

**LEASE AGREEMENT  
BETWEEN  
THE CITY OF SANTA BARBARA  
AND  
SANTA BARBARA ZOOLOGICAL FOUNDATION  
FOR THE DEVELOPMENT, MAINTENANCE, AND OPERATION OF  
THE SANTA BARBARA ZOOLOGICAL GARDENS**

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## List of Exhibits

Exhibit A - Premises Map

Exhibit B - Nondiscrimination Certificate

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (the "Lease") is dated for reference purposes \_\_\_\_\_, 2012 and is effective as of the Effective Date by and between:

**THE CITY OF SANTA BARBARA**, a municipal corporation, hereinafter referred to as "City"; and

**SANTA BARBARA ZOOLOGICAL FOUNDATION**, a California non-profit public benefit corporation, hereinafter referred to as the "Foundation."

**WITNESSETH**

WHEREAS, the City of Santa Barbara owns certain real property formerly known as The Childs Estate in the City of Santa Barbara as shown on the map attached hereto as Exhibit A; and

WHEREAS, the Foundation has leased the real property depicted on the map attached hereto as Exhibit A since 1963 for the development and operation of an accredited zoological gardens and Regional Park, commonly known as the Santa Barbara Zoo (or the Santa Barbara Zoological Gardens), for the benefit, enjoyment, and education of the citizens of Santa Barbara and its visitors; and

WHEREAS, the primary objectives of the Foundation are to administer, develop, and maintain the zoological gardens and Regional Park in the interests of preservation and conservation of wildlife and natural resources for the continued benefit, enjoyment and education of the citizens of Santa Barbara and its visitors; and

WHEREAS, the Foundation continues its commitment to meet the high accreditation standards of the Association of Zoos & Aquariums while serving over 450,000 annual visitors from the community and tri-county area; and

WHEREAS, the Foundation, with the demonstrated financial support of the public, continues to develop the Regional Park pursuant to the Zoo Master Plan, to create an award-winning facility and operation for the benefit, enjoyment and education of the public; and

WHEREAS, the Foundation continues to contribute to the local economy through its operation, employment, and regional attendance; and

WHEREAS, the best interests of the City and the public will be served by the continued leasing of the Leased Premises to the Foundation for the operation of the zoological gardens as a Regional Park, and

WHEREAS, the City desires to see continued operation of the Santa Barbara Zoological Gardens for the benefit, enjoyment and education of the public.

**NOW THEREFORE**, the parties hereby mutually agree as follows:

## **I. DEFINITIONS**

The following words have in this Lease the definition attached to them in this section unless otherwise apparent from the context.

“**CITY**” means City of Santa Barbara, a municipal corporation, its officers, members of the City Council, agents, employees and authorized representatives.

“**CITY ADMINISTRATOR**” means the City Administrator of the City of Santa Barbara or the Administrator’s designated representative.

“**CITY COUNCIL**” means the Council of the City of Santa Barbara.

“**EFFECTIVE DATE**” means the date on which the City ordinance approving the City’s execution of this Lease becomes effective pursuant to Section 514 of the Santa Barbara City Charter.

“**EQUIPMENT**” means Foundation’s equipment, furniture and moveable property placed in, on or upon the premises by Foundation, including trade fixtures.

“**FIXTURES**” means any personal property installed in, on or upon the premises by Foundation.

“**FOUNDATION**” means the Santa Barbara Zoological Foundation, a California non-profit public benefit corporation.

“**IMPROVEMENTS**” means any addition to or modification, alteration or betterment of the real property made by Foundation including, but not limited to, buildings, animal exhibits, driveways, sidewalks, sewers, utilities and other permanent structures.

“**PARKS AND RECREATION DIRECTOR**” means the Parks and Recreation Director of the City of Santa Barbara.

“**REGIONAL PARK**” means facilities defined as such pursuant to Section 28.37.030.A.9. of Chapter 28.37 of the Municipal Code of the City of Santa Barbara.

“**ZOO**” means the zoological gardens and Regional Park located on the Premises and commonly known as the Santa Barbara Zoo or the Santa Barbara Zoological Gardens.

“**ZOO MASTER PLAN**” means the Master Plan for the Zoo as approved by the City in 2006 and as amended from time to time prior to or after the Effective Date.

## **II. PREMISES**

City leases to Foundation and Foundation leases from City, the real property located at 500 Niños Drive in the City of Santa Barbara as shown on the map and attached hereto as Exhibit A, hereinafter referred to as the “Premises”.

