

13. Insurance.

A. During the term of the Lease-back, City shall procure and maintain in full force and effect and at City's sole cost and expense the following policies of insurance, each policy of insurance required to be maintained by City shall be issued by an insurance company authorized to do business in the State of California, with a rating classification of at least a Class A: VIII by A.M. Best and Company. Such policies shall name SPCALA as an additional or named insured:

(i) A policy of "all risk" property, fire and extended coverage insurance, including without limitation, coverage of vandalism and malicious mischief, in an amount equal to one hundred percent (100%) of the full insurance replacement value of the Facility, which policy shall identify SPCALA as a co-insured with City;

(ii) A policy of or self insurance for comprehensive general liability insurance, insuring City's activities and those of its employees, agents, contractors, and invitees with respect to the Property or Facility against loss, damage, or liability for injury, or death of any person, or loss or damage to property occurring on the Property or Facility, as a result of occupancy or use of the Property or Facility with a limit of not less than Three Million Dollars (\$3,000,000.00) for each occurrence and Five Million Dollars (\$5,000,000.00) general aggregate for injury to any number of persons and/or property damage in any one occurrence.

(iii) Prior to the commencement of the Lease-Back, City shall furnish to SPCALA a certificate of insurance issued by the insurance carrier of each policy of

insurance carried by City pursuant hereto. Such certificate shall reflect that SPCALA is an additional or named insured and that such insurance policies shall not be cancelable without a minimum of thirty (30) days prior written notice to SPCALA.

(iv) The procuring of said insurance shall not be construed as a limitation on City's liability or as full performance on City's part of the indemnification and hold harmless provisions of this Lease Back; and City understands and agrees that, notwithstanding any insurance, City's obligation to defend, indemnify and hold SPCALA, its officers and employees harmless hereunder is for the full amount of any damage, cause of action, loss, expense, cost, or liability caused by the condition of the Facility or in any manner connected with or attributed to the acts or omissions of City, City's, agents, employees, licensees, invitees, or visitors, or the operations conducted by City, or City's use, misuse or neglect of the Facility.

(v) SPCALA makes no representation or warranty that the limits or forms of coverage of insurance specified herein are adequate to cover City's property, liability, or obligations under this Lease-Back.

B. It is understood and agreed that City may satisfy the insurance obligations and requirements set forth herein through an approved self-insurance plan.

14. Assignment. Neither party shall assign or transfer this Lease-Back or any interest in this Lease-Back, and City shall not sublease the Lease-Back Premises or any part thereof. Assignment of the Lease-Back by either party or by a trustee in bankruptcy shall be a material, non-curable breach of this Lease-Back.

15. Waiver. The failure or delay of SPCALA to insist on strict enforcement of any term, covenant, or condition herein shall not be deemed a waiver of any right or remedy that SPCALA may have and shall not be deemed a waiver of any subsequent or other breach of any term, covenant, or condition herein. The receipt and acceptance by SPCALA of delinquent rent shall not constitute a waiver of any other default but shall only constitute a waiver of timely payment for the particular rent payment involved. Any waiver by SPCALA of any default or breach shall be in writing. SPCALA's consent to or approval of any act by City requiring SPCALA's consent or approval shall not be deemed to waive SPCALA's consent or approval of any subsequent act of City.

16. This Lease Back shall be binding on and shall inure to the benefit of the parties and their successors, transferees, assignees, heirs and personal representatives and all of the parties shall be jointly and severally liable hereunder.

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

18. Waiver by City. SPCALA shall not be liable for and City hereby waives all claims against SPCALA, its officers and employees for loss, theft, or damage to equipment, furniture, trade fixtures, records, plants, and other personal property on or about the Lease-Back Premises, for injury to or death of persons on the Lease-Back Premises from any cause except to the extent caused by the gross negligence or willful misconduct of SPCALA, its officers, employees or agents.

19. Compliance with Laws. City, at its sole cost, shall comply with all laws, ordinances, rules, and regulations of and obtain such permits, licenses, and certificates required by all federal, state and local governmental authorities having jurisdiction over the Lease-Back Premises and business thereon.

20. Choice of Law: Amendments. This Lease-Back shall be construed and interpreted in accordance with the laws of the State of California. This Lease-Back contains the entire understanding of the parties and supersedes all other agreements and communications between the parties, oral or written, concerning the Lease-Back Premises. This Lease-Back shall not be construed against either party as the drafter. This Lease-Back may not be changed or amended except by an instrument in writing signed by SPCALA and City. This Lease-Back shall not be recorded.

21. Broker. The parties covenant and represent that they have had no contacts or dealings regarding this Lease-Back through a broker or agent or any other person who can claim a right to a commission or fee.

22. Termination of Lease. This Lease-Back is subject and subordinate to the terms and conditions of the Lease. The parties mutually acknowledge and agree that this Lease-Back and the Lease are mutually dependent and the termination of either this Lease-Back or the Lease 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.

