERG and JAMES A. DUNN, DBA McConaughy House Partnership, whose address is 2490 Heritage Park Row, San Diego, California 92110, hereinafter called "Lessee".

W I T N E S S E T H :

That for and in consideration of the rentals received, covenants, agreements, and conditions as hereinafter set forth to be faithfully paid, kept, and performed by Lessee, County hereby leases to Lessee that certain real property commonly known as "Parcel 80-1188-A1" at 2490 Heritage Park Row, San Diego, California, consisting of approximately 3,042 square feet of land, being a portion of Heritage Park owned and operated by County and hereinafter referred to as the "Premises". The Premises are delineated on Exhibit "A-1" and described in Exhibit "A-2" attached hereto and by this reference made a part hereof.

It is understood and agreed by and between the parties hereto as follows, to wit:

1. DEFINITION OF TERMS. The following words in this Lease shall have the significance attached to them in this Clause unless otherwise apparent from their context:

a. "Lease" means this Parcel 80-1188-A1 Heritage Park Lease Agreement.

b. "Premises" means the 3,042 plus or minus square feet of land designated Parcel 80-1188-A1, as delineated on Exhibit "A-1" and as described in Exhibit "A-2".

COUNTY CONTRACT
NUMBER 17537-5490R

c. "Heritage Park" means that County Park located at the northeasterly corner of Juan and Harney Streets and includes County parking facilities as they now exist or may hereafter be constructed, the location of one such facility being on the west side of Harney Street between Juan Street and San Diego Avenue and another at the southeasterly corner of Juan and Harney Streets, all in the Old Town section of the City of San Diego, California.

d. "City Building Inspection" means the City of San Diego and all of its departments and divisions having jurisdiction over construction, utilities and land use within Heritage Park.

e. "Board" means the Board of Supervisors of the County of San Diego.

f. "Lease Administrator" means the Director, Department of General Services, County of San Diego, or such other person as may be designated Lease Administrator from time to time by the Board.

g. "Parks Director" means the Director, Department of Parks and Recreation, County of San Diego.

h. "Base Rent" means the minimum rent per month as provided in Clause 9 (RENT) and as may be renegotiated as provided in Clause 15 (RENTAL RATE RENEGOTIATION), except as may be adjusted by Clause 10 (RENOVATION ALLOWANCE) and Clause 14 (COST OF LIVING ADJUSTMENT).

i. "Additional Rent" means the sublease rent per month resulting from subletting of the Premises as provided in Clause 25 (ASSIGNING, SUBLETTING AND ENCUMBERING).

j. "Maintenance Fee" means the Common Facilities Maintenance Fee as provided in Clause 16 (COMMON FACILITIES MAINTENANCE FEE).

k. "McConaughy House" means the Victorian dwelling to be relocated onto the Premises. Said dwelling was formerly located at 1569 Union Street, San Diego, California.

2. EXHIBITS TO LEASE. This Lease includes the following exhibits which are attached hereto and by this reference made a part hereof:

- a. Exhibit "A-1": Heritage Park Premises Plat.
Exhibit "A-2": Heritage Park Premises Legal Description.
- b. Exhibit "B": Working Drawings and Specifications.

3. ADMINISTRATION. This Lease shall be administered on behalf of County by the Lease Administrator and on behalf of Lessee by Daniel F. Bamberg and/or James A. Dunn or such other person(s) as shall be designated in writing from time to time by Lessee.

4. TERM. The term of this Lease is thirty (30) years, commencing on the day of execution of this Lease by County; and terminating thirty (30) years thereafter.

5. USE. County leases to Lessee and Lessee takes possession of the Premises for the purpose of constructing, relocating and restoring, operating and/or subletting McConaughy House for the operation of professional offices. No other uses whatsoever shall be permitted under the terms of this Lease unless specifically authorized in writing, in advance, by the Lease Administrator.

Use and maintenance shall be in accordance with the laws of the United States of America, the State of California, the City of San Diego and applicable Rules and Regulations for Parks and Recreation Department operations now in force, or hereafter prescribed and promulgated by resolution or ordinance of the County of San Diego.

Lessee further agrees to conduct active business operations within the Premises throughout the term of this Lease in accordance with good business practice.

6. CONSTRUCTION OF FACILITIES AND IMPROVEMENTS.

a. As partial consideration for the granting of this Lease, Lessee agrees to relocate McConaughy House from its present storage site in the Park onto the Premises, as shown on Exhibit "B" hereto, for Lessee's use during the term of this Lease. Lessee agrees to restore all roof ironwork and chimneys on McConaughy House in style similar to that shown on historical photos thereof. Lessee's installation and construction of said improvements shall be completed by Lessee within one hundred eighty (180) days from the commencement date of this Lease. In the event Lessee cannot complete said improvements within said one hundred eighty (180) day period, County may terminate this Lease at County's option; excepting only those delays caused by events in which Lessee shall have no control, including but not limited to acts of God, strikes, or natural disaster, but not including financial inability, shall not be counted as part of said one hundred eighty (180) day period.

b. Lessee's improvements shall be constructed at Lessee's sole cost and expense in accordance with Working Drawings and Specifications which shall be prepared in accordance with the provisions of Exhibit "B" hereof and approved by the City of San Diego Building Inspection Department and in compliance with the theme of the Park as determined by the Parks Director. Said Working Drawings and Specifications shall be drawn at Lessee's sole expense by an architect licensed by the State of California. Said Working Drawings and Specifications are hereby made a part of the consideration of this Lease.

c. Lessee agrees that the construction of Lessee's improvements shall conform to all City construction requirements. The Premises shall conform to, and be kept in conformance with, all regulations and orders, as they now exist or may hereafter be enacted, of the State Department of Industrial Relations and the California Occupational Safety and Health Act (CAL-OSHA). The Premises shall at all times meet the requirements of the local jurisdiction's and the State Fire Marshall's safety orders. If, during occupancy by Lessee, any deficiencies are found to exist, said deficiencies shall be corrected by Lessee at its sole cost and expense.

d. All improvements constructed by Lessee within the Premises shall be constructed in strict compliance with Working Drawings and Specifications approved by County, as provided above, and shall become security for this Lease. Upon termination of this Lease, said improvements shall become a part of the Premises and shall be owned by County.

e. Within sixty (60) days following completion of any substantial improvement within the Premises, Lessee shall furnish County a complete set of "As-Built" plans and an itemized statement of the actual construction cost of such improvement. The statement of cost shall be sworn to and signed by Lessee or his responsible agent under penalty of perjury. This cost figure shall be the basis for calculations should payment be made under the provisions of Clause 28 (TERMINATION BY COUNTY). The cost of any Lessee-constructed improvements not confirmed by Lessee as provided in this Clause shall not be considered in the event this Lease is terminated as hereinafter provided.

f. Lessee shall at all times indemnify and save County harmless from all claims for labor or materials in connection with construction, repair, alteration,

or installation of structures, improvements, equipment, or facilities within the Premises, and from the cost of defending against such claims, including attorneys' fees.

In the event a lien is imposed upon the Premises as a result of such construction, repair, alteration or installation, Lessee shall procure and record a bond in accordance with Section 3143 of the California Civil Code, which frees the Premises from the claim of the lien and from any action brought to foreclose the lien.

Should Lessee fail to procure and record said bond within twenty (20) days after the filing of such a lien, this Lease shall be in default and shall be subject to immediate termination at County's sole option.

7. CONSTRUCTION PERFORMANCE. Lessee shall commence construction and relocation of buildings on the Premises according to the Working Drawings and Specifications provided under Clause 6b (CONSTRUCTION OF FACILITIES AND IMPROVEMENTS) hereof within thirty (30) days after written approval of construction by City. Lessee shall diligently pursue said development, construction and/or alteration to completion. Lessee shall at all times conduct its construction operations so that such operations will minimally interfere with the normal operation and use of Heritage Park by County, the public, and other persons and organizations entitled to the use of same. Upon compliance of the work specified in this Clause and in said Working Drawings and Specifications, Lessee shall perform no further or other construction, modification, alteration, or improvement without the prior written approval of the Parks Director; said approval shall not be unreasonably withheld.

