

GROUND LEASE – ATHLETIC FIELD

Location of Leased Premises: FAIRVIEW DEVELOPMENTAL CENTER 2501 HARBOR BLVD. COSTA MESA, CALIFORNIA 92626
Agency: DEPARTMENT OF DEVELOPMENTAL SERVICES REAL PROPERTY NO. 790

Lease No.: L-2313

Lessee: City of Costa Mesa

This Lease, dated for reference purposes only, March 1, 2012, is made by and between the State of California, acting by and through the Director of the **Department of General Services (DGS)**, with the consent of the **Department of Developmental Services**, hereinafter collectively referred to as STATE, and the **City of Costa Mesa**, a California Municipal Corporation and Public Body, hereinafter referred to as LESSEE.

RECITALS

WHEREAS, pursuant to Government Code Section 14670(a), the Director of the Department of General Services (the "DGS"), with the consent of the Department of Developmental Services (the "DDS"), is authorized to let State-owned real property for a period not to exceed five years if the Director deems such letting is in the best interest of the STATE; and

WHEREAS, the DDS has under its jurisdiction certain real property located at 2501 Harbor Blvd., City of Costa Mesa, County of Orange, State of California, commonly referred to as the Fairview Development Center (FDC); and

WHEREAS, STATE is required by law to provide outdoor recreational facilities and opportunities to consumers served by STATE, and STATE has limited funds for maintaining and improving outdoor facilities that are vital and integral to the care, treatment, and habilitation services provided by STATE ; and

WHEREAS, STATE's policy is to make available for Lease property under its control, when it is for the benefit of the public, and same is consistent with the State of California's program needs; and

WHEREAS, LESSEE and STATE desire to jointly use and improve the STATE playing fields for STATE consumers and community recreation and it is in the best interest of the STATE that a Lease to develop the campus of STATE be consummated between STATE and LESSEE on the terms and conditions herein contained.

NOW THEREFORE, the parties agree to the provisions of the Lease AS set forth hereinbelow as follows:

- Section 1: Site Specific Provisions
- Section 2: Ground Lease Specific Provisions
- Section 3: Standard Provisions

SECTION 1 –SITE SPECIFIC PROVISIONS

WITNESSETH:

PROPERTY DESCRIPTION

1. STATE does hereby lease to LESSEE, and LESSEE hereby hires from STATE an area of land within the boundaries of the Fairview Developmental Center, situated in the City of Costa Mesa, County of Orange, State of California, 92626, as shown on Exhibit "A" attached hereto. LESSEE acknowledges that access to the playing field is through STATE'S private property, and LESSEE has limited access by road to the above described playing field and parking areas accompanying the playing field. LESSEE's areas consists of the following components:

(a) Playing field – An area of approximately five (5) acres of land located adjacent to North Shelley Circle within the Fairview Developmental Center site.

(b) Parking – At least 40 "head-in" parking spaces located within proximity to the Playing Field.

(c) Access - Non-exclusive right of ingress and egress for approximately one (1) mile from the terminus of the public road to the Playing Field site including the above described areas.

Together the Playing Field, the Access and the Parking are hereinafter referred to as "Premises" as outlined in Exhibit "A" consisting of 3 pages, attached hereto and incorporated herein.

USE

2. LESSEE agrees to use the Premises during the term of the Lease for the purpose of City sponsored or co-sponsored athletic events for recreation Division youth or adult programs regardless of skill level.

LESSEE provides playing fields and athletic facilities to the public through its recreation programs and local organizations, has limited land resources for conducting LESSEE sponsored recreational programs, is subject to increasing demand, and accordingly seeks cooperative joint-use agreements with public land owners for shared-use athletic facilities.

STATE'S use of the Premises is usually during daylight business hours with limited need for evening and nighttime use, and LESSEE'S recreation programs needs are usually for weekend, evening and nighttime use.

The operation within the Premises will be the function and total responsibility of the LESSEE, and LESSEE will abide by any rules and regulation established by the Administrative Services Director of FDC.

RENT PAYMENTS AND IN-LIEU CREDIT

3. STATE has verified through an appraisal report that the concluded annual "Fair Market Rent" for the use of the ground at FDC to be in the sum of:

SIX THOUSAND FIVE HUNDRED FORTY-THREE AND NO/100 DOLLARS (\$6,543.00) per Acre for a total of THIRTY TWO THOUSAND SEVEN HUNDRED FIFTEEN AND NO/100 DOLLARS (\$32,715.00) per year.

LESSEE's payments shall display State's Lease Number L-2313 and shall be mailed to the following address:

Department of General Services
Attn: Accounts Receivable - (L-2313)
707 Third Street, 10th Floor
Sacramento, CA 95605

SECTION 1 –SITE SPECIFIC PROVISIONS**RENT PAYMENTS
AND IN-LIEU
CREDIT (CONT)**

LESSEE acknowledges that rent and past due rent shall be due and payable to STATE whether or not an actual invoice is sent by STATE or received by LESSEE.

STATE agrees to waive the Rent for each period or part thereof that LESSEE provides the In-lieu Rent Benefit. If at any time during the term of this Lease, STATE shall discover that LESSEE has failed to provide the contributions as defined, said failure shall constitute a forfeiture by LESSEE of said In-Lieu rent credit. Upon written notice by STATE of forfeiture, LESSEE shall pay rent identified above, or the profit made by LESSEE during the term of the Lease, whichever amount is greater.

LESSEE's contribution constituting the In-lieu Rent Benefit, is set forth on Exhibit "B" attached hereto and generally described as:

(a) Parking Lot Removal and Replacement: LESSEE will administer the removal and replacement contract and pay two-thirds of the project costs. LESSEE's design and specifications are subject to written approval of FDC.

(b) Maintenance of Turf. The LESSEE shall mow, maintain, aerate, fertilize, provide pest control, and maintain sprinkler and irrigation systems for the Playing Field at the Premises, and all improvements used by LESSEE or its Permitted Users thereon.

(c) Watering. LESSEE shall perform watering to the Premises, subject to the provisions of Section 1, Paragraph 5 hereof.

FDC will reimburse LESSEE one-third (1/3) of the cost for parking lot improvements upon receipt of an invoice from LESSEE.