## **III. TERM**

The initial term of this Lease is thirty five (35) years, commencing upon the Effective Date of the ordinance approving the City’s execution of this Lease (“Commencement Date”). Foundation

shall have the option to extend the term of this Lease for an additional fifteen (15) years subject to the same terms and conditions as set forth in this Lease and any amendments to this Lease that may have occurred prior to the exercise of said option. Foundation may exercise its option to extend the Lease term by sending written notice to City of Foundation's intent to extend the term of this Lease. The option to extend the term of this Lease shall expire if not exercised at least three (3) years prior expiration of the original term of this Lease.

#### **IV. TITLE, CONDITION, AND RENT**

##### **4.01 Title to the Premises**

Title to the leasehold of the Premises is conveyed by City to Foundation free and clear of all recorded liens, encumbrances, covenants, assessments, easements, leases and taxes, except as are consistent with this Lease.

##### **4.02 Condition of Premises**

Foundation accepts the condition of the Premises as is.

##### **4.03 Rent**

Foundation shall pay annually to City One Dollar (\$1.00) as rent for the Premises. The rental payment shall accompany the annual report required pursuant to Section 11.01 of this Lease.

#### **V. USE**

##### **5.01 Approved Use**

Foundation shall use the Premises for the development, operation, and maintenance of an accredited zoological gardens and Regional Park, commonly known as the Santa Barbara Zoo (Santa Barbara Zoological Gardens), for the benefit, enjoyment, and education of the citizens of Santa Barbara and its visitors.

##### **5.02 Zoo Master Plan**

Foundation shall operate and develop the Zoo in a manner consistent with the Zoo Master Plan, any currently valid approvals from the City (Planning Commission, Historic Landmarks Commission, Park and Recreation Commission, Council or any other City body from which an approval is necessary) as such approvals may be revised from time to time, and any future approvals related to new development. This provision is not intended to restrict the Foundation from developing and operating the Zoo in a manner consistent with the approved use described in Section 5.01.

##### **5.03 Accreditation**

In addition to operating and developing the Zoo in a manner consistent with the Zoo Master Plan, and any applicable City approvals, Foundation shall maintain (i) an accreditation with the Association of Zoos & Aquariums, or any successor to such organization (the "AZA"); and (ii) a current Exhibitor's Permit issued by the U.S. Department of Agriculture (the "USDA"). Foundation shall conduct its operations and shall maintain the Zoo facilities in accordance with the accreditation standards and shall comply with the facilities and operational standards and

requirements of both the AZA and the USDA, as such standards and requirements may be revised from time to time throughout the term of this Lease. If the AZA should cease operation without a successor, City and Foundation shall meet and confer regarding the selection of another appropriate accrediting agency. Any alternative accrediting agency shall be selected by mutual agreement of City and Foundation.

**5.04 Additional Specific Allowed Uses**

Consistent with Foundation's use of the Premises as an accredited zoological gardens and Regional Park, Foundation may use the Premises or portions thereof for any ancillary and compatible uses which are consistent with and complimentary to the operations of the zoological gardens and Regional Park, as reasonably determined by Foundation and in accordance with Chapter 28.37 of the City Municipal Code. Such additional uses shall include without limitation, making the Premises or portions thereof available for public or private events such as weddings, receptions, conferences, group meetings, fundraising activities (which are consistent with Foundation's nonprofit tax-exempt status), children's educational camps and programs, entertainment or musical events, events, programs and activities related to the Old Spanish Days in Santa Barbara Fiesta and other events, programs and activities. As part of Foundation's supplemental activities on the Premises, or as part of the regular food and beverage service provided on the Premises, Foundation may sell alcohol provided that any such alcohol sales or service is conducted with all necessary licenses. It is the intention of this section to be an enabling provision which permits the widest range of supplemental events and activities on the Premises which are determined by Foundation in its reasonable discretion to be consistent with and complimentary to the operations of the zoological gardens and Regional Park and in accordance with Chapter 28.37 of the City Municipal Code.

**5.05 Rules and Regulations**

Foundation shall conform to and abide by all laws, rules and regulations relative to the uses herein authorized, and shall be subject at all times to applicable laws, rules, regulations, resolutions, ordinances and statutes of the City of Santa Barbara, County of Santa Barbara, State of California, and the Federal Government. Where permits or licenses are required for the development or use authorized herein, such permits or licenses must be obtained by Foundation from the regulatory body having jurisdiction thereof before such use is undertaken.

**5.06 Limitation on Use**

Foundation may use or permit the use of the Premises in any manner that is consistent with the permitted uses set forth in Section 5.04 and a Regional Park. Foundation shall use reasonable good faith efforts to engage and permit such uses of the Premises in a manner that is reasonably calculated to minimize or avoid damage, waste or a nuisance, or unreasonable disturbance of owners or occupants of neighboring properties.