8. COMPLETION BOND. No construction, relocation of buildings, restoration and/or remodeling shall be commenced within Heritage Park by Lessee until Lessee has furnished to County a Surety Bond in an amount sufficient to return the Premises and the balance of Heritage Park affected by said construction, relocation, restoration and/or remodeling to the condition said County property existed in prior to the commencement of this Lease. In lieu of a Surety Bond, County will accept a cash deposit in an amount sufficient to return Heritage Park to said original condition. Provided, however, in no event shall said Surety Bond or cash deposit be in an amount less than Fifty Thousand Dollars (\$50,000.00) and said bond or cash deposit shall be issued jointly to Lessee and County. Said bond must be issued by a company qualified to do business in the State of California and acceptable to County. Said bond shall be in a form acceptable to County and shall insure faithful and full observance and performance by Lessee of all the terms, conditions, covenants, and agreements relating to restoration of Heritage Park. Additionally said bond shall provide for commensurate cash payment to County or completion of restoration of Heritage Park at County's sole option, in the event Lessee fails to faithfully and fully observe and perform all of the terms, conditions, covenants, and agreements relating to construction or improvements.

9. RENT. Lessee, in consideration of the possession and use of the Premises, shall pay the Base Rent in advance on or before the first day of every month of this Lease or any extension thereof commencing on the first day of the month next following the date of execution of this Lease by the Board. Lessee shall pay the Additional Rent in addition to the Base Rent, as provided in Clause 9a below, monthly along with the Base Rent during the term of this Lease or extension

or holding over thereof, and said Additional Rent shall be due and payable commencing on the first day of the month following occupation of the Premises by any and all sublessees, and on the first day of each month thereafter, so long as the sublease(s) is/are in effect, provided, however, Lessee shall owe County no Additional Rent as a result of occupation of the Premises by any one law firm and any one real estate development firm within which one or both of the two Lessee individuals are principles. Said rents are due and payable in accordance with the following schedule of procedures:

a. The Base Rent reserved to County for the first three (3) years of the term, as provided in Clause 4 (TERM) hereof, shall be Six Hundred Eight Dollars (\$608.00) per month. The Additional Rent reserved to County shall be an amount computed as ten percent (10%) of the rental due Lessee from its sublessees during the term of each sublease and/or any extension or holding over thereof as provided in the first paragraph of this clause.

b. Base Rent and Additional Rent due County for each succeeding period shall be adjusted as provided in Clause 14 (COST OF LIVING ADJUSTMENT) and Clause 15 (RENTAL RATE RENEGOTIATION) hereof.

10. RENOVATION ALLOWANCE. Based on a portion of Lessee's estimated costs of restoration, house moving, and renovation (as approved by Parks Director) set forth in Clause 6 (CONSTRUCTION OF FACILITIES AND IMPROVEMENTS) hereof, Lessee shall be allowed a "Renovation Allowance" of Ninety-one Thousand Eighty Dollars (\$91,080.00) to be applied against rent payable hereunder commencing with the first month rent is due under this Lease. Said allowance shall reduce the rent payable hereunder by Two Hundred Fifty-three Dollars (\$253.00) for each

of the three hundred sixty (360) months within the term of this Lease. It is further agreed that said "Renovation Allowance" shall not accumulate interest.

11. RENT PAYMENT PROCEDURES.

a. Payment of Rent. Base and Additional Rent shall be paid as provided in Clause 9 (RENT) hereof.

b. Place of Payment and Filing. Rent payments shall be made payable to the County of San Diego and rent and statements as aforesaid shall be submitted to the County Controller Branch Office, 5555 Overland Avenue, San Diego, California 92123 or to such other location as may be specified by County in writing from time to time.

12. RECORDS AND ACCOUNTS. Lessee shall, at all times during the term of this Lease, keep or cause to be kept, true and complete books, records, and accounts of all financial transactions in the operation of its business as the Lessee and/or Sublessor of the Premises. The records must be supported by source documents such as sublease rental receipts, statements, or other pertinent documents.

County shall have the right at any reasonable time to examine and perform audits of Lessee's and/or sublessee's records pertaining to its operations on the Premises. The cost of said audits shall be borne by County; however, Lessee shall provide to County at Lessee's expense, necessary data to enable County to fully comply with each and every requirement of the State of California or by the United States of America for information or reports relating to this Lease and to Lessee's use of the Premises.

13. LATE PAYMENTS. In the event Lessee fails to remit to County, in cash, the Basic Rent due and the Additional Rent due, if earned, as set forth in

Clause 9 (RENT) and/or the Common Facilities Maintenance Fee, as set forth in Clause 16 (COMMON FACILITIES MAINTENANCE FEE) hereof within fifteen (15) days after the due date, Lessee shall be deemed delinquent in payment of rent and shall become liable for and shall pay to County the rent due together with an additional five percent (5%) of the monthly rent due as compensation to County for loss of revenue and additional expenses resulting from such delinquency and shall pay an additional five percent (5%) for each fifteen (15) days, or fraction thereof, that said delinquency thereafter continues. However, the Lease Administrator shall have the right to waive, for good cause, delinquency payments so accruing upon written application, for waiver of any such accrued delinquency. In the event of a dispute between the parties as to the correct amount of rent due, County shall accept the sum tendered by Lessee without prejudice, and if a deficiency is subsequently determined, said five percent (5%) shall apply only to the amount of the actual determined deficiency.

14. COST OF LIVING ADJUSTMENT. The monthly Base Rent provided in Clause 9 (RENT) above or as may be adjusted by renegotiation or arbitration, as provided in Clause 15 (RENTAL RATE RENEGOTIATION) below, shall also undergo a cost of living adjustment to be effective for the three (3) year periods of this Lease which commence July 1, 1984, July 1, 1987, July 1, 1993, July 1, 1996, July 1, 2002, and July 1, 2005; to reflect an increase or decrease in the purchasing power of the dollar by use of the following formula:

$$R = A \times \frac{B}{C}$$

WHEREIN,

"R" equals the adjusted monthly Base Rent for each month of the particular three (3) year period for which said rent is being computed (new rent); and

"A" equals the Base Rent most recently having been established by negotiations or arbitration, as required herein, between County and Lessee (Base Rent for years 1 through 3, 10 through 12, 19 through 21 or 28 through 30 respectively); and

"B" equals the average monthly Consumer Price Index (CPI), as hereinafter defined, for the first full calendar quarter immediately preceding the commencement of the particular three (3) year period for which the adjusted Base Rent is being computed; and

"C" equals the average monthly CPI, as hereinafter defined, for the first full calendar quarter immediately preceding the most recent three (3) year period for which the Base Rent was adjusted by negotiation or arbitration as required herein.

The Consumer Price Index, which shall be used as the source for the index numbers in the above formula, shall be defined as that index published by the United States Department of Labor, Bureau of Labor Statistics, entitled "Consumer Price Index/Los Angeles-Long Beach-Anaheim, CA/All Urban Consumers/All Items (1977 = 100)". In the event that said index is not published, then another comparable index or source of such information generally recognized as authoritative shall be substituted by agreement of the parties. If the parties should not agree, such source of information shall be determined by arbitration pursuant to the provisions of the California Code of Civil Procedure.

At no time shall such adjustments result in a Base Rent which is less than the amount of Base Rent most recently determined by negotiation or arbitration as provided herein.

15. RENTAL RATE RENEGOTIATION. Upon the expiration of the first nine (9) year rental period, the ^{+ Svc} Base Rent and Additional Rental rate for each succeeding nine (9) year rental period shall be determined in the following manner:

Within the one hundred eighty (180) days prior to the termination of the first nine (9) year period provided in Clause 4 (TERM) hereof, County shall propose to Lessee in writing the Base Rent and Additional Rental rate to be established by the parties hereto for the next succeeding nine (9) year period and the parties hereto shall, by amendment to this Lease, revise the Base and Additional Rental to reflect their agreement as to the Base and Additional Rental rate to be applied for the next succeeding nine (9) years except as said Base Rent may be adjusted by application of Clause 14 (COST OF LIVING ADJUSTMENT) hereof. If agreement is not reached between the parties no less than one hundred twenty (120) days prior to the end of any nine (9) year period, County and Lessee shall commence arbitration in accordance with the following procedure.

County shall, no less than ninety ³⁻¹⁶ (90) days prior to the end of said nine (9) year period, select and appoint one representative who shall be a recognized real estate appraiser and a member of the American Institute of Real Estate Appraisers. Lessee shall, no less than ninety (90) days prior to the end of said nine (9) year period, select and appoint one representative who shall be a recognized real estate appraiser and a member of the American Institute of Real Estate Appraisers. Both parties shall give written notice each to the other of selection and appointment of their respective representatives.