UTILITIES

4. (a) LESSEE agrees to separately meter the Premises for all utility costs such as electricity and in connection with LESSEE'S use of the Premises during the term of this Lease. This expense excludes trash pick-up. Utility payments shall be made payable to and sent directly to the utility provider.

(b) LESSEE shall comply with energy conservation measures required by law, or reasonably required by STATE as the result of an energy crisis. STATE shall not be liable to LESSEE for failure to provide utilities for causes beyond STATE's control.

TERM

5. The Term of this Lease shall commence April 1, 2012 and shall end March 31, 2017 with such rights of termination as are hereinafter expressly set forth.

**EARLY
TERMINATION**

6. (a) STATE or LESSEE hereto agree that STATE may terminate this Lease at any time during the term hereof by giving written notice to LESSEE ninety (90) days prior to the date when such termination shall become effective. If STATE elects early termination of the Lease, STATE shall reimburse LESSEE for the prorated share of initial improvement costs incurred by LESSEE.

(b) Notwithstanding the above early termination clause, this Lease may be terminated at anytime by STATE upon default by LESSEE of any covenant contained herein.

(c) Termination of this Lease for any reason shall also constitute termination of the Memorandum of Understanding. Termination of the Memorandum of Understanding shall also constitute termination of the Lease. If LESSEE terminates its Memorandum of Understanding with the STATE, LESSEE shall concurrently give notice to terminate this Lease.

SECTION 1 –SITE SPECIFIC PROVISIONS

**PLAYING FIELD
REPRESENTATIVES**

7. Prior to occupancy, LESSEE and STATE shall each designate in writing to the other party a representative who shall be responsible for the day-to-day issues of operation, maintenance, cleanliness and general order. LESSEE’s designated representative shall be available at all times during LESSEE’s permitted use, and STATE may contact LESSEE’s Communications Center, (714) 754-5252, at any other time and LESSEE’s designated representative shall be empowered to immediately address any concerns of STATE, due to the sensitive nature of the STATE’S consumers, clients and users of the Fairview Development Center.

NOTICES

8. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below. All such notices or other communications shall be deemed received upon the earlier of (i) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, or (ii) if mailed as provided above, on the date of receipt or rejection, when received by the other party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Standard Time, so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a State or Federal holiday, such notice shall be effective on the following business day.

STATE

DEPARTMENT OF GENERAL SERVICES

Real Estate Services Division
P. O. Box 989052
West Sacramento, CA 95798-9052
Phone: (916) 375-4025

With Copies to:

DEPARTMENT OF DEVELOPMENTAL SERVICES

Facilities Unit
1600-9th Street, Room 340, MS 3-16
Sacramento, CA 95814

FAIRVIEW DEVELOPMENTAL CENTER

Administration Office
2501 Harbor Blvd.
Costa Mesa, California 92626
Telephone: (714) 957-5000

LESSEE:

CITY OF COSTA MESA

Attn: Recreation Manager
P.O. Box 1200
Costa Mesa, CA 92628-1200
Telephone: (714) 754-5300

Notice of change of address or telephone number shall be given by written notice in the manner described in this section. LESSEE is obligated to notice all State offices listed above and the failure to provide notice to all State offices shall constitute a lack of notice. Nothing contained herein shall preclude the giving of any such notice by personal service

SECTION 1 –SITE SPECIFIC PROVISIONS**CANCELLATION**

9. Any willful violation of the terms of this Lease or the Fairview Developmental Center's rules and regulations shall be grounds for cancellation of the Lease and removal of the LESSEE, except that LESSEE shall have the right to receive notice of such violation and a period of 10 calendar days, only if such violation is curable, to cure prior to any such cancellation, and only if LESSEE fails to cure the specified violation shall cancellation be permitted pursuant to this section. Cancellation or termination of this Lease shall result in the Memorandum of Understanding executed by and between the STATE and LESSEE also be terminated simultaneously.

**HOLDING OVER &
LEASE RENEWAL**

10. Any holding over after the expiration of the term of this Lease with the consent of the STATE, expressed or implied, shall be deemed to be a tenancy only from month-to-month. During hold over, LESSEE's rental rate shall, at the option of the STATE, be adjusted to be consistent with the most current established rental rate for the premises, payable on a monthly basis in advance. Said month-to-month tenancy shall be otherwise subject to all the terms and conditions of this Lease insofar as applicable.

STATE offers and LESSEE accepts no assurance that the Premises or any other comparable space or facilities at the site described herein will be made available to LESSEE beyond the term stated above or as said term is reduced as provided herein.

**MEMORANDUM OF
AGREEMENT
PROVISIONS****11. HOURS OF OPERATION:**

LESSEE will be entitled to use FACILITY for LESSEE-related youth (15 years old and under) recreational activities, in accordance with the terms of this Lease, Monday through Friday, 4:00 to 8:00 p.m. and Saturday from 9:00 a.m. to 5:00 p.m. LESSEE-related activities must cease at 8:00 p.m. weekdays and at 5:00 p.m. on Saturdays, but participants, coaches, spectators, and referees shall have 30 additional minutes to clear FDC property.

FDC retains the right to schedule full or partial use of the FACILITY during LESSEE days/hours up to four (4) events every calendar year provided that the total number of event days does not exceed eight (8) days except as provided for in Section 1, Paragraph 14. FDC shall have the right to unlimited use of FACILITY during LESSEE days/hours for non-conflicting compatible use (FDC shall solely determine if such activities are compatible) by its consumers concurrent with LESSEE scheduled activities.

OBLIGATIONS OF LESSEE:

LESSEE hereby covenants and agrees to the following:

(a) LESSEE will maintain, or cause to be maintained, turf as identified in Exhibit A (Site Map) and any improvements made upon FACILITY by LESSEE as listed in Exhibit B. This paragraph shall not be deemed to require installation of any of the improvements listed on Exhibit B.

1. LESSEE shall maintain and/or improve sprinklers and irrigation controller for the life of this agreement. Repairs to irrigation system may require access during non-use hours. STATE shall allow LESSEE access for irrigation repairs. All irrigation systems beyond the valve assembly as shown in Exhibit A shall be the responsibility of LESSEE.

(b) All utilities associated with LESSEE use and permanent improvements installed as a result of this Lease shall be paid by LESSEE. LESSEE shall be responsible for the incremental increase in water usage needed to maintain FACILITY turf in acceptable condition for permitted uses.