**VI. OPERATION**

**6.01 Operating Costs**

Foundation shall be responsible for all costs related to the operation of the Zoo including the personnel, supplies, and equipment necessary for the care of the animals and the maintenance and operation of the Premises.

**6.02 Fees and Charges**

Foundation may impose and collect fees and charges for entrance to and use of the zoo facilities and for any supplemental services provided, facilities rental fees and charges, food and beverage service and the sale of goods and services.

**6.03 Concessions and Vending**

Foundation may provide for the operation of retail concessions upon the Premises. Concessions may be operated by the Foundation's own employees or by contract.

All foods, beverages, confectionery, refreshments, or other items, sold or kept for sale shall conform in all respects to federal, state and municipal laws, ordinances and regulations. Foundation shall require all concessionaires operating under the Foundation's authority to obtain at their own expense any and all permits or licenses that may be required in connection with the operation of any concession.

Any concession agreement entered into by Foundation shall only be a license to provide services on the Premises and shall not constitute an interest in the real property of the Premises. Any and all concession agreements shall terminate upon Foundation's assignment of this Lease or other termination of Foundation's interest in the Premises, unless expressly assumed, in writing, by the Foundation's successor in interest.

**6.04 Solicitation of Grants**

Foundation shall be responsible for and shall have the right to solicit and receive grants, donations and gifts to fund the development, maintenance and operation of the Zoo. If not in conflict with other granting priorities of the City, at the reasonable request of Foundation, City shall endorse Foundation grant applications when required by a granting agency.

**6.05 Exclusive Use of Funds**

All monies received by Foundation for development, maintenance and operation of the Zoo shall be used exclusively for said purposes. All monies received by Foundation from the operation or use of the Zoo shall be committed to the development, maintenance and operation of the Zoo and no other use. No member of Foundation's Board of Directors shall receive any direct financial benefit from the use of such funds; provided, however, the Foundation may pay reasonable compensation for services rendered to the Foundation by a member of the Foundation's Board of Directors or by a firm that employs a member of the Foundation's Board of Directors.

**6.06 Naming of Zoo Facilities**

Notwithstanding the provisions of Chapter 22.48 of the Santa Barbara Municipal Code, Foundation shall have the right to name areas and facilities within the Premises pursuant to the request of persons or organizations who have made contributions towards the development of the Zoo.

**6.07 Animals, Specimens, and Collections**

All animals, specimens, and collections furnished by the Foundation shall remain the property of the Foundation and may, from time to time, be exchanged, sold, or otherwise disposed of as the Foundation may determine in its sole discretion.

**6.08 Circulation and Parking**

City and Foundation have shared mutual interests related to circulation and parking in the neighborhoods adjoining and in the vicinity of the Premises, East Beach and the Cabrillo Boulevard corridor. City acknowledges that from time to time Foundation staff and visitors may use the parking facilities located at Dwight Murphy Field and on the streets in the vicinity of the Premises. Foundation acknowledges that the parking facilities located at Dwight Murphy Field are primarily intended to serve park uses occurring at Dwight Murphy Field. Any use of the parking facilities at Dwight Murphy Field by employees or guests of the Zoo is secondary to the park uses and shall occur on a first-come, first-served basis without prior assignment or reservation. City and Foundation covenant and agree to cooperate with one another in connection with the circulation and parking issues associated with the Premises, East Beach and the Cabrillo Boulevard corridor.

**VII. MAINTENANCE**

**7.01 Maintenance**

Foundation, at its sole cost and expense, shall keep and maintain the Premises and all improvements, fixtures, equipment and utilities on the Premises in good order, condition and repair and in compliance with all applicable laws. City shall have the right to enter upon the Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and to conduct repairs as City may be required to perform under the provisions of this Lease.

**7.02 Water Quality**

Foundation shall comply with applicable laws regarding the quality of storm water, surface water, and ground water and any approved water quality plan.

**7.03 Recycled Water Use**

The City and the Foundation agree to a policy of designing and planning new projects and exhibits on the Premises to use recycled water for irrigation, toilet flushing, fountains, and other appropriate uses to the greatest extent practicable.

For the term of this Lease, Foundation shall comply with the Recycled Water User Agreement executed by the City and the Foundation, as such agreement may be amended from time to time.

**VIII. TAXES AND UTILITIES**

**8.01 Taxes**

Foundation shall pay, prior to delinquency, all taxes assessed against or levied upon the real property of the Premises or any personal property of Foundation located on the Premises. In addition, Foundation shall pay, prior to delinquency, any taxes related to the use or operation of the Premises including, but not limited to, any sales taxes related to retail sales conducted on the Premises.

