

R- 292706

## RECOGNITION AND ATTORNMENT AGREEMENT

This RECOGNITION AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2000, by and among the City of San Diego (the "City"), and Padres L.P., a Delaware limited partnership (the "Padres").

### RECITALS

A. The City and the Padres have entered into that certain Joint Use and Management Agreement dated as of January \_\_, 2000 (the "Joint Use Agreement"). Capitalized terms used herein without definition shall have the meanings assigned to such terms in the Joint Use Agreement. Pursuant to the Joint Use Agreement, the City, among other things, has granted to the Padres the right to use and occupy all of the City Property, including the City's interest in the Ballpark Property, at the times and in the manner set forth therein.

B. The City and the Public Facilities Financing Authority of the City of San Diego, a California Joint Powers Authority (the "PFFA"), have entered into that certain Site Lease dated as of \_\_\_\_\_, 2000 (the "Site Lease"), pursuant to which the City has leased the Ballpark Land to the PFFA. The Ballpark Land is located in the City of San Diego, County of San Diego, and is more particularly described in Exhibit A attached hereto and made a part hereof.

C. The PFFA and the City have entered into that certain Facility Lease dated as of \_\_\_\_\_, 2000 (the "Facility Lease"), pursuant to which the PFFA has subleased the City Property to the City.

NOW, THEREFORE, in consideration of the promises and covenants herein made, the City and the Padres covenant and agree as follows:

### AGREEMENT

1. Joint Use Agreement. The City acknowledges that it has received and reviewed a copy of the Joint Use Agreement.

2. Padres Property. The City acknowledges and agrees that (a) the Joint Use Agreement provides that selected items of property, which are designated therein as "Padres Property," are owned by the Padres; and (b) neither the City nor the PFFA has any interest in Padres Property, except to the extent arising under the Joint Use Agreement.

3. Recognition and Non-Disturbance. The City, as a party to the Site Lease and the Facility Lease, hereby agrees that the Joint Use Agreement shall not be terminated, nor shall the Padres' use, possession or enjoyment of the City Property granted by the Joint Use Agreement be affected in any other matter, as a consequence of any action, proceeding or other exercise of remedies instituted under or in connection with the Site Lease or the Facility Lease.

4. Attornment. The Padres agree that if the City transfers its ownership interest in the City Property, then the Padres shall continue to perform, for the benefit of the transferee, all of the Padres' obligations under the Joint Use Agreement (subject, however, to any

conditions to such obligations set forth in the Joint Use Agreement). Notwithstanding the foregoing, no such assignment shall relieve the City from (a) its obligations arising under the Joint Use Agreement with respect to any time period preceding the assignment or (b) its obligations under Section 7.6.2, Section 8.4.2 and Section 28.7 of the Joint Use Agreement. Any attornment to a purchaser or transferee pursuant to the Joint Use Agreement shall occur automatically, but each party shall on request by and without cost to the other party or any purchaser or transferee execute, acknowledge and deliver any instruments evidencing such attornment; provided, however, that such attornment shall be not be effective unless and until such purchaser or transferee shall agree with the Padres in writing that the Padres' possession of the City Property and the rights and privileges under the Joint Use Agreement shall not be impaired or disturbed on account of any such transfer.

5. No Amendments. In light of the fact that the Joint Use Agreement provides that the rights of the Padres thereunder are subordinate to the Site Lease and the Facility Lease, the City hereby agrees that it shall not amend the terms of the Site Lease or the Facility Lease without first obtaining the Padres prior written consent, which consent shall not be unreasonably withheld (it being understood that it will be reasonable for the Padres to withhold consent to any amendment which could affect the rights or obligations of the Padres in any material respects).

6. Notices of Default. The City shall promptly send to the Padres a copy of any notice of default or similar statement provided to the City under the Site Lease or the Facility Lease. Such notices shall be delivered to the Padres in the manner and at the addresses set forth in Section 7 below.

7. Notices. Any notice to be given to any party pursuant to any provision of this Agreement shall be in writing, shall be (i) hand delivered to such party, (ii) sent by telecopy to the telecopy number for such party listed below, (iii) sent by Federal Express or other nationally-recognized overnight courier service to the address of such party set forth below, or (iv) sent by or as an attachment to electronic mail (with acknowledgment of receipt) and, if hand delivered, shall be deemed received when delivered, if telecopied, shall be deemed received upon confirmation of receipt either telephonically or by facsimile, and if sent by Federal Express or other nationally-recognized overnight courier service, shall be deemed received one business day after having been deposited with Federal Express or other nationally-recognized overnight courier service if designated for next day delivery, and if sent by or as attachment to electronic mail, shall be deemed received upon acknowledgment of receipt. Notices shall be addressed as follows:

For the City:                      City Manager  
   202 "C" Street, Mail Station 9A  
   San Diego, California 92101  
   Telecopy (                      )  
   e-mail:

with a copy to:

City Attorney  
1200 Third Avenue, Suite 1620  
San Diego, California 92101  
Telecopy (            )  
e-mail:

For the Padres:            President & Chief Executive Officer San Diego Padres  
8880 Rio San Diego Drive, Suite 400  
San Diego, California 92108  
P.O. Box 122000  
San Diego, California 92112  
Telecopy (            )  
e-mail:

with a copy to:

San Diego Padres  
8880 Rio San Diego Drive, Suite 400  
San Diego, California 92108  
P.O. Box 122000  
San Diego, California 92112  
Telecopy (            )  
e-mail:

Any party, by notice given as provided above, may change the address or telecopy number or e-mail address to which future notices shall be sent.

8.     Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

9.     Modifications and Amendments. This Agreement shall not be modified or amended except in writing signed by all parties hereto.

10.    Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the City and the Padres have executed this Agreement as of the date first above written.

THE CITY OF SAN DIEGO, CALIFORNIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PADRES L.P., a Delaware limited partnership

By: \_\_\_\_\_,  
a \_\_\_\_\_ corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit A

BallPark Land

[To be completed upon finalization of legal description of Ballpark Land pursuant to Joint Use and Management Agreement]