SECTION 1 –SITE SPECIFIC PROVISIONS**MEMORANDUM OF
AGREEMENT
PROVISIONS (CONT)**

(c) LESSEE shall provide and maintain, or cause to be maintained, portable temporary rest room facilities for LESSEE-permitted FACILITY users. Restrooms will be located on the north side of the existing fence or at a mutually agreed upon location on an as needed basis. Access to temporary rest room facilities shall be provided at LESSEE cost via a gate installed in the fencing surrounding the FACILITY. Restrooms shall be locked when not in use and will be fully screened to the satisfaction of both parties.

(d) LESSEE shall insure that LESSEE users are familiar with the rules, regulations, and any terms that govern the LESSEE users conduct at FACILITY, and will inform LESSEE users about the special needs and conduct required when dealing with, associating with, or interacting with STATE FACILITY consumers, clients, and guests. LESSEE shall remain responsible to ensure that LESSEE users are familiar with the rules, regulations, and terms and shall be responsible for any consequences of failure of LESSEE users to comply with rules, regulations, and terms herein. All LESSEE-permitted FACILITY users shall be required to adhere to all FDC policies, procedures, rules and regulations. FDC reserves the right to ban any individual, team, group or league from use of FACILITY for violation of FDC rules and regulations at the sole discretion of FDC. FACILITY users who fail to comply with FDC rules and regulations may be asked to immediately leave the property. FDC will not be responsible for recompense for costs or hours lost due to expulsion. The person whose name appears on any issued permit for use of the Premises shall be present during users activities and be responsible for knowledge of all FDC rules and regulations which are described generally at Section 1, Terms and Conditions below.

(e) LESSEE and/or LESSEE-permitted user groups shall be allowed use of portable storage containers located on the north side of the existing fence or at a mutually agreed upon location on an as needed basis. LESSEE shall install an access gate to allow direct access from FACILITY to adjacent LESSEE property.

(f) LESSEE will allow no vehicles to enter upon turf area of FACILITY except as may be necessary and authorized for the limited purposes of maintenance, operation, and delivery of goods and services and will be responsible for the immediate repair or restoration of the FACILITY from such vehicle use.

(g) LESSEE will hold user groups responsible for picking up trash and debris at FACILITY and for depositing it into the proper trash bins. LESSEE shall be responsible for any trash or debris left at the facility and may be charged the cost of clean-up and/or trash or debris disposal by STATE, if it leaves trash and debris at the FACILITY after any use by LESSEE. At the request of FDC, LESSEE shall provide one (1) three (3) cubic yard trash bin for LESSEE-permitted FACILITY users to be located at a mutually agreed upon location on an as needed basis. If bin is located in a stand-alone location, LESSEE shall provide screening or enclosure as required by STATE procedure. (See Section 2, paragraph 14 for further explanation.)

(h) LESSEE may provide portable, temporary lights for use by LESSEE-permitted FACILITY users, until such time as permanent lights are installed. Use of portable lights will be allowed until 08:30 p.m. LESSEE shall provide secure enclosure(s) for storage of temporary lights during periods of non-use ("Non-use periods" shall be defined as periods of two weeks or longer). Enclosures shall be located at a mutually agreed upon location at or near FACILITY on an as needed basis. STATE and LESSEE shall meet and confer regarding placement of temporary lights. LESSEE shall be given access to the field, and related property, to place and remove temporary lights, including any required re-fueling. STATE shall have the right to approve the type, make, and model of temporary lights prior to installation. FDC representative shall have the right to approval of light placement and orientation.

SECTION 1 –SITE SPECIFIC PROVISIONS**MEMORANDUM OF
AGREEMENT
PROVISIONS (CONT)**

(i) LESSEE police forces shall be required to respond to incidents and/or requests for services involving FDC during periods of LESSEE's permitted use. However, STATE reserves the right to use FDC police forces and/or assume incident command if the incident primarily concerns STATE consumers, employees or guests at STATE's discretion. STATE police will confer with LESSEE police in this event. Control of any criminal act involving LESSEE's permitted users at the site will be the under the authority of LESSEE's police, although STATE police may be first responders. However, any disputes as to incident command or jurisdiction shall be determined solely by STATE, if the incident occurs on STATE's property.

(j) LESSEE shall only use maintenance products and materials on the FDC grounds that have been reviewed and approved by STATE. LESSEE shall endeavor to limit the use of any toxic or hazardous substances, and shall at all times remain responsible for the storage, use and transportation of any toxic or hazardous substances. LESSEE shall notify and provide any requested information on any hazardous substances brought on the STATE property, prior to use and/or transport.

(k) LESSEE acknowledges that parking on the STATE's property will be limited and that STATE will issue citations as to parking violations and other violations of the rules and regulations which may result in fines for LESSEE users. LESSEE shall assist as much as possible in the collection of such fines and shall try to limit violations by use of LESSEE personnel, users, guests and invitees who are on site during such use.

OBLIGATIONS OF STATE:

During the term of this Lease, STATE hereby covenants and agrees to the following:

(a) STATE shall provide at least thirty (30) days' notice to LESSEE prior to making any improvements or placing any equipment, containers or other objects that may temporarily or permanently reduce the area listed in Exhibit A (Site Map). In the event of a declared State, local, regional, or federal emergency, STATE shall be granted immediate access to the Premises and all activities permitted by LESSEE will cease until such time as the emergency has ended.

(b) STATE reserves the right to cancel previously approved and permitted LESSEE's use of the Premises. STATE will provide LESSEE with as much notice as is practical when canceling previously approved use of the Premises. Cancellations shall only be made for unforeseeable events or activities. STATE shall not be responsible, in any way, including, but not limited to, for any damages, fees or costs as a result of such cancellations.

(c) STATE will have the right to make emergency repairs to the Premises and to any improvements made by LESSEE. In the event STATE has to make emergency repairs to any improvement installed by LESSEE, STATE shall notify LESSEE within 24 hours of the time when repairs were made and apprise LESSEE of what work was performed and the current condition of item repaired.

(d) STATE shall maintain any improvements installed by STATE or LESSEE that have been approved by STATE that are put in for the exclusive use of STATE consumers.