**8.02 Utilities**

Foundation shall be responsible for the payment of charges incurred for all water, sewer, gas, electricity, telecommunications, trash disposal, to the extent applicable, and any other utilities and services supplied to the Premises, together with any taxes thereon.

**IX. IMPROVEMENTS TO PREMISES**

**9.01 City Charter Section 520**

All development of the Premises pursuant to this Lease shall be compatible with and accessory to the park and recreation purposes for which the City Council has designated the Premises in accordance with section 520 of the City Charter and Chapter 28.37 of the City Municipal Code. A City Council finding of compatibility shall be required as a condition precedent for any consent for any development, installation or use of the Premises not specified in the Zoo Master Plan, the uses allowed in Regional Parks pursuant to Chapter 28.37 of the Municipal Code, or this Lease.

**9.02 Future Development of Premises**

A. Foundation shall conduct no new construction, installation, grading or other development in, on or upon the Premises that would require a building permit under the California Building Code, as such code is adopted by the City of Santa Barbara, or a Coastal Development Permit without the prior written consent of the Parks and Recreation Director, who shall review proposed projects in consultation with the Public Works Director. Such consent may be documented by the Parks and Recreation Director executing the master application for new development projects. When seeking approval for a proposed project, Foundation shall provide the Parks and Recreation Director with conceptual engineering and design plans for the proposed project. Foundation may appeal the denial of a project by the Parks and Recreation Director to the City Council in accordance with section 1.30.050 of the Santa Barbara Municipal Code.

The approval of any project by the Parks and Recreation Director or the City Council on appeal pursuant to this provision shall constitute an action of the City in its proprietary capacity only and shall in no way excuse Foundation from complying with any laws, rules, regulations and ordinances regarding the development and use of the Premises nor shall any approval pursuant to this provision limit the exercise of discretion in the design review process by any City officer, board or commission or the City Council. Foundation shall be exempt from the obligation to pay City development fees and permit fees for any construction, project or development on the Premises during the term of this Lease. This exemption from fees does not apply to mitigation fees, utility buy-in or connection fees, or any other fees that do not relate to the review of a development application or the permitting or inspection of construction.

B. All construction undertaken pursuant to this Lease shall be of first quality construction and architectural design and in accordance with plans and specifications submitted to and approved by City.

C. Foundation and City shall share with each other all geological, hydrological, or other reports or studies of the Premises that either party may prepare or cause to be prepared.

D. At least ten (10) days prior to commencement of any construction on the Premises, Foundation shall provide to City evidence of a payment and performance bond, letter of credit or cash or securities on deposit in an amount equal to one hundred percent (100%) of the contract price as security for the contractor's faithful performance of the construction. This bond, letter of credit, cash or securities shall be in such form and with such surety, brokerage, or depository institution as may be approved by City. Foundation shall bear all costs and fees associated with any bond, letter of credit, cash or securities as provided herein. In lieu of a payment and performance bond, Foundation may in its discretion provide City with either (i) evidence of cash or readily available securities on deposit in a Foundation account with any bank, savings and loan or other brokerage or financial institution in and amount; or (ii) a letter of credit, standby revolving credit loan or other credit facility sufficient to pay one hundred percent (100%) of the contract price for any construction, project or development on the Premises.

E. To the extent the California Labor Code requires the payment of prevailing wages for any work on improvements, fixtures or equipment on the Premises, Foundation shall ensure that any contractors hired by Foundation to perform any such work shall comply with the provisions of the Labor Code and Foundation shall indemnify and hold the City harmless for the failure of any contractor to comply with the provisions of such code.

## **X. TITLE**

### **10.01 Title to Real Property**

Title to the real property which is the subject of this Lease shall remain vested in the City.

### **10.02 Improvements Constructed by Foundation**

Title to all Improvements and Fixtures constructed or placed by Foundation upon the Premises shall remain vested in Foundation until termination of this Lease. Upon expiration of the term or other termination of this Lease, title to all Improvements upon the Premises shall vest in City without compensation therefor to Foundation. Upon expiration of the term or other termination of this Lease, Foundation shall retain ownership of any removable Fixtures. Unless Foundation receives prior written consent from the City to leave such Fixtures in place as part of the Premises, Foundation shall remove all Fixtures from the Premises upon expiration of the term or other termination of this Lease.

