

nuisance or inconvenience caused by City's entry in an emergency.

25. Signs. City and SPCALA hereby mutually agree to place, affix, maintain, or permit any sign, advertisement, name, insignia, logo, descriptive material, or similar item (collectively "sign" or "signs") on the Property. Signs identifying SPCALA shall be maintained by SPCALA, at its cost, in good condition. Any sign not mutually agreed to may be removed by City at SPCALA's cost and the cost of removal shall be additional rent.

City and SPCALA shall erect appropriate signs to identify the SPCALA's portion of the Property as separate from the portion of the Property that is leased back to the City. These signs may take the form of a map or other graphics of the Property color-coded to identify the separate portions as well as descriptive signs with arrows, logos, or other identifying marks.

26. Americans with Disabilities. Except as otherwise provided in the Lease-Back, SPCALA shall have and be allocated the sole responsibility to comply with the Americans with Disabilities Act of 1990 ("ADA") with respect to the Property's compliance with the architectural and path-of-travel requirements as in effect at the time the Facility is constructed..

27. Brokers. SPCALA represents that it has had no contacts or dealings regarding this Lease through a broker or agent or any other person who can claim a right to a commission or fee. SPCALA shall defend, indemnify and hold City harmless from all liability arising from any person claiming a commission or fee as a result of SPCALA entering this Lease provided that City promptly notifies SPCALA regarding such claim.

28. Notice. Any notice or approval under this Lease shall be in writing and either personally delivered or deposited in the U.S. Postal Service, first-class, postage prepaid and addressed to SPCALA at the address first stated above, Attn: Chief Financial Officer. and to City at 333 West Ocean Boulevard. Long Beach, California 90802 Attn: City Manager. Notice shall be effective on the date of mailing or on the date personal delivery is made, whichever first occurs. Notice of change of address shall be given in the same manner as other notices. A courtesy copy of notices from SPCALA to City shall be given as provided herein to the Director, Department of Health and Human Services, City of Long Beach, 2525 Grand Avenue. Long Beach. California 90815.

29. Holding Over. If SPCALA holds over after the expiration of this Lease, with or without the express or implied consent of City, such tenancy shall be from month-to-month only, and neither a renewal of this Lease nor an extension for any further term. Such month-to-month tenancy shall be subject to the terms, covenants, and conditions herein, except that rent shall be five hundred percent (500%) of the rent stated in Section 4. Nothing in this Section shall be construed as a consent by City to any holding over by SPCALA.

30. Force Majeure. The term "force majeure" in this Lease shall mean acts of God, strikes, civil disturbances, wars, explosions, or acts beyond the reasonable control of the party claiming inability to perform which, by the exercise of due diligence and foresight, that party could not reasonably control, but financial inability to perform shall not be considered a cause beyond the reasonable control of the party.

31. Surrender of Property. On the expiration or sooner termination of this Lease, SPCALA shall deliver to City possession of the Property in the same or better condition that existed immediately prior to the date of execution hereof, reasonable wear and tear excepted.

32. Hazardous Materials.

A. SPCALA shall not keep or allow to be kept on the Property any goods, merchandise, supplies, personal property, materials, or items of any kind which are in any way explosive or hazardous except those limited items which are necessary for SPCALA to carry on its business provided that SPCALA disposes of same as required by law. SPCALA shall comply with California Health and Safety Code Section 25359.7 or its successor statute regarding notice to City on discovery by SPCALA of the presence or suspected presence of any hazardous substance on the Property. "Hazardous materials or substance" shall mean any hazardous substances as defined in any federal, state or local statute, ordinance, rule or regulation applicable to the property including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Title 42 U.S.C. §§9601-9662), the Resource Conservation and Recovery Act (Title 42 U.S.C. §§6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code §§ 25300-25395), and the Hazardous Waste Control Law (Health and Safety Code §§ 25100-25250.25). "Hazardous materials" shall also include asbestos, asbestos-containing materials, radon gas and petroleum or petroleum fractions, whether or not defined as a hazardous substance in any such statute, ordinance, rule or regulation.