(e) STATE shall pay, directly to the applicable utility provider, that portion of the utility expenses attributable to its existing fields and improvements.

(f) STATE shall, at its own expense, arrange for trash disposal for the contents of LESSEE provided trash bins as part of its regularly scheduled trash collection. The parties shall meet and confer to resolve any issues arising from excess trash accumulation.

SECTION 1 –SITE SPECIFIC PROVISIONS**MEMORANDUM OF
AGREEMENT
PROVISIONS (CONT)****OTHER TERMS AND CONDITIONS:**

LESSEE shall also be solely responsible to ensure that all these terms and conditions are met by LESSEE users:

- (a) All LESSEE-permitted FACILITY users shall be required to adhere to all STATE policies, procedures, rules and regulations. STATE reserves the right to ban any individual, team, group or league from use of the Premises for violation of STATE rules and regulations at the sole discretion of STATE. Users of the Premises who fail to comply with STATE rules and regulations may be asked to immediately leave the property. STATE will not be responsible for reimbursement of costs or hours lost due to expulsion.
- (b) LESSEE's users are to comply with all requests of STATE administrators and managers regarding health and safety issues and impacts on facility operations.
- (c) LESSEE-permitted FACILITY users shall be made aware that the site is on California State Developmental Center property under the jurisdiction and control of the State of California and that STATE has consumers who occupy housing in the same general area. All LESSEE-permitted FACILITY users shall respect the privacy and sensitivity of STATE consumers, visitors and staff.
- (d) LESSEE-permitted users shall cooperate with STATE authorities, and shall not interfere or cause interference with operations of STATE.
- (e) Clear access for emergency vehicles shall be maintained at all times.
- (f) Vehicular and pedestrian access to site shall be as directed by STATE.
- (g) The Premises shall be available to STATE and State personnel and inspectors at all times. LESSEE-permitted users shall anticipate that STATE personnel will visit the Premises on a frequent, irregular basis to observe activities. LESSEE-permitted FACILITY users will keep a copy of their LESSEE-issued permits available for inspection at all times of FACILITY use.
- (h) Amplified sound producing devices are prohibited at all times.
- (i) LESSEE and LESSEE-permitted FACILITY users shall report to STATE, immediately upon discovery, the loss of any tools, equipment or materials stored or used on the Premises. STATE will not be responsible for losses due to theft or otherwise. However, this paragraph shall not be construed to obligate STATE to assume responsibility for investigations of thefts reported to STATE.
- (j) Material Safety Data Sheets (MSDS) for all materials LESSEE uses on site must be available on-site for all required materials and supplies.
- (k) No firearms, narcotics, drugs, intoxicants, alcoholic beverages, knives or similar sharp objects, weapons of any kind, or other prohibited items are allowed on FACILITY or STATE property at any time.
- (l) If LESSEE places locks on any improvements to the Premises, STATE shall also have the right to install a lock ("daisy chain") in order for STATE and LESSEE to have access to said improvement, except for any facilities located on LESSEE's property, as well as LESSEE storage facilities and portable lights (except when in use on STATE FACILITY).
- (m) LESSEE employees and field users shall not have access to or use of any facilities on the STATE site except for the recreational areas and related parking lot(s) covered by this Lease.

SECTION 1 –SITE SPECIFIC PROVISIONS

**MEMORANDUM OF
AGREEMENT
PROVISIONS (CONT)**

- (n) All LESSEE rules and regulations with respect to recreational field use and allocation shall apply to use of the Premises where they do not directly contradict the terms of this Lease. Where redundant references to rules, regulations, or terms are present, the more stringent shall apply.
- (o) No pets (except Guide Animals) are allowed on STATE grounds.
- (p) Barbeques or other heat producing devices are prohibited.
- (q) The taking of photographic or video-graphic pictures is prohibited without the written approval of STATE.
- (r) FACILITY users shall observe all STATE posted rules and regulations.
- (s) No foreign objects of any kind are to be discarded on STATE property.

PERMITTING:

- (a) LESSEE may enter into agreements of use by permit with groups for recreational purposes. LESSEE will be the sole permitting agent for STATE FACILITY during LESSEE use hours. Such agreements for use are subject to and deemed to incorporate by reference all provisions of this Lease.
- (b) LESSEE may charge a fair and reasonable fee or accept in-kind services from LESSEE-permitted FACILITY users to offset the costs associated with the use of the Premises.
- (c) Neither LESSEE nor STATE may assign or transfer this Lease, or any part thereof, or any rights thereunder, without the written consent of the other party.