## **XI. OBLIGATIONS OF FOUNDATION**

### **11.01 Annual Report**

On or about August 1st of each year during the term of this Lease, Foundation shall submit to the City an annual report showing its revenues and income, its expenditures, its resources and a descriptive account of its activities during the preceding twelve months together with an audited financial statement for the applicable period.

## **11.02 Maintenance and Inspection of Records**

Foundation shall maintain true, correct and accurate records of its development, maintenance and operation of the Premises. Foundation shall keep and maintain said records for not less than five (5) years in its offices on the Premises.

All of the Foundations books of account and records relating to this Lease shall be made available at one location within the City limits of the City of Santa Barbara. City shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records (including any tax returns filed by Foundation) at reasonable times and upon reasonable notice for the purpose of determining the accuracy thereof. Any audit of such books and records shall be conducted at City's expense.

## **XII. INDEMNITY AND INSURANCE**

### **12.01 Indemnity & Hold Harmless**

Foundation agrees to investigate, defend, indemnify and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expense (including attorneys' fees) and causes of action of whatsoever ("Losses") character which the City may incur, sustain or be subjected to on account of loss or damage to property and loss of use thereof and for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed or occupancy, operation, maintenance, enjoyment, or use of the Premises under this agreement and arising from any cause whatsoever, excluding any Losses resulting from the gross negligence or willful misconduct by the City.

### **12.02 Insurance**

#### **A. Required Insurance Coverage**

Foundation shall maintain and keep in force during the term of this Lease, for the mutual benefit of City and Foundation, at Foundation's sole cost and expense, the following insurance:

1. Property Insurance insuring against loss of or damage to all improvements, fixtures and equipment on the Premises resulting from fire, lightning, vandalism, malicious mischief and those risks ordinarily insured by special form property coverage. Such property insurance shall be in an amount equal to the full replacement cost of said improvements, fixtures and equipment, including all required code upgrades. In addition, Foundation shall at its expense provide such additional insurance as may be reasonably required in the event Foundation provides alcohol service on the Premises.

2. Comprehensive General Liability Insurance with limits of not less than Ten Million Dollars (\$10,000,000) in any combination of primary or excess coverage for each occurrence combined single limit for bodily injury and property damage. Coverage thereunder shall include endorsements for contractual liability, personal injury, owners' and contractors' protection, and fire legal liability.

3. Automobile Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000) in any combination of primary or excess coverage each occurrence combined single limit for bodily injury and property damage for all vehicles owned or operated by Foundation.

4. Workers' Compensation Insurance in compliance with statutory limits.

## **B. General Insurance Policy Requirements**

1. All insurance provided for in this section shall be enacted under valid and enforceable policies in form and substance satisfactory to City issued by insurers satisfactory to City and authorized to do business in the State of California. Such insurance shall apply as primary and not in excess of or contributing with any insurance that City may carry. The policies required shall name City, its officers, employees and agents as additional insured. Foundation's insurance policies shall apply separately to each named or additional insured as if separate policies had been issued to each. Foundation's insurance, as required by this Lease, shall not be subject to cancellation or material reduction without at least thirty (30) days prior written notice to the City. Foundation shall furnish to City a Certificate of Insurance evidencing that the above requirements have been met on or before the commencement of this Lease and upon the renewal of each policy.

2. Foundation hereby expressly waives on behalf of its insurers hereunder any right of subrogation against City by reason of any claim, liability, loss or expense arising under this Agreement. This provision applies regardless of whether or not the Foundation obtains a waiver of subrogation endorsement from its insurer.

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

4. The procuring of such required policy or policies of insurance shall not be construed to limit Foundation's liability hereunder or to fulfill the indemnification provisions and requirements of this Lease. Notwithstanding said policy or policies of insurance, Foundation shall be obligated for the full and total amount of any damage, injury or loss caused by negligence or neglect connected with this Lease or with use or occupancy of the Premises.

### **12.03 Use of Insurance Proceeds**

Upon the occurrence of any loss, the proceeds of any insurance shall be paid to a financial institution or trust company with an office in Santa Barbara County designated by Foundation and approved by City (the "Insurance Trustee"). In the event of such loss, to the extent of available insurance proceeds received by Foundation, Foundation shall be obligated to rebuild or replace the destroyed or damaged improvements, equipment or fixtures in the same or better condition as they existed prior to such loss. All sums deposited with the Insurance Trustee shall be held in trust by the Insurance Trustee with the following powers and duties:

A. The Insurance Trustee shall pay the contractor retained by Foundation for the restoration in installments as the construction progresses. A retention fund of ten percent (10%) of the total contract price shall be established. The contractor shall be paid the retained amount upon the completion of the restoration, acceptance of the work by the Foundation and City, payment of all costs, expiration of all applicable lien periods and proof that the Premises is free of all mechanics' liens and lienable claims.