Upon appointment and notice of appointment of said representatives, said representatives shall, no less than eighty (80) days prior to the end of said nine (9) year period, meet and confer for the purpose of appointing a third person of like

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professional qualification and shall, no less than seventy (70) days prior to the end of said nine (9) year period, appoint said third person who shall act as a neutral arbitrator of any disagreements which may arise in the course of rental renegotiations. The said representatives and neutral arbitrator shall promptly meet and determine the rental rate which shall be applied for the nine (9) year period under arbitration. No less than thirty (30) days prior to the end of said nine (9) year period, said neutral arbitrator and concurring representative(s) shall render a written decision and in which decision they shall specify the monthly rental to be paid by Lessee to County for and during the nine (9) year period under arbitration. It is understood and agreed that any award made pursuant to this arbitration agreement shall be binding on both County and Lessee, and shall apply to rent due and payable to County for the full nine (9) year rental period under arbitration, subject to the provisions of Clause 14 (COST OF LIVING ADJUSTMENT) hereof. Refusal to acquiesce in said award by either party shall constitute a breach of this Lease.

In the event that either party should fail to appoint a representative, or the representatives should fail to appoint a neutral arbitrator, or either party should refuse to acquiesce in the decision of the neutral arbitrator, either or both parties may apply to the Superior Court in and for the County of San Diego for relief of an appropriate nature pursuant to the arbitration provisions of the California Code of Civil Procedure which are found at Section 1280 and following.

County shall bear all of the expense of its appointed representative and Lessee shall bear all of the expense of its appointed representative. County and Lessee shall equally share the fee and expenses of the neutral arbitrator and the incidental expenses of the arbitration not attributable to either party's representative.

In order to determine the rental rate, the representatives and the neutral arbitrator shall consider fair market or "economic rent" for the Premises, said rate being the monthly amount which said Premises could be expected to return to County if offered for lease on the open market under normal circumstances giving due consideration to location, desirability and utility of said Premises and similar relevant matters which are traditionally considered by professional appraisers in estimating the rental rate return which could be expected from similar property. Any and all improvements upon the property owned by County shall be considered in arriving at the said rental rate.

Should said arbitration be concluded and a new Base Rent be established by such process after commencement of the nine (9) year period for which said Base Rent applies, said new Base Rent shall be effective retroactive to the date said nine (9) year period commences.

16. COMMON FACILITIES MAINTENANCE FEE. Together with each monthly payment of Base Rent and Additional Rent as provided in Clause 9 (RENT) above, Lessee shall pay a monthly fee of Two Hundred Forty-five Dollars (\$245.00) in advance on or before the first day of every month of this Lease or any extension thereof for landscape maintenance, water and Lessee's share of any special assessments or taxes which may be levied upon Heritage Park or any portion thereof, except taxes and assessments levied against the Premises, as well as for Lessee's nonexclusive use of County-owned facilities including but not limited to common area walkways and driveways. Beginning with the 37th month of this Lease, and for each succeeding three (3) year period, said fee shall be adjusted to reflect any increase or decrease in the purchasing power of the dollar following the commencement of this Lease by the use of the following formula for the periods indicated:

$$F = \$245.00 \times \frac{B}{C}$$

WHEREIN,

"F" equals the adjusted monthly Common Facilities Maintenance Fee for each month of the particular three (3) year period for which said fee is being computed.

"B" equals the average monthly Consumer Price Index (CPI), as defined in Clause 14 (COST OF LIVING ADJUSTMENT) hereof, for the first full calendar quarter immediately preceding the commencement of the particular three (3) year period for which the adjusted Common Facilities Maintenance Fee is being computed; and

"C" equals the average monthly CPI for the first full calendar quarter immediately preceding the term of this Lease.

17. CONTROL OF OPERATING HOURS AND OPERATING PROCEDURES BY COUNTY. Lessee, as the term is used in this Clause pertains also to sublessees, assignees, licensees and/or permittees. Before commencing business operations within the Premises, Lessee shall propose to the Parks Director, for his approval, operating schedules and procedures for each and every separate business or service activity of Lessee. Said schedule and procedures shall be designed to make all the services to be provided under the terms of this Lease available to the public to the fullest extent reasonable. All changes proposed in such schedules and procedures shall be submitted to the Parks Director for his approval ten (10) days before they are to be implemented.

In the event the Parks Director does not approve the proposed schedules and procedures, or changes therein, Lessee shall have the right to confer with the Parks Director and to present reasons for proposing such schedules and procedures. If, after conferring with Lessee, the Parks Director continues to disapprove of the

proposed schedules and procedures, the Parks Director shall make such changes therein as he deems reasonably proper, and Lessee shall institute such changes. Lessee may, however, appeal the matter to the Board of Supervisors, whose decision shall be final and conclusive. Lessee agrees to operate in accordance with the schedules and procedures approved by the Parks Director, or, if appealed to the Board, in accordance with the decision of said Board. Lessee's failure to comply with said schedules and procedures shall be cause for immediate termination of this Lease.

Primary consideration shall be given to the public purpose of Heritage Park in implementing this Clause.

Lessee agrees that Lessee will operate and manage the services and facilities offered in a competent and efficient manner at least comparable to other well managed operations of similar type.

Lessee shall at all times retain active, qualified, competent, and experienced personnel to supervise Lessee's operation and to represent and act for Lessee.

Lessee shall require its attendants and employees to be properly dressed, clean, courteous, efficient, and neat in appearance at all times. Victorian era dress shall be worn wherever and whenever practicable. Lessee shall not employ any person(s) in or about the Premises who shall use offensive language or act in a loud, boisterous, or otherwise improper manner.

Lessee shall maintain a close check over attendants and employees to insure the maintenance of a high standard of service to the public. Lessee shall replace any employee whose conduct is detrimental to the best interests of the public.

It is the intent of County and Lessee that all personnel operating on or from the Premises shall be clearly, either employees under direction and management of Lessee, or alternately, operating under a Sublease Agreement previously consented to by County as provided in Clause 25 (ASSIGNING, SUBLETTING AND ENCUMBERING) hereof.

18. REPAIRS AND MAINTENANCE. Lessee, at Lessee's sole expense, shall, to the satisfaction of the Parks Director, keep in good order, condition and repair the entire interior of the Premises, including, but not limited to, interior surfaces, walls, floors, attic space, interior utility, heating and air conditioning systems, interior plumbing, and window repairs and maintenance. Lessee shall make repairs required hereunder within a reasonable time after the need for such repair is identified. Lessee agrees that by taking possession of the Premises as herein set forth that the Premises are in a reparable condition. County shall not maintain, repair, or replace improvements constructed within the Premises, except, County may, at its sole option, replace or repair any County-constructed facilities within or without the Premises in order to protect the Premises or any part of Heritage Park and County owned facilities.

Lessee, at Lessee's sole expense, shall repair and maintain the exterior of the Premises, including but not limited to, porches, roofs and outside walls, provided, however, County agrees to paint McConaughy House whenever such work is deemed necessary by the Parks Director subsequent to the initial painting which shall be accomplished by Lessee at Lessee's expense as part of Lessee's restoration of McConaughy House within Heritage Park. In addition, County shall be responsible for alleviating any hazardous conditions that may exist and/or develop exterior to the Premises within Heritage Park.

County's right to repair: In the event Lessee fails to make repairs or replacements to any and all improvements as required by County, then County may notify Lessee in writing of said failure specifying in said notice the nature and extent of said failure. In the event Lessee fails to make said required repairs or replacements within a reasonable time after such notice by County, County may make such repairs or replacements and the cost thereof including, but not limited to, the cost of labor, material and equipment, shall be paid by Lessee to County within ten (10) days from receipt by Lessee of statement of costs from County.

19. JANITORIAL SERVICES. Lessee shall provide, at its sole expense, all janitorial services which may be required by Lessee's occupancy. Lessee further expressly agrees to maintain the Premises and the porches leading to the Premises in a safe, clean, wholesome and sanitary condition to the satisfaction of the Parks Director and in compliance with all applicable rules and laws. Lessee further agrees to provide proper containers for trash and garbage and store said containers in a location designated by the Parks Director. Lessee shall keep the Premises free and clear of rubbish and litter to the satisfaction of the Parks Director.

County reserves the right for its agents or employees to enter upon and inspect the Premises any any and all reasonable times to ascertain the above described standards are maintained.