End of Section 1

SECTION 2 – GROUND LEASE SPECIFIC PROVISIONS

1. **ROAD ACCESS AND FEES.** LESSEE agrees to the following terms and conditions regarding the use of said access road:
 - (a) LESSEE shall exercise its right personally or through its authorized agents, employees, contractors, servants and Permitted Users whenever it is necessary.
 - (b) LESSEE shall use said road at its sole risk and avoid traveling upon it to the greatest practical extent at all times when weather conditions are such that excessive damage to the road surface may result from such use, and further, LESSEE shall, at its expense, promptly repair any road damage caused by its use, including such road surface protective features as water drains, berms, or culverts.
2. **ACCESS TO PREMISES.** Only the LESSEE, its properly qualified and authorized agents, employees, contractors, servants, and Permitted Users shall have the right of ingress to and egress from said Premises.
3. **REGULATION BY STATE,** STATE shall, through the FDC's Administrative Services Director, have the full power and right to determine and regulate the operations of the LESSEE insofar as they affect the operation, safety of consumers and the effective use of State-owned facilities at FDC.
4. **RIGHT TO ENTER.** During continuance in force of this Lease, there shall be and is hereby expressly reserved to STATE and to any of its agencies, contractors, agents, employees, representatives or licensees, the right at any and all times, and any and all places, to temporarily enter upon said Premises for survey, inspection, or any other lawful STATE purposes.
5. **IMPROVEMENTS & MODIFICATIONS.** LESSEE at its sole cost and expense may, subject to the approval of FDC, from time to time during its tenancy of the Premises:
 - (a) Furnish, install and use at the Premises such improvements and property of whatsoever kind and nature as LESSEE and STATE mutually deems necessary consistent with the purpose of this Lease as set forth in "Use" Section hereof.
 - (b) Improve the Premises in a manner consistent with the purposes of this Lease as set forth in "Use" Section hereof, and provided further that plans for the construction or enlargement of any improvement will be submitted to STATE in advance of such construction or enlargement, and will be subject to written approval by STATE. Such approval by STATE shall not relieve LESSEE of the obligation of complying with any and all terms and conditions of this Lease; LESSEE shall notify the STATE thirty (30) days prior to the actual construction. No further approval by STATE or FDC shall be required to install the improvements referenced in Exhibit "B" hereof prior to approval of any Facility Master Plan.
 - (c) In making any excavation and/or installation of equipment on the Premises and/or easement areas, LESSEE shall make the same in such manner as will cause the least injury to the surface of the ground around such excavation and/or construction, and shall replace the earth so removed by it and restore the surface of the ground and any improvement thereon to as near the same condition as they were prior to such excavation as is practicable.
6. **DISPOSITION OF LESSEE'S PERSONAL PROPERTY.**
 - (a) During the term of this Lease, all personal property placed in, upon, or under the Premises by LESSEE shall remain the property of LESSEE and shall be removed by LESSEE, at its sole cost and expense within thirty (30) days after expiration or termination of LESSEE's tenancy.
 - (b) Should LESSEE fail to remove said equipment and personal property within thirty (30) days after expiration or termination of the Lease, STATE may do so at the risk of LESSEE. Upon written demand by STATE, LESSEE shall immediately pay all costs and expenses of the removal of LESSEE'S personal property and equipment.
 - (c) LESSEE may, however, with written consent of STATE, abandon in place any and all of LESSEE'S equipment and personal property, whereupon, as abandoned, title to said improvements will vest in STATE.
7. **SURRENDER OF PREMISES.** Upon termination of this Lease for any cause, the LESSEE shall remove any and all of LESSEE'S equipment and personal property and restore the entire Premises to its condition prior to the execution of this Lease, except however, the STATE may approve, in writing, any deviation from this requirement.

SECTION 2 – GROUND LEASE SPECIFIC PROVISIONS

8. **LESSEE'S SECURITY.** LESSEE shall be responsible for the security of the Premises and all persons in its program while such persons are in, on or about the Premises. In the event of a serious security emergency the State shall cooperate with the staff of LESSEE, but such assistance shall not interfere with the State's normal treatment program. Rules and regulations governing employees and customers of the Developmental Center which are applicable to LESSEE shall be strictly adhered to by LESSEE'S staff.
9. **FIRE/POLICE PROTECTION.** LESSEE is a separate and distinct entity from Fairview Developmental Center and shall so inform the local Fire and Police Agencies. The STATE shall in no way be responsible or liable for such protection to LESSEE.
10. **MEDICAL.** Medical support shall not be provided by Fairview Developmental Center or by STATE. Necessary emergency medical or surgical care of LESSEE'S clients and employees will be lessee's responsibility. As used herein, this is intended to mean that LESSEE shall be liable for any and all medical and/or surgical care costs for LESSEE'S employees served by LESSEE'S program.
11. **EMERGENCY PREPAREDNESS.** LESSEE agrees to be responsible for maintaining an emergency preparedness program for LESSEE. LESSEE shall not rely on STATE to provide food or supplies during a local or area wide disaster. STATE will, if time and material allow, assist LESSEE during a disaster.
12. **PARKING.** LESSEE'S employees, their guests and invitees and Permitted Users shall have the use of the Fairview Developmental Center, of non-reserved designated automobile parking areas, driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by STATE. STATE reserves the right to designate parking areas within reasonable proximity to the Premises for LESSEE'S agents, invitees, and employees. Parking is allowed in designated parking areas only.
13. **LESSEE GUARANTEES.** LESSEE hereby guarantees, for the term of this Lease any and all work or services performed by LESSEE or LESSEE'S properly qualified or authorized agents, employees, contractors and servants, in order to accomplish the installation and/or maintenance of its Playing Field at the STATE'S facilities. All costs to repair or replace STATE'S existing irrigation systems upon the Premises shall be the sole responsibility of LESSEE during the term of this Lease.
14. **TRASH:** LESSEE shall pick up trash and debris at Premises and deposit trash in trash bins. STATE shall allow LESSEE to use the existing three (3) cubic yard trash bins for the Premises. If LESSEE needs additional trash bins for LESSEE-permitted Users, LESSEE may be provided one (1) additional three (3) cubic yard trash bin, such trash bin to be enclosed to STATE standards and located at a mutually agreed upon location. STATE shall, at its expense, arrange for trash disposal for the contents of LESSEE provided trash bins as part of its regularly scheduled trash collection.