B. City hereby agrees to indemnify and hold harmless SPCALA, its agents,

employees and directors, from and against any and all costs, damages, claims, clean-up, repair, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any release, treatment, use, generation, storage, or disposal of hazardous materials on, under or from the Property by any person or entity at any time prior to commencement of the Lease. City and SPCALA shall each be responsible for damages, claims, costs and liabilities arising from any release, treatment, use, generation, storage or disposal of hazardous materials on, under or from the Property which occurs after the commencement of the Lease on a comparative basis according to who is responsible for the presence of such hazardous materials on the Property.

33. Termination Right. Notwithstanding any other provisions of this Lease, in the event that with reasonable diligence SPCALA is unable to timely obtain the permits and entitlements from governmental entities required to construct the Facility, it may, at its option, terminate this Lease and all other documents related to it. If SPCALA elects such remedy, this Lease shall terminate, both parties shall be placed in as nearly the same position as possible to that just prior to the execution of this Lease, and they shall thereafter have no further liability or responsibility to each other.

34. Kennel Capacity. The capacity of the kennels operated by the SPCALA on the Premises, meaning the number of animals that can be housed by the SPCALA, shall be mutually agreed to by the parties during the design stage. The capacity of the kennels cannot be increased more than 15% over the capacity figure agreed to in the design stage except in the following circumstances:

A. by the mutual consent of the parties; or

B. in the event of a need for temporary housing of animals due to an emergency situation.

CITY shall give notice to the SPCALA of any breach of this provision and SPCALA shall have thirty (30) days after the date of said notice to cure the breach.

35. Miscellaneous.

A. The headings and numbers of this Lease are not a part of it and the groupings of the provisions of it into separate sections, paragraphs, and clauses are for convenience only and shall have no effect on the construction or interpretation of it.

B. Each provision of this Lease to be performed by SPCALA shall be construed as both a covenant and a condition of this Lease.

C. If any term, covenant, or condition of this Lease is found to be invalid, void, ineffective, or unenforceable for any reason, the remaining terms, covenants, and conditions shall remain in full force and effect.

D. Time is of the essence on this Lease.

E. This Lease shall not be modified except in writing signed by duly authorized representatives of the parties.

F. This Lease represents and constitutes the entire understanding between the parties and supersedes all other agreements and communications between the parties, whether oral or written, concerning the subject matter herein.

G. This Lease shall not be recorded.

H. In any action or proceeding relating to this Lease, the prevailing party shall be entitled to its costs, including reasonable attorney's fees.

I. This Lease shall be binding on and inure to the benefit of the parties and their successors, heirs, personal representatives, transferees, and assignees except as provided in Section 15, and all of the parties hereto shall be jointly and severally liable hereunder.

J. Rent not paid when due shall bear interest at the rate of ten percent (10) per annum.

K. This Lease shall be governed by and construed in accordance with the laws of the State of California.

L. This Lease is created as a joint effort between the parties and fully negotiated as to its terms, covenants, and conditions. This Lease shall not be construed against either party as the drafter.

M. The relationship of the parties hereto is that of landlord and tenant, and the parties agree that nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, principal-agent, association, or employer-employee relationship between them or between City and any third person or entity.

N. The individuals signing this Lease on behalf of City and SPCALA represent and warrant to each other that they are authorized and legally capable of signing this Lease in their representative capacity.

O. The termination of either this Lease or the Lease-Back shall be deemed and shall immediately cause the termination of the other, without the necessity of notice of

termination. However, if notice of termination is given as to either the Lease or the Lease-Back, then that notice shall also be deemed notice of termination of the other.

IN WITNESS WHEREOF, the parties have caused this document to be executed with all of the formalities required by law as of the date first stated above.

LOS ANGELES SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS,
a California nonprofit corporation

10/1/98, 1998

By [Signature]
SPCALA President

10/2/98, 1998

By Gladys Mac Naie
SPCALA Secretary

CITY OF LONG BEACH, a municipal
corporation

Sept 28, 1998

By [Signature]
Long Beach City Manager

ASSISTANT CITY MANAGER

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

This Lease is approved as to form this 28th day of Sept, 1998.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

LEGAL DESCRIPTION

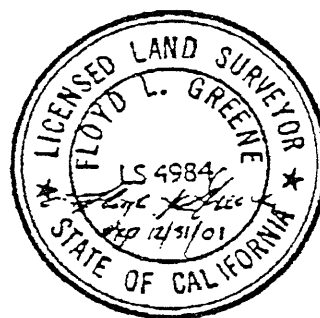
for the
**El Dorado Park Area I
Animal Care Center**