20. INSURANCE. Lessee shall maintain insurance, in form acceptable to County, in full force and effect throughout the term of this Lease. The policy or policies of said insurance, except for Workers' Compensation, shall name County as an "Additional Insured" and shall, as a minimum, provide the following forms of coverage in the amounts specified:

a. A policy of Workers' Compensation to statutory limits covering all employees of Lessee working at the Premises. Lessee shall include said requirement in all sublease agreements.

b. Comprehensive public liability covering Premises and structures thereon.

(1) \$500,000 bodily injury, each person;

(2) \$500,000 bodily injury, each occurrence; and

(3) \$500,000 property damage;

or in lieu of (1), (2), and (3) above,

(4) \$500,000 combined single limit bodily injury and property damage.

c. Lessee shall also provide fire and extended coverage insurance in an amount sufficient to repair, replace, and refurbish McConaughy House in a form acceptable to County.

All said insurance shall be in force from the first day possession of the Premises is taken by Lessee.

Each policy of insurance shall contain the following clauses:

a. "It is agreed that this policy shall not be cancelled nor the coverage reduced until thirty (30) days after the Director, Department of General Services of the County of San Diego, shall have received written notice of such cancellation or reduction. The notice shall be sent by certified mail or registered mail and shall be deemed effective the date delivered to said Director, as evidenced by properly validated return receipt."

b. "This coverage is considered primary coverage for the County of San Diego as the additionally insured, except for sole negligence on the part of said County or County employees."

Lessee agrees to deposit with County, on or before the effective date, one copy of the policy or each of the policies necessary to satisfy the insurance provisions of this Lease and to keep such insurance in effect and the policy or policies on deposit with County during the entire term of this Lease, and failure to so insure shall be grounds for immediate termination by notification by the Lease Administrator.

County shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the Lease Administrator, the insurance provisions in this Lease do not provide adequate protection for County and for members of the public using the Premises, County may require Lessee to obtain insurance sufficient in coverage, form and amount to provide adequate protection. County's requirements shall be reasonable, but shall be designed to assure protection from and against the kind and extent of risks which exist at the time a change in insurance is required.

The Lease Administrator shall notify Lessee in writing of changes in the insurance requirements and, if Lessee does not deposit copies of acceptable insurance policies with County incorporating such changes within sixty (60) days of receipt of such notice, this Lease shall be deemed in default without further notice to Lessee and may be forthwith terminated by the Lease Administrator.

The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies

of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by it or its agents, customers, or guests negligence or neglect connected with this Lease or with use or occupancy of the Premises.

Said insurance shall include the risks and obligations of any sublessee, cosignee, permittee and/or licensee in an amount satisfactory to the Lease Administrator.

21. INDEMNIFICATION. Lessee shall indemnify and save harmless County, its officers, agents and employees from and against any and all claims, demands, liabilities or loss of any kind or nature which County, its officers, agents or employees, may sustain or incur or which may be imposed upon them or any of them for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with this Lease or with occupancy and use of the Premises by Lessee, its officers, agents, employees, subtenants, licensees, patrons or visitors. Lessee further agrees to pay any and all costs and expenses, including, but not limited to, court costs and reasonable attorneys' fees, incurred by County arising out of any such claims, demands or liabilities.

County shall indemnify and save harmless Lessee, its agents, sublessees and employees from and against any and all claims, demands, liabilities or loss of any kind or nature, which Lessee, its agents, sublessees and employees, may sustain or incur or which may be imposed upon them or any of them for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with any negligent acts or omissions of County within Heritage Park. County further agrees to pay any and all costs and expenses, including but not limited to court costs and reasonable attorneys' fees, incurred by Lessee arising out of such claims, demands or liabilities.

22. TAXES, ASSESSMENTS AND FEES. Lessee shall be responsible for the payment of, and shall pay before they become delinquent, all taxes, assessments and fees assessed or levied upon Lessee or the Premises or any interest therein, including, but not limited to building, structures, fixtures, equipment or other property installed or constructed thereon. Lessee further agrees not to allow such taxes, assessments or fees to become delinquent and as such to become a lien against the Premises or any improvement thereto. Nothing herein contained shall be deemed to prevent or prohibit Lessee from contesting the validity or amount of any such tax assessment or fee in the manner authorized by law.

NOTICE OF TAXABLE POSSESSORY INTEREST: The terms of this document may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

23. UTILITIES. County has constructed the main utility lines, including sewer, water, telephone, and electricity, to the Premises as generally shown on Exhibit "B" hereof. Lessee shall pay for all utility services, except water which shall be paid for by County.

Lessee shall provide and pay for the installation and/or modifications of utilities required by Lessee for the use and enjoyment of the Premises which are not installed as of the date of execution of this Lease, including but not limited to electrical, gas, water, sewer, and telephone services.

24. DAMAGE OR DESTRUCTION. In the event that the Premises should be damaged by fire or any other cause during the term of this Lease or extension thereof, repairs shall be made by Lessee, at its sole expense, and with all reasonable dispatch, and Lessee shall be allowed a pro rata reduction of rent in the

same proportion that the damaged area is to the entire Premises. Such reduction of rent shall continue during the time required for Lessee to make such repairs. If in the opinion of the Lease Administrator, Lessee can use and occupy the Premises without substantial inconvenience, there shall be no reduction of rent.

In the event the damage by fire or other cause amounts to the substantial destruction of the Premises which cannot be economically repaired considering authentic historical requirements within ninety (90) days, accrued rent shall be reduced in the same proportion as the affected space is to the total gross floor space of improvements located within the Premises. Lessee shall not be liable for said rent for the said affected space until repairs and reconstruction have been made by Lessee, subject to the approval of County, whose approval shall not be unreasonably withheld, so that the Premises are again ready for occupancy.

In the event improvements located within the Premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce such declaration, Lessee shall, at its sole expense, within ninety (90) days, commence and diligently pursue to completion the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the Premises for the purposes permitted by this Lease; in such an event rent shall be prorated as above in this Clause. Repair, replacement or reconstruction of improvements within the Premises shall be accomplished in a manner approved by County; such approval shall not be unreasonably withheld.

25. ASSIGNING, SUBLETTING AND ENCUMBERING.

a. Any pledge, hypothecation, encumbrance, transfer, sublease, or assignment (hereinafter referred to collectively as "Encumbrance") of Lessee's real property interest in the Premises or any part or portion thereof must first be

approved in writing by the Lease Administrator as aforesaid, or said Encumbrance shall be void and of no force and effect. County agrees that said approval shall not be unreasonably withheld.

Occupancy of the Premises by a prospective transferee, sublessee, assignee, or Encumbrancer before approval of the transfer, sublease, assignment or Encumbrance by County shall constitute a breach of this Lease and such shall be grounds for termination. Should Lessee hereunder become a corporation by proper assignment of interest consented to by County, the Encumbrance of any stock or interest in said corporation in aggregate exceeding twenty-five percent (25%) of the total ownership shall be deemed an Encumbrance within the meaning of this Lease.

Should County consent to any Encumbrance, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease. Such terms, covenants, or conditions shall apply to each and every Encumbrance hereunder and shall be severally binding upon each and every Encumbrancer, assignee, transferee, subtenant, or other successor in interest of Lessee. Any document to pledge, hypothecate, transfer, sublet, assign or encumber the Premises or any part thereof shall incorporate directly or by reference all the provisions of this Lease. County agrees that it will not arbitrarily withhold consent to any Encumbrance, but County may withhold consent at its sole discretion if any of the following conditions exist:

- (1) Lessee or any of its sublessees, successors or assigns is in default as to any term, covenant, or condition of this Lease, whether notice of default has or has not been given by County.

- (2) The prospective Encumbrancer has not agreed in writing to keep, perform, and be bound by all the terms, covenants, and conditions of this Lease.

(3) All the terms, covenants, and conditions of the Encumbrance, including the consideration therefor of any and every kind have not been revealed in writing to County.

(4) The construction required of Lessee as a condition of this Lease has not been completed to the satisfaction of County.

(5) The processing fee required by County as set out below has not been paid to County.

b. A fee according to the following table shall be paid to County for processing each said prior consent to mortgage, pledge, hypothecate, or encumber and for each prior consent to assign, transfer or sublease submitted to County as required by this Lease. This processing fee shall be deemed earned by County when paid and shall not be refundable.