B. Payments to the contractor shall be made on presentation of certificates or vouchers from the architect or engineer retained by Foundation showing the amount due. If the Insurance Trustee, in the Insurance Trustee's reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Foundation, the Insurance Trustee shall have the right to appoint an architect or engineer to supervise the construction and to make payments to the contractor on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the Insurance Trustee out of the trust fund.

C. If the sums held by the Insurance Trustee are insufficient to pay the actual cost of the repair, restoration or replacement, Foundation shall have the right but not the obligation to deposit the amount of the deficiency with the Insurance Trustee within thirty (30) days after request by the Insurance Trustee indicating the amount of the deficiency.

D. Any undistributed funds following compliance with the provisions of this section shall be delivered to Foundation.

E. All actual costs of the Insurance Trustee shall first be paid from the insurance proceeds, then by Foundation. If the Insurance Trustee resigns or for any reason is unable or unwilling to act or continue to act in accordance with these provisions, Foundation shall substitute a new trustee for the designated trustee. The new trustee must be a financial institution or trust company with an office in Santa Barbara County approved by City.

F. Both Parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee in order for the Insurance Trustee to perform its obligations under this section.

#### **12.04 Termination of Lease Following Damage or Destruction**

Notwithstanding anything in this Lease to the contrary, in the event of any damage or destruction of the Premises or any improvements thereon which prevents the Foundation from operating the Zoo in its reasonable business discretion, Foundation shall have the right to terminate this Lease by written notice to the City given not less than ninety (90) days before the effective date of termination. In the event Foundation terminates this Lease following an event of damage or destruction to the Premises or any improvements thereon, the proceeds of any insurance on account of such damage or destruction shall be paid to City.

### **XIII. DEFAULT**

#### **13.01 Events of Default**

Any of the following occurrences or acts shall constitute an "Event of Default" under this Lease:

A. If Foundation at any time during the term (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law or equity or before any administrative tribunal which have or might have the effect of preventing Foundation from complying with the terms of this Lease) shall fail to observe or perform any of Foundation's covenants, agreements or obligations hereunder and such failure is not cured within sixty (60) days after receipt of written notice thereof by City to Foundation or, in the case of any failure which cannot with due diligence be cured within such sixty-day period, if Foundation should not proceed promptly to cure the same and thereafter conduct the curing of such failure with diligence, it being intended that the time within which to cure the failure shall be extended for such period as may be necessary to complete the curing of the same with diligence; or

B. If Foundation shall be liquidated or dissolved or shall begin proceedings toward its liquidation or dissolution without the prior written consent of City; or

C. If Foundation shall commit or suffer to be committed any waste of the Premises or any part thereof which is not cured within sixty (60) days after receipt of written notice thereof by City to Foundation or, in the case of any failure which cannot with due diligence be cured within such sixty-day period, if Foundation should not proceed promptly to cure the same and thereafter conduct the curing of such failure with diligence, it being intended that the time within which to cure the failure shall be extended for such period as may be necessary to complete the curing of the same with diligence; or

D. If Foundation shall alter the improvements on the Premises in any manner, except as expressly permitted by this Lease; or

E. If Foundation shall fail to maintain or replace the insurance as required by this Lease promptly after written notice from City to Foundation; or

F. If Foundation shall engage in any financing except as consented to by the City, or any other transaction creating any mortgage on the Premises, or place or suffer to be placed thereon any lien or other encumbrance, or suffer any levy or attachment to be made thereon without the prior knowledge and consent of City, which lien, encumbrance, levy or attachment the Foundation fails to bond over within thirty (30) days after written notice from the City; or

G. If Foundation fails to operate the Zoo for more than seventy-two (72) consecutive hours, except in the case of such closures as may be allowed or provided for by this Lease (hereafter referred to as an "Abandonment"), City may enter the Premises and operate the Zoo until the resolution of the situation that led to the Abandonment or until the termination of this Lease by either party. If the Lease is not terminated, City reserves the right to charge Foundation for costs incurred by City in the operation of the Zoo during the course of an Abandonment.

### **13.02 Remedies**

Upon the occurrence of any Event of Default described above, City may terminate Foundation's right to possession by any lawful means, in which case this Lease shall terminate and Foundation shall immediately surrender possession to City. In such event, City shall be entitled to recover from Foundation, any amount necessary to compensate City for all the detriment proximately caused by an affirmative act of Foundation or Foundation's failure to perform its obligations under this Lease.