End of Section 2

SECTION 3 – STANDARD PROVISIONS

1. **PERMITS AND APPROVALS.** STATE and LESSEE agree that LESSEE'S ability to use the Premises is dependent upon LESSEE obtaining all of the certificates, permits, licenses, and other approvals that may be required from any third party. State will cooperate with LESSEE, if at no expense to State, in LESSEE'S effort to obtain such approvals in connection with said permits, licenses or other approvals.
2. **LEASE MODIFICATION FEES.** An administration fee shall be assessed for any action originated by LESSEE requiring lease administration or technical review staff work by STATE which result in an amendment to, or assignment of this Lease. To initiate such services, LESSEE must submit a written request to DDS. The administration fee will be assessed at the prevailing rate in effect at the time the request is received. LESSEE will be required to remit the administration/technical review fee to the DGS address listed in the "Notices" Paragraph of this Lease. If the request is found to be complex and/or requires non-standard handling for administrative services, the transaction will be billed at the DGS current hourly rate for the actual additional hours required to complete the requested administrative/technical review services.
3. **DEFAULT.** LESSEE shall make all payments to the STATE without deduction, default or delay. In the event of the failure of LESSEE to do so, or in the event of a breach of any of the other terms, covenants or conditions herein contained on the part of LESSEE to be kept and performed, and if such default continues for a period of thirty (30) days after receipt of written notice from STATE to LESSEE of such default, this Lease may, at the STATE'S sole discretion, be terminated. In the event of termination of this Lease, it shall be lawful for STATE to reenter into and upon the Premises and every part thereof and to remove and store at LESSEE'S expense all property there from and to repossess and occupy the Premises. In the event STATE terminates this Lease pursuant to this Paragraph, the STATE shall not be required to pay LESSEE any sum or sums whatsoever.
4. **INTEREST ON PAST DUE OBLIGATIONS.** STATE may charge interest, for any amount due to STATE but not paid when due, at a rate equal to the annual maximum rate allowable by law from the due date. Payment of such interest together with the amount due shall excuse or cure any default by LESSEE under the "Default" Paragraph herein.
5. **COMPLIANCE WITH LAWS.** LESSEE shall at its sole cost and expense comply with all the statutes, laws, ordinances and regulations of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the Premises and use of the Premises as provided by this Lease.
6. **FAILURE TO PERFORM.** In the event of the failure, neglect, or refusal of LESSEE to do, or perform work, or any part thereof, or any act or thing in this Lease provided to be done and performed by LESSEE, STATE will, at its option, have the right to do and perform the same, and LESSEE hereby covenants and agrees to pay STATE the cost thereof on demand.
7. **ASSIGNMENT, SUBLETTING & CHANGE IN USE.** LESSEE shall not transfer or assign ("assign" shall include any transfer of any ownership interest in the Lease by LESSEE or by any partner, principal, or controlling stockholder, as the case may be, from the original LESSEE, its partner or principal) this Lease, and shall not sublet, license, permit or suffer any use of the Premises or any part thereof without first obtaining the written consent of the STATE, which consent is at the sole discretion of the STATE.
8. **RIGHTS RESERVED BY STATE.**
 - (a) STATE reserves the right to use the real property involved (not including real property installed, erected or constructed by LESSEE) in any manner, including but not limited to the right to construct, place, maintain, use, operate, repair, replace, alter and move pipelines, conduits, culverts, ducts, fences, poles, electrical energy, power and communication lines, roads, bridges, subways, sidewalks, to grant easements over, across, upon and under said real property, and the continuous right of ingress to and egress from any portion or portions of said real property in such manner as not to create any unreasonable interference with the exercise of the rights granted to LESSEE.
 - (b) Any grant herein contained is subject to all valid and existing contracts, leases, licenses, easements, encumbrances and claims of title which may affect said facility.

SECTION 3 – STANDARD PROVISIONS

(c) No priority or other rights will attach to the use of any space in STATE'S building or on said facility.

9. **PROHIBITED USES.** LESSEE shall not commit, suffer or permit any waste or nuisance on the Premises or on STATE property or any acts to be done thereon in violation of any laws or ordinances, and shall not use or permit the use of the Premises for any illegal or immoral purposes.

No dumping of refuse by LESSEE is permitted at the Premises. LESSEE agrees not to cut or remove any trees or brush thereon except as approved in writing in advance by STATE. LESSEE agrees that it shall at all times exercise due diligence in the protection of the Premises and the STATE'S property against damage or destruction by fire or other cause.

10. **FIRE AND CASUALTY DAMAGES.** STATE will not keep improvements which are constructed or installed by LESSEE under the provisions of this Lease insured against fire or casualty, and LESSEE shall make no claim of any nature against STATE by reason of any damage to the business or property of LESSEE in the event of damage or destruction by fire or other cause, arising other than from or out of negligence or willful misconduct of agents or employees of the STATE in the course of their employment.
11. **ACTS OF NATURE.** If any of LESSEE'S improvements or equipment are destroyed by acts of nature, LESSEE may replace them with improvements or equipment of the same general type that meets or exceeds the technical specifications of the original equipment, which occupies no more physical space and that consumes no more electrical power. LESSEE shall immediately notify STATE of such items and the date the replacement is completed.
12. **HAZARDOUS WASTE.** LESSEE agrees that it shall comply with all laws, federal, state, or local, existing during the term of this Lease pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law.

(a) In the event STATE or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney's fees and costs, as a result

of the LESSEE'S illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the LESSEE shall indemnify, defend, and hold harmless any of these individuals against such liability.

(b) Where the LESSEE is found to be in breach of this Paragraph due to the issuance of a government order directing the LESSEE to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the LESSEE or any person acting under LESSEE'S direct control and authority, LESSEE shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by STATE in connection with or in response to such government order.

(c) In the event a government order is issued naming the LESSEE, or the LESSEE incurs any liability during or after the term of the Lease, in connection with contamination which pre-existed, the LESSEE'S obligations and occupancy under this Lease or which were not caused by the LESSEE, STATE will hold harmless, indemnify, and defend the LESSEE in connection therewith and shall be solely responsible as between LESSEE and STATE for all efforts and expenses therefore.

13. **CONDITION OF PREMISES.**

(a) LESSEE is aware of the current condition of the Premises and accepts the Premises in "as is" condition. LESSEE accepts the Premises as being in good order, condition and repair, unless otherwise specified herein, and agrees that on the last day of the term, or sooner termination of this Lease, to surrender up to STATE the Premises, with any appurtenances or improvements therein, in the same condition as when received, reasonable use and wear thereof and damage by act of Nature, excepted.

(b) LESSEE shall not call on STATE to make any repairs or improvements on the Premises and LESSEE shall keep the same in good order and condition at its own expense.

14. **VACATING THE PREMISES.** LESSEE shall, on the last day of said term or sooner termination of this Lease, peaceably and quietly leave, surrender, and yield up to STATE, the Premises in good order, condition, and repair, reasonable use and wear thereof and damage by acts of nature, excepted.

SECTION 3 – STANDARD PROVISIONS

15. **RECOVERY OF LEGAL FEES.** If action is brought by the STATE for the recovery of any rent due under the provisions hereof or for any breach hereof, or to restrain the breach of any agreement contained herein, or for the recovery of possession of said Premises, or to protect any rights given to the STATE against LESSEE, and if the STATE will prevail in such action, the LESSEE shall pay to the STATE such amount in attorney's fees in said action as the court shall determine to be reasonable, which shall be fixed by the court as part of the costs of said action.
16. **TAXES AND ASSESSMENTS.** LESSEE agrees to pay all lawful taxes, assessments or charges that at any time may be levied upon any interest in this Lease. It is understood that this Lease may create a possessory interest subject to property taxation and LESSEE may be subject to the payment of property taxes levied on such interest.
17. **NON-DISCRIMINATION.** (a) In the performance of this Lease, the LESSEE shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, age (over 40), marital status, sex, sexual orientation, or use of family care leave. LESSEE shall insure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment.
- (b) Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (c) LESSEE shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Lease by reference and made a part thereof as if set forth in full. LESSEE shall give written notice of its

obligations under this clause to any labor organizations with which they have collective bargaining or other agreement. Further, LESSEE shall post in conspicuous places available to employees and applicants for employment, notices to be provided by the STATE setting forth the provisions of this Fair Employment Practices Section. (Government Code, Section 12920-12994).