Years 1 through 2 of Lease:	None
Years 3 through 9 of Lease:	\$150
Years 10 through end of Lease:	Processing fee to be negoti.

c. Notwithstanding the provisions of the first paragraph in Clause, if requested by Lessee, County agrees to execute its written consent assignment of this Lease to a trustee under a trust deed for the benefits of a l (herein called "beneficiary"), upon and subject to the following covenant conditions:

(1) Said trust deed and all rights acquired thereunder shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights and interests of County hereunder, except as herein otherwise provided.

(2) In the event of any conflict between the provisions of this Lease and the provisions of any such trust deed, the provisions of this Lease shall control.

(3) Upon and immediately after the recording of a trust deed affecting the Premises, Lessee, at Lessee's expense, shall cause to be recorded in the Office of the Recorder, San Diego County, California, a written request, executed and acknowledged by County for a copy of any Notice of Default and of any Notice of Sale under the trust deed as provided by the statutes of the State of California relating thereto.

(4) At the time of requesting consent to a trust deed, Lessee shall furnish to County a complete copy of the trust deed and note to be secured thereby, together with the name and address of the holder thereof.

d. County agrees that it will not terminate this Lease because of a default or breach on the part of Lessee if the beneficiary under any trust deed to which County has given its consent, within sixty (60) days after service of written notice on the beneficiary by County of its intention to terminate this Lease for such default or breach, shall:

(1) Cure such default or breach if the same can be cured by the payment or expenditure of money required to be paid under the terms of this Lease, or if such default or breach is not so curable, cause the trustee under the trust deed to commence and thereafter to diligently pursue to completion steps and proceedings for the exercise of the power of sale under and pursuant to the trust deed in the manner provided by law; and

(2) Keep and perform all of the covenants and conditions of this Lease requiring the payment or expenditure of money by Lessee until such time as the leasehold shall be sold upon foreclosure pursuant to the trust deed or shall be released or reconveyed thereunder; provided, however, that if the beneficiary shall fail or refuse to comply with any or all of the conditions of this paragraph, then and thereupon County shall be released from the covenant of forbearance.

e. The prior written consent of County shall not be required:

(1) To a transfer of the leasehold at foreclosure sale pursuant to a trust deed, by judicial foreclosure, or by an assignment in lieu of foreclosure; or

(2) To any subsequent transfer by the beneficiary if the beneficiary is an established bank, savings and loan association, or insurance company, and is the purchaser at such foreclosure sale.

Provided, that in either such event, the beneficiary forthwith gives notice to County in writing of any such transfer, setting forth the name and address of the transferee, the effective date of such transfer and the express agreement of the transferee assuming and agreeing to perform all of the obligations under this Lease, and submits to County a copy of the document by which such transfer was made.

26. SUCCESSORS IN INTEREST. Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the sublessees, assignees, permittees, concessionaires, licensees, heirs, successors, executors and administrators of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

27. DEFAULT.

a. DEFAULT BY LESSEE: Should Lessee default in the performance of any covenant, condition, or agreement contained herein, and such default is not corrected within thirty (30) days after Lessee receives written notice from County of said default, the Lease Administrator may declare this Lease to be terminated; provided, however, that if the nature of Lessee's Lease obligation is such that more than thirty (30) days are required for performance, then Lessee shall not be in default if Lessee commences performance within such thirty (30) day period and

thereafter diligently prosecutes the same to completion. All rights of Lessee and those who claim under Lessee, stemming from this Lease, shall expire and be of no further force and effect at the time of such termination.

b. **DEFAULT BY COUNTY:** County shall not be in default unless County fails to perform obligations required of County under this Lease within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to County specifying wherein County has failed to perform such Lease obligation; provided, however, that if the nature of County's Lease obligation is such that more than thirty (30) days are required for performance, then County shall not be in default if County commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

c. In the event either party shall prevail in legal action against the other claiming a breach or default of this Lease, the prevailing party shall be entitled to recover costs of sustaining such action, including reasonable attorneys' fees.

28. TERMINATION BY COUNTY. In the event that County should require the Premises subsequent to third year of the term of this Lease in connection with future expansion and/or operation of Heritage Park, County reserves the right, upon one hundred eighty (180) days written notice to Lessee, to terminate this Lease. In the event that this Lease is terminated pursuant to the provisions of this Clause, County shall pay to Lessee a sum of money for Lessee's leasehold interest which shall be computed as follows:

The original remodeling and restoration costs of the Premises by Lessee or the replacement cost of said Lessee constructed improvements, whichever is greater, less one-thirtieth of such amount for each year of Lessee's occupancy prorated for partial years.

The parties hereto understand and agree that the formula for payment as hereinabove provided may be filed by the County in the event that County brings an action in condemnation to terminate this Lease and condemn Lessee's interest pursuant to this Clause and that said formula shall constitute a stipulation by the parties hereto as to the fair market value of Lessee's entire right, title and interest in and to the Premises. At such time of termination or condemnation, all improvements of whatsoever nature located on the Premises shall become the sole property of County reserving, however, to County the right to require Lessee at Lessee's sole expense to remove said improvements from the Premises within thirty (30) days.

29. TERMINATION BY LESSEE. In the event that during the term of this Lease any ordinance or law should become effective, the terms of which so restrict the uses to which the Premises may be put that Lessee is unable to continue the use and occupation of the Premises substantially in the manner as allowed by this Lease, Lessee may apply in writing to County for a mutual termination of this Lease. Consent to said mutual termination will not be unreasonably withheld by County.

30. QUITCLAIM OF LESSEE'S INTEREST UPON TERMINATION. Upon termination of ^{the first 30 years of this} ~~this~~ Lease for any reason, including but not limited to, termination because of default by Lessee, Lessee shall execute, acknowledge, and deliver to County within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title, and interest of Lessee in the Premises and improvements thereon are quitclaimed to County. County may prepare and record a notice reciting the failure of Lessee to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of termination of this Lease and

of all rights of Lessee or those claiming under Lessee in and to the Premises and improvements thereon.

31. DISPOSITION OF IMPROVEMENTS, FIXTURES AND PERSONAL PROPERTY. All buildings, structures, equipment and fixtures installed by Lessee in accordance with the provisions of this Lease, and not being a replacement or repair of or for any improvement or improvements now existing and belonging to County, or subsequently installed by County, shall be and remain the property of Lessee during the term of this Lease. It is agreed that any building, equipment and fixtures so installed by Lessee shall be, and the same are hereby made, security for the faithful performance of each and all the terms, conditions and covenants of this Lease, including but not limited to the payment of rent. Upon the termination of this Lease for any cause, all such buildings, structures, equipment and fixtures (but not trade fixtures) shall become the property of County, provided, however, County may require Lessee and Lessee hereby agrees to remove any such buildings, structures, equipment and fixtures at Lessee's own expense; provided, that all damage to County's remaining property or improvements shall be repaired in a good and workmanlike manner and the Premises shall be left in as good order and condition as when Lessee took possession thereof, fair wear and tear and damage by elements excepted. In the event Lessee does not so remove any of such buildings, structures, equipment or fixtures as aforesaid, County may remove, or sell, or destroy the same at the expense of Lessee, and Lessee shall pay to County the reasonable cost of any such removal, sale or destruction. It is further agreed that any personal property not removed from the Premises within sixty (60) days following termination of this Lease may, at County's option, be deemed abandoned, whereupon County may dispose of the property as provided in Chapter 5

(commencing with Section 1980), Title 5, Part 4, Division 3 of the Civil Code of California.

32. EMINENT DOMAIN. In the event the whole or any part of the Premises is condemned by a public entity, other than County pursuant to Clause 28 (TERMINATION BY COUNTY) hereof, in the lawful exercise of the power of eminent domain, this Lease shall terminate as to the part condemned upon the date possession of that part is taken by said public entity. If only a part is condemned and the taking of that part does not substantially impair the capacity of the remainder to be used for the purposes allowed by this Lease in the opinion of the Lease Administrator, Lessee shall continue to be bound by the terms, covenants, and conditions of this Lease; except, the monthly rental shall be reduced in proportion to the relationship that the compensation paid by the public entity for the portion of the Premises condemned bears to the value of the whole of the Premises as of the date possession of the part is taken by the public entity. If only a part is condemned and the taking of the part substantially impairs the capacity of the remainder to be used for the purposes allowed by this Lease, in the opinion of the Lease Administrator, Lessee shall have the option to:

a. Terminate this Lease and be absolved of all obligations hereunder which have not accrued at the date possession is taken by the public entity; or

b. Continue to occupy the remainder of the Premises and remain bound by the terms, covenants, and conditions of this Lease. If Lessee elects to continue to occupy the remainder, the monthly rental shall be reduced in proportion to the relationship that the compensation paid by the public entity for the portion of the Premises condemned bears to the value of the whole of the Premises as of the date of possession of the part is taken by the public entity.