**XIV. CONDEMNATION**

If the Premises or any portion thereof is taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively, “Condemnation”), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. In the event that only a portion of the Premises is condemned, Foundation may, at Foundation’s election, terminate this Lease as of the date the condemning authority takes possession. If Foundation does not elect to terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining. In the event that this Lease is not terminated by reason of the Condemnation, Foundation shall repair any damage to the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of City; provided, however, Foundation shall be entitled to recover all just compensation to which it may legally be entitled, including but not limited compensation for improvements on the Premises owned by the Foundation as described in Section 10.02 above.

**XV. MISCELLANEOUS AND INTERPRETIVE PROVISIONS**

**15.01 Assignment**

Foundation shall not assign this Lease or sublease all or any portion of the Premises without the prior written consent of the City Council.

**15.02 Successors**

This Lease shall be binding upon City and Foundation, their personal representatives, successors and assigns.

**15.03 Choice of Law; Venue**

This Lease shall be governed by the laws of the State of California. Any litigation between the Parties concerning this Lease shall be initiated in the County of Santa Barbara, State of California.

**15.04 Nondiscrimination Certificate**

Foundation agrees to comply with City’s nondiscrimination certificate which is attached hereto as Exhibit B and incorporated herein by reference.

**15.05 Captions**

Neither the index nor the title nor the heading to the sections in this agreement are part of this agreement and shall have no effect upon the construction or interpretation of any part hereof.

**15.06 Recordation**

This Lease may be recorded or an abstract, memorandum or short form agreement may be recorded at Foundation’s expense in the Office of the County Recorder of Santa Barbara County, California. City and Foundation agree to execute any abstract, memorandum or short form of this agreement in the form and substance as required by any title insurance company insuring Foundation’s leasehold interest in the Premises.

**15.07 Amendments**

This Lease may be amended only in writing, properly executed by City and Foundation.

**15.08 Severability**

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 in no way be affected, impaired or invalidated thereby.

**15.09 Time**

Time is of the essence in this Lease.

**15.10 Execution and Counterpart**

This Lease may be executed in two or more counterparts each of which shall be an original but all of which shall constitute one and the same instrument.

**15.11 Consent of Parties**

Unless another standard or condition is specified in the particular provision, whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval or grant it on unreasonable conditions.

**15.12 Corporate Authorization**

Each individual executing this Lease on behalf of any entity shall represent and warrant that he or she is duly authorized to execute and deliver the Lease on behalf of said entity in accordance with the duly adopted resolution of the Board of Directors or equivalent of that entity and that this Lease is binding upon that entity in accordance with its terms.

**15.13 Exhibits**

Attached hereto are Exhibits A and B both of which constitute part of this Lease and are incorporated herein by this reference.

**15.14 Notices**

All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by regular, certified or registered mail with the U.S. Postal Service, with postage prepaid, and shall be deemed sufficiently given if served in the manner specified herein. If such notice is intended for City it shall be addressed to:

City Clerk  
City of Santa Barbara  
P.O. Box 1990  
Santa Barbara, CA 93102-1990

with a copy to:

Parks and Recreation Director  
Parks and Recreation Department

PO Box 1990  
Santa Barbara, CA 93102-1990

and if intended for Foundation it shall be addressed to:

Santa Barbara Zoological Foundation  
Attn: Executive Director  
500 Ninos Drive  
Santa Barbara, CA 93103

or to such other address as either party may have furnished to the other in writing as a place for the service of notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices sent by overnight courier services that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the courier. If notice is received on Saturday, Sunday or a legal holiday, it shall be deemed received on the next business day.

**15.15 No Waiver**

No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder. No waiver of any provision hereof by City or Foundation shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by City or Foundation, as the case may be. Failure by City or Foundation, as the case may be, to enforce any of the terms, covenants or conditions of this Lease for any length of time or from time to time shall not be deemed to waive or decrease the right of City to insist thereafter upon strict performance by Foundation.

**15.16 No Right to Holdover**

Foundation has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. Nothing contained herein shall be construed as consent by City to any holding over by Foundation.

**15.17 Cumulative Remedies**

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**15.18 Surrender of Premises**

Foundation shall surrender the Premises upon the expiration of this Lease or upon any earlier termination date, other than termination following damage or destruction pursuant to Section 12.04, with all of the improvements and fixtures in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice.

**15.19 No Prior or Other Agreements**

This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no prior or contemporaneous agreement or understanding shall be effective. Upon the Commencement Date of this Lease, the prior lease between the Parties dated December 30, 1987 is hereby amended, restated and superseded by this Lease.