23. Signs. City and SPCALA shall mutually agree to place, affix, maintain, and permit any sign, advertisement, name, insignia logo, descriptive material, or similar item (collectively, "sign" or "signs") on the Lease-Back Premises. Signs identifying the City shall be maintained by City, at its cost, in good condition.

City and SPCALA shall erect appropriate signs to identify the Lease-Back Premises as separate from the premises of the SPCALA. These signs may take the form of a map or other graphics of the entire facility color-coded to identify the Lease-Back Premises from the premises of the SPCALA as well as descriptive signs with arrows, logos, or other identifying marks.

24. Record Retention. SPCALA shall keep or cause to be kept during the term of this Lease-Back and for one (1) year thereafter books and records relating to Operating Expenses.

City shall have the right at any reasonable time during the term and for one (1) year after expiration or sooner termination of this Lease-Back to examine and audit the books and records of SPCALA relating to Operating Expenses, at the City's cost, except as stated below.

SPCALA shall cooperate with the City in such examination or audit, which shall take place during usual business hours.

If the audit reveals an overstatement of Operating Expenses which has resulted in an overpayment of City's share under this Lease-Back, then SPCALA shall immediately refund the City's overpayment upon demand for same from City. If the City has overpaid its

share of operating Expenses by five percent (5%) or more, then SPCALA shall pay the cost of the audit.

25. Default. The occurrence of any of the following acts shall constitute a default by City:

- A. Failure to pay rent when due if the failure continues after three (3) days' written notice from SPCALA;
- B. Abandonment of the Lease-Back Premises, providing that failure to occupy or operate the Lease-Back Premises for ten (10) consecutive business days shall be deemed an abandonment except for causes of force majeure;
- C. Any attempted assignment, transfer or sublease;
- D. Failure to maintain or pay for all necessary permits and business licenses required by the City of Long Beach in its municipal or regulatory capacity;
- E. The making by City of any general arrangement or general assignment for the benefit of creditors, or the appointment of a trustee or receiver to take possession of substantially all of City's assets located at the Lease-Back Premises or of City's interest in this Lease-Back, or the attachment, execution or other judicial seizure of substantially all of City's assets located at the Lease-Back Premises or of City's interest in this Lease-Back, or where City becomes a "debtor" as defined in any bankruptcy laws. If any provision of this subpart (E) is contrary to law, such provision shall have no force or effect;
- F. Failure to perform any term, covenant or condition of this Lease-Back, other than those set forth in sub-sections (A), (B) and (C) of this section shall not constitute

a default unless such default is not cured within thirty (30) days after receipt by City of notice from SPCALA specifying such default. If the default cannot be reasonably cured within such thirty-day period, City shall still not be in default if City begins to cure within such thirty-day period and diligently proceeds to cure to completion;

G. The breach by City of any of the covenants, conditions or provisions of sub-sections (B) and (E) of this section all of which are hereby deemed to be material, non-curable defaults without the necessity of notice thereof by SPCALA to City;

H. The parties mutually agree that and this Lease-Back is and shall be mutually dependent on the Lease, and a default by City under the Lease shall be a material non-curable default under this Lease-Back and termination of the Lease shall also be a material non-curable default under this Lease-Back, all of which shall entitle SPCALA to terminate this Lease-Back immediately without the necessity of notice thereof by SPCALA to City. SPCALA may, in its sole discretion, elect to waive a non-curable default or breach of this Lease-Back by City thereby avoiding termination of the Lease-Back and Lease.

26. Hazardous Materials. City shall not keep or allow to be kept on the Lease-Back Premises 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 City to carry on its business provided that City disposes of same as required by law.

27. Parking Spaces. City shall be entitled to the number of reserved parking spaces as set forth in Exhibit "C" for the use of its staff, at no charge.

28. Quiet Possession. If City pays the rent and performs all of the covenants and conditions of this Lease-Back, City shall have quiet possession of the Lease-Back Premises for the term hereof subject to the covenants and conditions of this Lease.

29. Force Majeure. The term "force majeure" in this Lease Back 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.

30. Miscellaneous.

A. The headings and numbers of this Lease-Back 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-Back to be performed by City shall be construed as both a covenant and a condition of this Lease-Back.

C. If any term, covenant, or condition of this Lease-Back 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-Back.

E. This Lease-Back shall not be recorded.



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

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

H. The relationship of the parties hereto is that of landlord and tenant, and the parties agree that nothing contained in this Lease-Back 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.

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

31. Exhibit "C". Subsequent to execution of this Lease-Back, the parties shall execute a document captioned "Commencement Date and Parking", in the form of Exhibit "C" attached hereto and incorporated herein by reference, which states the commencement date and the number of parking spaces reserved to the City hereunder.

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]  
President

10/2/98, 1998

By [Signature]  
Secretary

CITY OF LONG BEACH, a municipal  
corporation

Sept 28, 1998

By [Signature] **ASSISTANT CITY MANAGER**  
City Manager

**EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.**

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

ROBERT E. SHANNON, City Attorney

By [Signature]  
Deputy