Lessee shall give notice in writing of its choice of remedies hereunder within thirty (30) days of the date possession of the part is taken by the public entity.

Should a portion of the Premises be condemned and the monthly rental be reduced as provided above, the monthly rental shall continue to be subject to periodic revision in accordance with Clause 14 (COST OF LIVING ADJUSTMENT) and Clause 15 (RENTAL RATE RENEGOTIATION) hereof.

Notwithstanding the provisions of Clause 28 (TERMINATION BY COUNTY), County shall be entitled to receive and shall receive all compensation for the condemnation of all or any portion of the Premises by exercise of eminent domain except that Lessee shall be entitled to that portion of said compensation which is the value of the loss of use of Lessee-constructed improvements for the remainder of the Lease term. The amount to which Lessee shall be entitled hereunder shall not exceed the actual cost of improvements constructed by Lessee, reduced in proportion to the ratio that the expired Lease term bears to the original Lease term.

c. In the event Lessee does not concur with the opinion of the Lease Administrator regarding capacity of remainder to be used for purposes allowed by the Lease, Lessee may request determination by the Board.

33. QUIET POSSESSION. Lessee by paying the rent and performing the covenants and agreement as herein required may at all times during the said term peaceably and quietly have, hold and enjoy the Premises for the term aforesaid. If County for any reason whatsoever cannot deliver possession of the Premises to Lessee at the commencement of the term hereinbefore specified, or if Lessee is dispossessed through action of a title superior to the County's then in neither of

such events shall County be liable to Lessee for any loss or damage resulting therefrom, but rather there shall be determined and stated in writing by the Board a proportionate reduction of the rent covering the period or periods during which Lessee is prevented from having the quiet possession of the Premises.

34. RESERVATIONS TO COUNTY. The Premises are accepted by Lessee subject to any and all existing easements and encumbrances. County reserves the right to all gas, oil, water and minerals on or beneath the Premises and right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone, telegraph and power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, and along the Premises or any part thereof, and to enter the Premises for any and all such purposes. County reserves the right to grant franchises, easements, rights of way, and permits in, over, upon, through, across and along any and all portions of the Premises. No right reserved by County in this Clause shall be so exercised as to interfere unreasonably with Lessee's operations hereunder or to impair the security of any secured creditor of Lessee.

County agrees that rights granted to third parties by reason of this Clause shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. County further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Premises by Lessee, the rental shall be reduced in proportion to the interference with Lessee's use of the Premises.

35. EFFECT OF SURRENDER. The voluntary or involuntary surrender of this Lease by Lessee shall not work a merger. Such surrender, or the termination

of this Lease by mutual agreement, shall at the option of County terminate any or all existing permits, subleases or subtenancies granted by Lessee or may, at the option of County, operate as an assignment to it of Lessee's rights and interest in any and/or all of such permits, subleases, or subtenancies.

36. LEASE SUBORDINATE TO CONDITIONS AND RESTRICTIONS. This Lease shall be subordinate to and subject to the terms, conditions, restrictions, and other provisions of any existing or future permit, Lease, and/or agreement between County and the United States of America and/or any other local, State or Federal agency, relative to the control, operation or maintenance of Heritage Park, the execution of which has been or will be required as a condition precedent to the operation or control of Heritage Park. Lessee agrees to be bound by such terms, conditions, restrictions and provisions and, whenever County may so demand, to execute, acknowledge, or consent formally to such terms, conditions, restrictions, or provisions.

37. UNLAWFUL USE. Lessee warrants that no improvements shall be erected, placed upon, operated nor maintained within the Premises, nor any business or other activity conducted or carried on thereon or therefrom, in violation of the terms of this Lease, or of any regulation, order of law, statute, by-law, or ordinance of a governmental agency having jurisdiction and any breach of said warranty shall constitute a breach of this Lease.

38. ABANDONMENT. If Lessee abandons the Premises or is dispossessed by process of law or otherwise, any personal property belonging to Lessee and left on the Premises sixty (60) days after such abandonment or dispossession shall be deemed to have been transferred to County. County shall have the right to remove and to dispose of such property without liability therefor to Lessee or to any person claiming under Lessee, and shall have no need to account therefor.

39. HOLDING OVER. In the event Lessee shall hold over after the term herein granted or extension thereof in accordance with Clause 4 (TERM) hereof, such holding over shall be a tenancy from month to month and shall be governed by the terms, conditions, and covenants contained in this Lease, but shall not operate to extend the time limits hereinabove provided in connection with Lessee's right of first refusal. Such holding over shall be at the monthly rental rate of twenty-five percent (25%) above the Base Rate as currently in effect at the termination date of this Lease or extension thereof, plus the Additional Rent and Common Facilities Maintenance Fee as provided in Clause 9 (RENT) hereof. Renovation Allowance provided in Clause 10 (RENOVATION ALLOWANCE) above shall not apply to any holding over period.

40. AMENDMENTS. This Lease sets forth all of the agreements and understandings of the parties, and any modification hereof must be written.

41. LEASE ORGANIZATION. The various headings and numbers herein, the groupings of provisions of this Lease into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

42. FORCE MAJEURE. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, nothing in this Clause shall excuse Lessee from the prompt payment of any rental or other charge required of Lessee, except as may be expressly provided elsewhere in this Lease.

43. PARTIAL INVALIDITY. If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

44. WAIVER OF RIGHTS. The failure of County or Lessee to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that County or Lessee may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Lease thereafter nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Lease.

45. COUNTY'S RIGHT TO REENTER. Lessee agrees to yield and peaceably deliver possession of the Premises to County on the date of termination of this Lease, whatsoever the reason for such termination.

Upon giving written notice of termination to Lessee or upon expiration of the term of this Lease, County shall have the right to reenter and take possession of the Premises on the date such termination becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination of the Lease and reentry of the Premises by County shall in no way alter or diminish any obligation of Lessee accrued or accruing under the Lease terms and shall not constitute an acceptance or surrender.

Lessee waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Premises for any reason or in the event County reenters and takes possession of the Premises in a lawful manner.

In the event Lessee is in breach of this Lease and County, at its sole option, reenters and takes possession of the Premises, Lessee agrees that should the manner or method employed by County in reentering or taking possession of the Premises give Lessee a cause of action for damages or in forcible entry and detainer, the total amount of damages to which Lessee is entitled in such an action shall be one dollar (\$1.00). Lessee agrees that this Clause may be filed in any such action, and that when filed it shall constitute a stipulation of Lessee fixing the total damages to which Lessee is entitled in such an action.

46. SIGNS. Lessee may erect and maintain such signs upon the Premises as are approved in writing by the Parks Director prior to installation of said signs. Signs shall be removed by Lessee at the termination of this Lease upon written request of the Parks Director.

47. TIME. Time is of the essence of this Lease.

48. ENTIRE AGREEMENT. The parties hereto have herein set forth the entirety of their agreement and no understandings, agreements or obligations not herein included shall be of any force and effect.

49. AFFIRMATIVE ACTION PROGRAM. Lessee and any sublessees or assignees for whom a "Consent to Sublease" is approved by the County, maintaining a business location within San Diego County and using such business location in any manner connected with this Lease, shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated herein by reference. County shall furnish a copy of the Affirmative Action Programs for Vendors to Lessee upon request.

Lessee, in the operations to be conducted pursuant to the provisions of this Lease and otherwise in the use of the Premises, shall not discriminate or

permit discrimination against any person or class of persons by reason of sex, race, color, creed, or national origin in any manner prohibited by law or any amendments thereto.

50. NOTICES. Notices given or to be given by County or Lessee to the other, shall be given in writing and shall be addressed as County or Lessee may hereafter designate by written notice.

TO: COUNTY

Director, Department of General Services
County of San Diego
5555 Overland Avenue, Bldg. 2
San Diego, CA 92123

TO: LESSEE

McConaughy House Partnership
2490 Heritage Park Row
San Diego, CA 92110

51. NON-DISCRIMINATION. Lessee herein covenants by and for itself, its successors, and assigns, and all persons claiming under or through it, and this lease is made and accepted upon the subject to the condition that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the leased Premises nor shall the Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Leased Premises.