(d) Remedies for willful violations:

(1) The STATE may determine a willful violation of the Fair Employment Practices provision to have occurred upon the receipt of a final judgment having that effect from a court in an action to which LESSEE was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the LESSEE has violated the Fair Employment Practices Act and has issued an order pursuant to the appropriate provisions of the Government Code.

(2) The STATE will have the right to terminate this Lease and any loss or damage sustained by the STATE by reason thereof will be borne and paid for by the LESSEE.

18. **INSURANCE.**

LESSEE shall furnish STATE a certificate of insurance with STATE's Lease Number (L-2313) indicated on the face of said certificate, issued to STATE with evidence of insurance as follows:

COMMERCIAL GENERAL LIABILITY

LESSEE shall maintain general liability with limits of not less than \$1,000,000 aggregate for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of Premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the LESSEE's limit of liability.

The policy must include State of California, Department of General Services and their officers, agents and employees as additional insureds, but only insofar as the operations under the Lease are concerned. The additional insured endorsement must be provided with the certificate of insurance.

SECTION 3 – STANDARD PROVISIONS**AUTOMOBILE LIABILITY**

LESSEE shall maintain motor vehicle liability with limits of not less than \$1,000,000 per accident for bodily injury and property damage. The State of California and Department of General Services are to be additional insured with respect to liability arising out of all vehicles owned, hired and non-owned. The additional insured endorsement must be provided with the certificate of insurance.

WORKERS' COMPENSATION

LESSEE shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Lease, including special coverage extensions where applicable. Employer's liability limits of \$1,000,000 shall be required, and the policy shall include a waiver of subrogation in favor of the State of California. The waiver of subrogation endorsement must be provided with the certificate of insurance.

GENERAL REQUIREMENTS

LESSEE shall ensure that the following general requirements are met:

- a. Insurance Companies must be acceptable to Department of General Services, Office of Risk and Insurance Management.
- b. LESSEE shall provide STATE with a true copy of the policy in place providing coverage for General Liability, within thirty (30) days after each insurance policy renewal.
- c. Coverage needs to be in-force for complete term of this Lease. If insurance expires during the term of the Lease, a new certificate must be received by the STATE within thirty (30) days of the expiration date of the existing policy. This new insurance must still meet the terms of the original contract.
- d. Lessee shall notify the State within five business days of Lessee's receipt of any notice of cancellation or non-renewal of any insurance required by this lease.
- e. LESSEE is responsible for any deductible or self-insured retention contained within the insurance program.
- f. In the event LESSEE fails to keep in effect at all times the specified insurance coverage, the STATE may, in addition to any other remedies it may have, terminate this Lease upon the occurrence of such event, subject to the provisions of this Lease.

g. Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the STATE.

h. If LESSEE is self-insured in whole or in part as to any of the above described types and levels of coverage, LESSEE shall provide STATE with written acknowledgment of this fact at the time of the execution of this Lease. The State may require financial information to justify LESSEE's self-insured status. If, at any time after the execution of this Lease, LESSEE abandons its self-insured status, LESSEE shall immediately notify STATE of this fact and shall comply with all of the terms and conditions of this Insurance clause pertaining to policies of insurance in regard to those types and levels of insurance.

It is agreed that STATE shall not be liable for the payment of any premiums or assessments on the required insurance coverage.

19. **HOLD HARMLESS INDEMNIFICATION.** This Lease is made upon the express condition that the State of California is to be free from all liability and claims for damages by reason of any injury to any person or persons, including LESSEE, or property of any kind whatsoever and to whomsoever belonging, including LESSEE, from any cause or causes whatsoever while in, upon, or in any way connected with the Premises during the term of this Lease or any occupancy hereunder, holdover periods or any other occupancy of the Premises by LESSEE, except those arising out of the sole negligence or willful misconduct of the STATE, its employees, agents, and invitees. LESSEE agrees to defend, indemnify, and save harmless the STATE from all liability, loss, cost or obligation on account of or arising out of any such injury or loss, however occurring.
20. **LOSSES.** STATE will not be responsible for losses or damage to personal property, equipment or materials of LESSEE and all losses shall be reported to STATE immediately upon discovery.
21. **DEBT LIABILITY DISCLAIMER.** The STATE, including but not limited to the STATE's General Fund or any special self insurance programs, is not liable for any debts, liabilities, settlements, liens or any other obligations of the LESSEE or its heirs, successors or assigns. The STATE and its agencies, departments and divisions will not be liable for and will be held

SECTION 3 – STANDARD PROVISIONS

harmless by LESSEE and for any claims or damages associated with any contract, tort, action or inaction, error in judgment, act of negligence, intentional tort, mistakes, or other acts taken or not taken by the LESSEE, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the LESSEE. The STATE has no obligation to defend or undertake the defense on behalf of the LESSEE or its heirs, successors or assigns.

LESSEE shall defend the State of California and its agencies, departments and divisions from any claims, actions, lawsuits, administrative proceedings or damages associated with any contract, tort, action or inaction, error in judgment, act of negligence, intentional tort, mistakes, or other acts taken or not taken by the LESSEE, its employees, agents, servants, invitees, guests, or anyone acting in concert with or on behalf of the LESSEE.

22. RELOCATION.

(a) In the event that STATE terminates this Lease pursuant to its terms, Lessee acknowledges and agrees that it has no claim against the STATE for Relocation Payments, Relocation Advisory Assistance, or costs pursuant to the Government Code sections 7260 et seq., or any regulations implementing or interpreting such sections. Lessee further agrees that it has no claim in either law or equity against the STATE for damages or other relief should the Lease be terminated pursuant to its terms, and waives any such claims it may have.