**XVI. TERMINATION**

**16.01 Termination**

Foundation shall have the right to terminate this Lease at any time with or without cause upon twelve (12) months written notice to City. If Foundation elects to terminate this Lease, Foundation shall effective upon the date of termination of this Lease immediately surrender possession of the Premises in accordance with Section 15.18 above.

**16.02 Disposition of Assets of the Foundation Upon Termination**

Foundation's assets are irrevocably dedicated to charitable purposes pursuant state and federal laws including, without limitation, Section 501(c)(3) of the Internal Revenue Code. The disposition of Foundation's assets following the expiration or termination of this Lease shall be subject to such laws, rules and regulations.

*[The remainder of this page is intentionally left blank.]*

**IN WITNESS WHEREOF**, the Parties have executed this agreement as of the date and year first above written.

**CITY OF SANTA BARBARA, a municipal corporation**

By: \_\_\_\_\_  
James L. Armstrong,  
City Administrator

**SANTA BARBARA ZOOLOGICAL FOUNDATION, a California nonprofit public benefit corporation**

By: \_\_\_\_\_  
Kelly Jensen, President

ATTEST

\_\_\_\_\_  
Deputy City Clerk

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Nancy Rapp,  
Parks and Recreation Director

APPROVED AS TO FORM:  
Stephen P. Wiley, City Attorney

By: \_\_\_\_\_  
N. Scott Vincent,  
Assistant City Attorney

APPROVED AS TO INSURANCE

\_\_\_\_\_  
Mark Howard, Risk Manager

## EXHIBIT A

All that certain real property owned by the City of Santa Barbara, California, within the City of Santa Barbara, California, lying Northerly of Cabrillo Boulevard, Westerly of the Andree Clark Bird Refuge, Easterly of Sycamore Canyon Creek, and southerly of the Southern Pacific Railroad right of way and as more particularly shown on the map attached hereto and outlined in red.



Features shown hereon were compiled from the records of various public and private entities and are for informational purposes only. The City of Santa Barbara does not accept any responsibility for the positional or completeness of this information.

M:\Administrative Services\Information Systems\GIS Collaboration\GIS Task\Public Works\Engineering\SB\_Zoo\Zoo Lease Area.mxd

# Zoo Lease Area

## Exhibit "A"

### Legend

-  Santa Barbara Zoo
-  Parcels



LESSEE'S OBLIGATION FOR NON-DISCRIMINATION CERTIFICATE  
(Santa Barbara Municipal Code Section 9.130.020)

I. Certificate Generally.

Consistent with a policy of non-discrimination in the use of real or personal property owned by the City of Santa Barbara a "lessee's obligation for non-discrimination certificate", as hereinafter set forth shall be attached and incorporated by reference as an indispensable and integral term of all leases of City owned real or personal property.

II. Contents of Certificate.

The "lessee's obligation for non-discrimination" is as follows:

(a) Lessee in the use of the property which is the subject of this lease or in the operations to be conducted pursuant to the provisions of this lease, will not discriminate or permit discrimination against any person or class of persons by reason of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Sections 12900 - 12996) except where such discrimination is related to bona fide occupational qualification.

(b) Lessee shall furnish its accommodations and services on a fair, equal and non-discriminatory basis to all users thereof and lessee shall only charge fair, reason-able and non-discriminatory prices for each unit of service.

Lessee may make reasonable and non-discriminatory rebates, discounts or other similar price reductions to volume purchasers to the extent permitted by law.

(c) Lessee shall make its accommodations and services available to the public on fair and reasonable terms without discrimination on the basis of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Sections 12900 - 12996) except where such discrimination is related to bona fide occupational qualification.

(d) Lessee shall not discriminate or allow discrimination either directly or indirectly, in hiring or employing persons to work on the leased premises.

(e) Lessee agrees that it shall insert the above articles in any agreement by which said Lessee transfers any interest herein or grants a right or privilege to any person, firm or corporation to use the leased premises or to render accommodations and services to the public on the leased premises.

(f) Non-compliance with provisions (a), (b), (c), (d), and (e) above shall constitute a material breach hereof and in addition to any other remedies provided by law or this lease, in the event of such non-compliance the Lessor shall have the right to terminate this lease and the interest hereby created without liability therefor, or at the election of the Lessor, the Lessor shall have the right to enforce judicially said provisions (a), (b), (c), (d), and (e).

In the event the Lessee is found to have failed to comply with the provisions of articles (a), (b), (c), (d), and (e) and notwithstanding any other remedy pursued by Lessor, the Lessee shall pay to the Lessor the sum of \$25.00 per day for each incident of a failure to comply.