52. SPECIAL PROVISIONS. Lessee and County agree that in the event there is any conflict between the following special provisions and any of the other provisions of this Lease, the following special provisions shall govern:

a. Areas Open to Public. In keeping with the public purpose of Heritage Park, Lessee shall preserve the Victorian character of McConaughy House during the term of this Lease. In addition, Lessee shall maintain the Reception

Area inside the front door and other appropriate areas of McConaughy House as viewing areas available to the public during normal working hours and shall cooperate with County and the Save Our Heritage Organisation to make McConaughy House available for free, guided public tours during weekends and holidays. Victorian or similar style clothing will be worn by reception personnel and tour guides whenever practicable.

b. Restoration of Storage Area. Upon completion of the relocation of McConaughy House from the temporary storage site within Heritage Park to Parcel 80-1188-A1 therein, Lessee shall remove all brush, timber, scraps and other material from said storage site and shall restore said site, including landscaping thereon, to as presentable a condition as before occupation of said storage site by McConaughy House.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

Approved and/or Authorized by Board
of Supervisors, County of San Diego

JUN 16 1981 #17

Porter D. Cremans
Clerk of the Board of Supervisor

COUNTY OF SAN DIEGO

By *Porter D. Cremans*
Clerk, Board of Supervisors

LESSEE:

Dated 6/2/81

Dated 6-2-81

By *Daniel F. Bamberg*
By *[Signature]*



FIRST AMENDMENT TO LEASE AGREEMENT

HERITAGE PARK

McCONAUGHY HOUSE

FIRST AMENDMENT
TO
LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT, made and entered into this 5th day of March, 1991, by and between the County of San Diego, hereinafter referred to as "County" and Daniel F. Bamberg, a Sole Proprietorship hereinafter called "Lessee", whereby the parties hereto agree as follows:

W I T N E S S E T H :

WHEREAS, on June 16, 1981, County entered into a thirty year Lease Agreement known as County Contract No. 17537-5490-R with Daniel F. Bamberg and James A. Dunn for that certain real property known as Parcel 80-1188-A1 also known as the McConaughy House located at 2490 Heritage Park Row, San Diego, California; and

WHEREAS, on March 7, 1990, James A. Dunn did assign and transferred right, title and interest in said Lease to Daniel F. Bamberg; and

WHEREAS, the parties hereto are desirous of amending said Lease Agreement in order to adjust the Base Rent, extend the term of the Lease, adjust the cost of living provision, clarify the Lessee's interest upon the expiration of the original lease term, adjust the rental rate renegotiation clause, and revise the insurance and special provisions clauses.

NOW THEREFORE, it is mutually agreed as follows:

1. Clause 4 of said Lease Agreement, entitled TERM is hereby amended to read as follows:

"4. TERM. The term of this Lease is fifty-two and one-half (52.5) years, commencing June 16, 1981, and terminating December 5, 2033."

2. Clause 9a of said Lease Agreement, entitled Base Rent is hereby amended to read as follows:

"a. The Base Rent reserved to County for the first three (3) years of the term, as provided in Clause 4 (TERM) hereof, shall be Six Hundred Eight Dollars (\$608.00) per month. Beginning with the tenth (10th) year of the term, as provided in Clause 4 (TERM) hereof, the Base Rent reserved to County shall be One Thousand Dollars (\$1,000.00) per month. The additional Rent reserved to County shall be an amount computed as ten percent (10%) of the rental due Lessee from its subleases during the term of each sublease and/or any extension or holding over thereof as provided in the first paragraph of this Clause."

3. Clause 14 of said Lease Agreement, entitled COST OF LIVING ADJUSTMENT is hereby amended to read as follows:

"14. COST OF LIVING ADJUSTMENT. The monthly Base Rent provided in Clause 9 (RENT) above or as maybe adjusted by renegotiation or arbitration, as provided in Clause 15 (RENTAL RATE RENEGOTIATION), shall undergo a cost of living adjustment to be effective for the three (3) year periods of this Lease which commence July 1, 1984, July 1, 1987, July 1, 1993, July 1, 1996, July 1, 2002, and July 1, 2005; and for the two and one-half (2.5) year periods of this Lease which commence December 16, 2013, June 16, 2016, June 16, 2021, December 16, 2023, December 16, 2028, and June 16, 2031. Said adjustment shall reflect any increase or decrease in the purchasing power of the dollar following commencement of this Lease by the use of the following formula:

$$R = A \times \frac{B}{C}$$

WHEREIN,

R equals the adjusted monthly rental for each month of the

particular 3 year (36 month) period, and 2.5 year (30 month) period;

A equals the base rent for the particular period as set forth above in Clause 9a (RENT);

B equals the average monthly consumer price index as hereinafter defined for the first full calendar quarter immediately preceding the commencement of the 12 month period for which the adjusted monthly rental is being computed; and

C equals the average monthly consumer price index as herein defined for the first full calendar quarter immediately preceding the commencement of the term of this Lease.

The consumer price index which shall be used as the source for such index numbers, shall be that published by the United States Department of Labor, entitled United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, for Los Angeles-Anaheim-Riverside Area, all items of the index entitled "Consumer Price Index for all Urban Consumers," for the Los Angeles-Anaheim-Riverside Area (1982-84 = 100). In the event that such index is not published for the Los Angeles-Anaheim-Riverside Area, then another comparable index or source of such information generally recognized as authoritative shall be substituted by agreement of the parties. If the parties should not agree, such source of information shall be determined by arbitration pursuant to the provisions of the California Code of Civil Procedure."

4. Clause 15 of said Lease Agreement, entitled RENTAL RATE RENEGOTIATION is hereby amended to read as follows:

"15. RENTAL RATE RENEGOTIATION. Upon the expiration of the following dates, June 16, 1990, June 16, 1999, June 16, 2008, June

16, 2011, December 16, 2018, and June 16, 2026, the Base Rent and Additional Rental rate for each of the first three (3) succeeding nine (9) year rental periods, the succeeding one (1) three (3) year rental period, and the three (3) succeeding seven and one half (7.5) year rental periods shall be determined in the following manner:

Prior to the expiration of the rental periods dated June 16, 1990, June 16, 1999, June 16, 2008, June 16, 2011, December 16, 2018, and June 16, 2026, County shall propose to Lessee in writing the monthly rental rate to be established by the parties for the next succeeding rental period and parties hereto shall, by amendment to this Lease, revise the monthly rental to reflect their agreement as to the monthly rental rate to applied for the next succeeding period. If agreement is not reached between the parties at least one hundred twenty (120) days prior to the commencement of the succeeding rental period, County and Lessee shall commence arbitration in accordance with the following procedure:

County shall, no less than ninety (90) days prior to the end of said rental period, select and appoint one representative who shall be a recognized real estate appraiser and a member of the American Institute of Real Estate Appraisers. Lessee shall, no less than ninety (90) days prior to the end of said rental period, select and appoint one representative who shall be a recognized real estate appraiser and a member of the American Institute of Real Estate Appraisers. Both parties shall give written notice each to the other of selection and

appointment of their respective representatives.

Upon appointment and notice of appointment of said representatives, said representatives shall, no less than 80 days prior to the end of said rental period, meet and confer for the purpose of appointing a third person of like professional qualification and shall, no less than 70 days prior to the end of said rental period, appoint said third person who shall act as a neutral arbitrator of any disagreements which may arise in the course of rental renegotiations. The said representatives and neutral arbitrator shall promptly meet and determine the rental rate which shall be applied for the rental period under arbitration. No less than thirty (30) days prior to the end of said rental period, said neutral arbitrator and concurring representative(s) shall render a written decision and in which decision they shall specify the monthly rental to be paid by Lessee to County for and during the rental period under arbitration. It is understood and agreed that any award made pursuant to this arbitration agreement shall be binding on both County and Lessee, and shall apply to rent due and payable to County for the full rental period under arbitration. Refusal to acquiesce in said award by either party shall constitute a breach of this Lease.

In the event that either party should fail to appoint a representative, or the representative should

fail to appoint a neutral arbitrator, or either party should refuse to acquiesce in the decision of the neutral arbitrator, either or both parties may apply to the Superior Court in and for the County of San Diego for relief of an appropriate nature pursuant to the arbitration provisions of the California Code of Civil Procedure which are found at Section 1289 and following.