(b) In the event subleasing, under the terms of this Lease, is permitted, LESSEE shall incorporate this Paragraph into the sublease. Failure to do so may obligate LESSEE for damages and costs resulting from claims for relocation payments by sublessee.

(c) The location of the Premises to be used by LESSEE for the purpose of this Lease may be changed as required by the STATE in the event of circumstances arising to warrant such a change. LESSEE agrees to accept another functionally equivalent location within the facility grounds within which to operate under the same general provisions of this Lease. In the event that new quarters are different in size from present quarters, there shall be an adjustment in rental rate on a proportionate square footage basis at the discretion of the

STATE, either greater or smaller, as the case may be.

In the event the STATE is unable to relocate the SUBLESSEE within the facility grounds, the STATE, upon reasonable notice, may require the LESSEE to leave the STATE premises. Reasonable notice is defined herein as to be at least thirty (30) days.

23. **SMOKING RESTRICTIONS.** Per Government Code 7597, Smoking shall not be allowed inside any building, or within 20 feet of any entrance or operable window of any building.

24. **RECORDING.** LESSEE shall not record this Lease or a short form memorandum thereof. Any such recordation will, at the option of STATE, constitute a non-curable default by LESSEE hereunder.

25. AUTHORITY TO CONTRACT.

(a) If LESSEE is a public, private or non-profit corporation, each individual executing this Lease on behalf of said LESSEE shall provide evidence, which is acceptable to the STATE, that he/she is duly authorized to execute and deliver this Lease on behalf of said LESSEE in accordance with a duly adopted resolution of the Board of Directors or in accordance with the Bylaws of said Board, and that this Lease is binding upon said Board of Directors in accordance with its terms.

(b) LESSEE shall, concurrently with the Execution of this Lease, deliver to the STATE at the address for the Department of General Services shown in the "Notice" Paragraph of this Lease, either a copy of the board's bylaws or a certified copy of the resolution of the Board of Directors authorizing or ratifying the execution of this Lease.

(c) In addition prior to the execution of this Lease, LESSEE shall provide STATE with a copy of LESSEE'S current bylaws and corporate filing status as filed with the California Secretary of State.

26. **PARTNERSHIP DISCLAIMER.** LESSEE its agents and employees shall act in an independent capacity and not as officers or employees of STATE. Nothing herein contained will be construed as constituting the parties herein as partners.

SECTION 3 – STANDARD PROVISIONS

27. **CEQA.** Any physical changes made to the improvements by Lessee or its agents shall comply with the California Environmental Quality Act (CEQA).
28. **BANKRUPTCY.** In no event shall this Lease or the leasehold estate become an asset of LESSEE in bankruptcy, receivership or other judicial proceedings. LESSEE shall be in default under this Lease and the provisions of the "Right of Entry" Paragraph hereof shall apply in the event of any of the following: (a) LESSEE becomes insolvent or makes an assignment for the benefit of creditors, (b) a petition in bankruptcy is filed by or against LESSEE, (c) a writ of execution is levied against this Lease or the leasehold estate, (d) LESSEE abandons or vacates or does not continuously occupy or safeguard the Premises.
29. **AMENDMENTS AND MODIFICATIONS.** No amendment, modification, or supplement to this Lease shall be binding on either party unless it is in writing and signed by the party to be bound by the modification.
30. **MUTUAL CONSENT.** Notwithstanding anything herein contained to the contrary, this Lease may be terminated and the provisions of the Lease may be altered, changed, or amended by mutual consent of the parties hereto in writing.
31. **FORCE MAJEURE.** If either LESSEE or STATE will be delayed or prevented from the performance of any act required hereunder by reason of acts of Nature, governmental restrictions, regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Lease) or other cause without fault and beyond the control of the party obligated (except financial inability), 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. Nothing in this Paragraph shall excuse LESSEE from prompt payment of any rent, taxes, insurance or any other charge required of LESSEE, except as may be expressly provided in this Lease.
32. **WAIVER.** If the STATE waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of that or any subsequent term, covenant or condition. Failure by STATE to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or decrease STATE'S right to insist thereafter upon strict performance by LESSEE. Waiver by STATE of any term, covenant, or condition contained in this Lease may only be made by a written document properly signed by an authorized STATE representative.
33. **ENTIRE AGREEMENT.** This Lease and its exhibits constitute the entire agreement between STATE and Lessee. No prior written or prior, contemporaneous or subsequent oral promises or representations shall be binding.
34. **PARAGRAPH HEADINGS.** All Paragraph headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.
35. **SEVERABILITY.** If any term, covenant, condition, or provision of this Lease or any application thereof, to any extent, is found invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Lease will not be affected thereby, and will be valid and enforceable to the fullest extent permitted by law.
36. **SEPARATE COUNTERPARTS.** This Lease may be executed counterparts, each of which when so executed shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument. Faxed signatures are treated as originals for the purpose of the Lease.
37. **SUPERSEDE.** This Lease supersedes and voids any prior license, lease or agreement of any kind between the STATE and the LESSEE identified in this Lease with regards to the Premises.
38. **BINDING.** The terms of this Lease and covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns and successors in interest of the parties hereto.
39. **ESSENCE OF TIME.** Time is of the essence for each and all of the provisions, covenants and conditions of this Lease.

End of Section 3

IN WITNESS WHEREOF, this Lease has been executed by the parties hereto as of the date written below.

**STATE OF CALIFORNIA
APPROVED:**

DIRECTOR OF DEPARTMENT OF
GENERAL SERVICES

By: _____
TONY PSIHOPAIDAS, Manager
State Owned Leasing and Development
707 Third Street, 5th Floor
West Sacramento, CA 95798

Date Executed: _____

APPROVAL RECOMMENDED:

STATE OWNED LEASING AND
DEVELOPMENT

By: _____
KIMBERLEY TSUMURA
Staff Real Estate Officer

LESSEE:

CITY OF COSTA MESA
a California Municipal Corporation and Public Body

By: _____
GARY MONAHAN, Mayor

Date: _____

CONSENT:

DEPT OF DEVELOPMENTAL SERVICES
FAIRVIEW DEVELOPMENTAL CENTER

By: _____
WILLIAM D. WILSON
Executive Director

DEPT OF DEVELOPMENTAL SERVICES
HEADQUARTERS

By: _____
MARIE W. MADDY, Chief
Facilities Planning