That portion of Lot 43 of Tract No. 10548 in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 174, pages 15 through 23 of maps, in the office of the County Recorder of said County described as follows:

Beginning at the intersection of the centerline of Spring Street, 60 feet in width, with the easterly line of the Los Angeles County Flood Control Right-of-Way, said easterly line also being the westerly line of Lot 43, all as shown on said Tract No 10548; thence South $89^{\circ} 47' 35''$ East 1417.09 feet along said centerline of Spring Street to a point, said point being the City of Long Beach Monument No. 5150, said monument is referenced by City of Long Beach field book C271 pages 35 and 67, on file in the office of the City Engineer of the City of Long Beach; thence continuing along said centerline of Spring Street South $89^{\circ} 47' 35''$ East 508.16 feet; thence at right angles to said centerline South $0^{\circ} 12' 25''$ West 64.05 feet to the True Point of Beginning; thence continuing along last said line South $0^{\circ} 12' 25''$ West 559.60 feet; thence East 227.63 feet; thence South $0^{\circ} 29' 09''$ West 36.77 feet; thence South $89^{\circ} 55' 26''$ East 284.30 feet; thence North $0^{\circ} 12' 25''$ East 544.12 feet; thence North $84^{\circ} 07' 34''$ West 514.27 feet to the True Point of Beginning.

Said described parcel contains 6.51 acres.

LHM:lc
a:117-08.doc



LEASE-BACK

25916

THIS LEASE-BACK is made and entered, in duplicate, as of the 1st day of August, 1998, for reference purposes only, pursuant to a minute order of the City Council of the City of Long Beach at its meeting held on April 7, 1998, by and between the CITY OF LONG BEACH, a municipal corporation ("City"), and the LOS ANGELES SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS, a California non-profit corporation ("SPCALA"), whose address is 5026 West Jefferson Boulevard, Los Angeles, California 90016.

RECITALS

WHEREAS. City and SPCALA are simultaneously with execution of this Lease-Back entering into a Lease for approximately 6.5 acres located at 7700 East Spring Street, in the City of Long Beach (the "Lease"); and

WHEREAS. as a condition of the Lease, SPCALA will construct improvements to the Property; and

WHEREAS. as a further condition of the Lease, SPCALA will execute this Lease-Back for a portion of the Facility to the City; and

WHEREAS. the parties intend and agree that this Lease-Back and the Lease shall be mutually interdependent;

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

1. Recitals. The above recitals are incorporated herein by this reference.

Capitalized terms used but not defined herein shall have the meanings set forth in the Lease.

2. Property. SPCALA hereby leases back to City and City hereby accepts and leases from SPCALA the portion of the Facility shown in red on Exhibit "A," attached hereto and incorporated herein by this reference, consisting of approximately _____ square feet, and commonly known as 7700 East Spring Street, Long Beach, Los Angeles County, California 90815, the "Lease-Back Premises", together with the right, in common between City, its employees, agents, and invitees and SPCALA, its employees, agents, and invitees to use the Common Areas (as defined in Section 6 hereof) delineated on Exhibit "A" in blue, subject to the Rules and Regulations attached as Exhibit "B."

3. Term. The term of this Lease-Back shall commence on the earlier of the following: the first day of the month following receipt of a Certificate of Occupancy by the SPCALA, or the first day of occupancy by City, and shall terminate on May 31, 2053, unless terminated sooner as provided for herein. The anniversary date of this Lease-Back shall be August 1, regardless of the commencement date.

4. Rent. City shall pay to SPCALA as annual Lease-Back rent the sum of Sixty Dollars (\$60.00), in advance, without deduction, set-off, notice, or demand on the anniversary date of each Lease year, and other good and valuable consideration including City's execution of the Lease. However, the first payment of annual Lease-Back rent shall

be due and payable on the commencement of this Lease-Back, rather than on the anniversary date.

5. Use. The Lease-Back Premises shall be used solely by City's Department of Health and Human Services and solely in connection with its animal control program. City shall not use the Lease-Back Premises or conduct its business thereon in any manner that will create a nuisance or constitute waste. City shall not make or permit any noise or odors that constitute a nuisance within the meaning of California Civil Code Section 3479 or California Penal Code Section 370.