County shall bear all of the expense of its appointed representative and Lessee shall bear all of the expense of its appointed representative and County and Lessee shall equally share the fee and expenses of the neutral arbitrator and the incidental expenses of the arbitration not attributable to either party's representative.

In order to determine the rental rate, the representatives and the neutral arbitrator shall consider fair market or "economic rent" for the Premises, said rate being the monthly amount which said Premises could be expected to return to County if offered for lease on the open market under normal circumstances giving due consideration to location, desirability and utility of said Premises and similar relevant matters which are traditionally considered by professional appraisers in estimating the rental rate return which could be expected from similar property. Any and all improvements upon the property owned by

County shall be considered in arriving at the said rental rate."

5. Clause 20 of said Lease Agreement, entitled INSURANCE is hereby amended to read as follows:

"20. INSURANCE. Lessee shall, during the term of this Lease, keep or cause to be kept, policies of insurance which will fully protect the Premises. Lessee shall submit, on or before date of occupancy, Certificates of Insurance evidencing that Lessee has obtained the required insurance from generally recognized responsible insurers in the following forms of coverage and minimum amounts specified:

a. Commercial General Liability Insurance. The policy must be written on an 'occurrence basis' and in amounts of not less than \$500,000 each occurrence.

b. Fire and Extend Coverage. The policy is to provide coverage against loss or damage to the Premises resulting from fire, lightning, vandalism, malicious mischief and such perils ordinarily defined as 'extended coverage' including flood but not earthquake. Such insurance shall be maintained in an amount of not less than 90% of the full replacement value subject to a deductible clause not to exceed one thousand dollars (\$1,000).

The required Commercial General Liability policy shall name the County of San Diego as 'additional insured'.

The required Fire and Extended Coverage policy shall name the County of San Diego as 'loss payee'.

Each policy of insurance shall contain the following clause:

'It is agreed that this policy shall not be canceled nor the coverage reduced until thirty (30) days after the County Lease

*\$50K
fire legal
liability
require
in lease
OK
2-9-87*

Administrator shall have received written notice of such cancellation or reduction. The notice shall be deemed effective the date delivered to said Lease Administrator as evidenced by properly validated return receipt.'

The County shall retain the right at any time to review the coverage, form and amount of insurance required herein, and may require Lessee to obtain insurance sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exist at the time a change in insurance is required. County requirements shall be reasonable."

6. Clause 52 of said Lease Agreement entitled SPECIAL PROVISIONS is hereby amended to read as follows:

"52. SPECIAL PROVISIONS. Lessee and County agree that in the event there is any conflict between the following special provisions and any other provisions of this Lease, whether heretofore or hereinafter set forth, the following special provisions shall govern:

a. Areas to Public. In keeping with the public purpose of Heritage Park, Lessee shall preserve the Victorian character of McConaughy House during the term of this Lease. In addition, Lessee shall maintain the Reception Area inside the front door and other appropriate areas of McConaughy House as viewing areas available to the public during normal working hours and shall cooperate with County and the Save Our Heritage Organization to make McConaughy House available for free guided public tours during weekends and holidays. Victorian or similar style clothing will be worn by reception

personnel and tour guides whenever practicable.

b. Restoration of Storage Area. Upon completion of the relocation of McConaughy House from the temporary storage site within Heritage Park to Parcel 80-1188-A1 therein, Lessee shall remove all brush, timber, scraps and other material from said storage site and shall restore said site, including landscaping thereon, to as presentable a condition as before occupation of said storage site by McConaughy House.

c. Relocation Assistance Waiver. Lessee hereby
✓ acknowledges that Lessee waives all rights to any form of Relocation Assistance provided for by local, State, or Federal law that Lessee may be entitled to by reason of this Lease."

7. Clause 53 entitled QUITCLAIM OF LESSEE'S INTEREST is hereby added to read as follows:

"53. QUITCLAIM OF LESSEE'S INTEREST. Upon expiration of the first thirty (30) years of this Lease (June 16, 2011), Lessee shall execute, acknowledge, and deliver to County within thirty (30) days after receipt of written demand therefore, a good and sufficient deed whereby all right, title, and interest of Lessee in the existing improvements thereon are quitclaimed to County. County may prepare and record a notice reciting the failure of Lessee to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of expiration of these rights and of all rights of Lessee or those claiming under Lessee in and to the existing improvements thereon.

8. This First Amendment to Lease Agreement shall be effective and binding on all parties hereto commencing upon execution of this First Amendment to Lease Agreement by County.

9. Except as hereinabove amended, said Lease Agreement shall continue in full force and effect in all particulars.

IN WITNESS WHEREOF, the parties hereto have set their hands on the date first above written.

Dated: 11/8/90

LESSEE: DANIEL F. BAMBERG
a Sole Proprietorship

BY: D. F. Bamberg
DANIEL F. BAMBERG

COUNTY OF SAN DIEGO

BY: Thomas J. Pastuszka
Acting Clerk, Board of Supervisors

Approved and/or authorized by the Board
of Supervisors of the County of San Diego
MARCH 5, 1991 (10)

Thomas J. Pastuszka

X
Acting Clerk of the Board of Supervisors

APPROVED

Therese M. ... 2/14/91
THOMAS ... DEPUTY COUNTY COUNSEL

50600376

copy

ASSIGNMENT OF LEASE
McCONAUGHY HOUSE, HERITAGE PARK
COUNTY CONTRACT NO. 17537-5490-R

For a valuable consideration, receipt of which is hereby acknowledged Daniel F. Bamberg, as ASSIGNOR, hereby assigns and transfers to Holiday Traditions, Inc., a California Corporation, as ASSIGNEE, all right, title, and interest of the undersigned as Lessee in and under that certain Lease known as County of San Diego, Contract No. 17537-5490-R, dated June 16, 1981, as amended by that certain First Amendment To Lease Agreement, dated March 5, 1999, and as further amended by that certain Second Amendment to Lease Agreement With Daniel F. Bamberg, dated June 4, 1996, between the County of San Diego, a political subdivision of the State of California, as Lessor, and Daniel F. Bamberg, as Lessee.

Dated: November 1, 1999

ASSIGNOR: Daniel F. Bamberg
a Sole Proprietor

BY: D. F. Bamberg
Daniel F. Bamberg

ACCEPTANCE OF ASSIGNMENT

The undersigned Assignee hereby accepts the foregoing assignment and hereby agrees to keep, perform and be bound by all the terms, covenants, and conditions in said Lease on the part of the Lessee therein to be kept and performed as though the undersigned Assignee was the original Lessee thereunder.

Dated: November 1, 1999

ASSIGNEE: Holiday Traditions, Inc.
a California Corporation

BY: Chuck Catania
Chuck Catania, President

CONSENT TO ASSIGNMENT

The above assignment of Lease is hereby consented to without waiving the restriction contained in said Lease as to any subsequent assignments.

COUNTY OF SAN DIEGO

Dated: Nov 29, 1999

BY: John A. Miller
JOHN A. MILLER, Director
Department of General Services

Attachment “B”
Scoring Matrix

Begins on the following page.

HERITAGE PARK
REQUEST FOR PROPOSALS (RFP)
EVALUATION

Business Entity: _____

Selection Committee Member: _____

Criteria	Rating
<i>Description of Proposed Project (30 points total)</i>	
1. Proposed project, including renovation of existing structures, development of new structures, if any, business plan and proposed lease term. (25 points)	
2. Estimated schedule for the proposed development through renovation and design and development of new buildings, if any. (5 points)	
<i>Development Team (15 points total)</i>	
1. Identify each entity or partner that would entitle and develop the proposed improvements. (5 points)	
2. Explain the intended role of each entity or partner that would entitle and develop the proposed improvements. (5 points)	
3. Identify the project manager that will be the lead for the proposed development of the project. (5 points)	
<i>Experience: Provide experience in developing/operating comparable projects. (30 points total) The following should include:</i>	
1. Dates of Projects (8 points)	
2. Financing Approaches (10 points)	
3. Predevelopment Activities (4 points)	
4. Public Sector Involvement (8 points)	
<i>Financial (25 points total)</i>	
1. Proven ability to raise capital for development of this project. (6 points)	
2. Demonstrated ability to pay monthly rent in accordance with a lease agreement. (7 points)	
3. The approximate investment the proposer will make in renovations of existing structures and proposed new development. (6 points)	
4. The amount of proposed rent. (6 points)	