6. Common Areas. The term "Common Area" and "Common Areas" shall mean all areas and facilities that are traditionally for the general nonexclusive use of lessees, their employees, suppliers, shippers, customers, invitees, and others, plus exterior doors and entrances, lobbies, public restrooms, parking areas, loading and unloading areas, service ways, trash areas, roadways, sidewalks, walkways, parkways, stairs, ramps, driveways, bumpers, landscaped areas, veterinary theater, classrooms, conference rooms, and rooms for employee breaks, exterior walls, the roof, the foundation fences, gates, and exterior windows and plate glass, and overhead lighting facilities.

7. Expenses.

A. City shall pay to SPCALA as additional rent during the term hereof fifty percent (50%) of all Operating Expenses, as herein defined. "Operating Expenses" shall mean all costs incurred by SPCALA under the Lease for the operation, repair, replacement

and maintenance of the Lease-Back Premises, in a neat, clean, safe and good condition including but not limited to the following:

- (i) The Common Areas including their surfaces, coverings, decorative items, carpets, and drapes and other window coverings;
- (ii) All heating, air conditioning, plumbing, and electrical systems, life safety and security equipment and systems, (excluding those which are controlled exclusively by SPCALA or City) telecommunications systems and facilities (excluding those which are controlled exclusively by SPCALA or City), fire detection systems (including sprinkler system maintenance and repair), and irrigation systems;
- (iii) Trash disposal, janitorial services, and security services;
- (iv) The cost of the following utilities: gas and electricity;
- (v) The replacement or addition of improvements mandated by any governmental agency;
- (vi) The replacement of equipment or improvements that have a useful life for depreciation purposes according to Federal income tax guidelines of five (5) years or less;
- (vii) The costs associated with the use of a management company to manage the Lease-Back Premises;
- (viii) Debt service on funds in excess of Three Million Dollars (\$3,000,000.00) borrowed by SPCALA to pay the cost of original construction of the Facility as defined in the Lease.

(ix) City shall pay its share of Operating Expenses within ten (10) days after receipt from SPCALA of a statement of actual expenses.

B. City shall pay during the term hereof all water and sewer services for the Property and the Facility. City shall also pay the cost of the premium for all-risk property insurance for the Facility both during construction of the Facility and during the term of the Lease-Back.

8. Maintenance & Repair. City shall, at its own expense and to the satisfaction of the SPCALA, keep, maintain, repair and replace all or any portion of the interior of the Lease-Back Premises and all improvements thereon in good condition (excluding those portions which are Common Areas), in a neat, safe and sanitary condition, and in compliance with applicable laws. City shall keep the Lease-Back Premises free from trash, garbage and litter. In all other respects, maintenance shall be governed by the Lease.

9. Nondiscrimination. Subject to applicable laws, rules, and regulations, City shall not discriminate against anyone in its use of the Lease-Back Premises on the basis of age, sex, sexual orientation, AIDS, AIDS related condition, marital status, race, religion, creed, ancestry, national origin, disability, handicap, or Vietnam veteran status.

10. Notice. Any notice required by this Lease-Back shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid to City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager and to SPCALA at the address first stated above, to the attention of the Chief Financial Officer. Notice shall be deemed effective on the day following the date of mailing or on the date

personal delivery is made, whichever first occurs. Change of address shall be given as provided herein for notices.

11. Kennel Capacity. The capacity of the kennels operated by the City on the Lease-Back Premises, meaning the number of animals that can be housed in the Lease-Back Premises, shall be mutually agreed to by the parties during the design stage. The capacity of the kennels cannot be increased more than 15% over the capacity figure agreed to in the design stage except in the following circumstances:

- (i) by the mutual consent of the parties; or
- (ii) in the event of a need for temporary housing of animals due to an emergency situation.

SPCALA shall give notice to the City of any breach of this provision and City shall have thirty (30) days after the date of said notice to cure the breach.

12. Indemnification. City shall defend, indemnify and hold SPCALA, its officers and employees harmless from all claims, demands, damages, causes of action, losses, liability, costs, or expenses, including reasonable attorney's fees, of any kind or nature whatsoever which SPCALA, its officers and employees may incur for injury to or death of persons or damage to or loss of property occurring in or on the Property or Facility arising from the condition of the Facility which City is required to maintain under Section 8 hereof, and the acts or omissions of City, its officers or employees relating to the occupancy, use, or misuse of the Facility by City, City's employees, licensees, or visitors.