

AGREEMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF INDOOR SOCCER ARENA

This Agreement for the Construction, Operation and Maintenance of Indoor Soccer Arena ("Agreement") is entered into this _____ day of February 2007, by and between the CAJON VALLEY UNION SCHOOL DISTRICT ("District"), a school district organized and existing under the laws of the State of California, and the SAN DIEGO SOCCER ASSOCIATION, INC. ("Association"), a 501(c)(3) nonprofit public benefit corporation. The District and Association may sometimes be collectively referred to herein as the "Parties."

RECITALS

A. The District owns and operates Montgomery Middle School ("Montgomery"), located at 1570 Melody Lane, El Cajon, California, which conducts physical education programs for its students.

B. The Association is a nonprofit, [public] benefit corporation that desires to provide an indoor soccer facility ("Arena") to be located at Montgomery to serve the youth and adults of San Diego County and, in doing so, provide opportunities for use of the Arena for the students at Montgomery.

C. The District is authorized to accept the construction of the Arena pursuant to Education Code section 35160 et seq.

D. The District and Association desire to enter into this Agreement for the construction of the Arena on the Montgomery campus.

NOW, THEREFORE, the parties agree as follows:

1. SCOPE OF WORK.

1.1 Construction. Association shall perform all construction of the Arena, including, but not limited to, the grading and earthwork (collectively referred to herein as "Work") consistent with the Project Description attached hereto as Exhibit "A."

The Work shall be performed by a general contractor selected by Association, and approved by the District ("General Contractor").

In addition to construction of the Arena, the Association will improve the two existing tennis courts immediately adjacent to the Arena site, to the normal standards for District tennis courts.

Association will construct additional asphalt tennis courts which, when added to the two existing tennis courts that the Association will improve, will equal in overall dimensions (court size, fenced area, setback, and spacing between the courts) the existing Montgomery tennis courts as of the date of execution of this Agreement.

The newly constructed courts shall be of the same quality and layout (including court game markings and nets) as the existing courts. In addition, Association will install volleyball pole standard sleeves in the newly constructed courts. Fencing of the new court area shall be equivalent in all material respects (height, gauge, post diameter, etc.) as the fencing of the existing courts.

The Association shall provide District with copies of all Plans to be submitted to DSA and any other government agency whose approval is required or reasonably deemed advisable by either party for construction of the Work ("Approvals"). Prior to such submittal, District shall have the right to amend or revise such Plans, subject to Association's agreement to such amendments or revisions. Upon receipt of all Approvals, the parties agree to execute a memorandum acknowledging the date of such receipt and amending this Agreement to include the Plans so approved as Exhibit "B" (the "Approved Plans").

1.2 Grant of Right of Entry. District hereby grants to Association and its agents, contractors and employees, the right to enter upon the portions of Montgomery shown on Exhibit "C" (the "Work Site") and such other areas of the Montgomery site as is reasonably necessary to perform the Work including, without limitation, the right to grade, fill, excavate, recompact, level, construct and otherwise alter and improve the Work Site in substantial conformance with the Approved Plans.

1.3 Work Requirements. Association shall furnish all equipment, tools, materials, labor and engineering services necessary to fully and adequately complete the Work set forth in this Agreement, and to pay all applicable fees and expenses associated with such Work, including, but not limited to, the actual costs of design, review, engineering, construction and District inspection of the Work. Association and its contractors shall perform all Work under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. All Work shall be performed, constructed and installed consistent with the Approved Plans and shall be subject to review and approval by the District's Inspector of Record (as defined in paragraph 1.11) and by the Architect. District shall assist and cooperate with Association in providing the most cost effective means and methods to complete the Work. The District will be required to employ a DSA-certified building inspector for this project. The Association will reimburse the District for that expense.

1.3.1 District Access to Work. District and its representatives shall at all times have access to the Work Site to carry out their duties. Association shall provide safe and proper facilities for such access. District agrees to follow Work Site safety rules established by Association for any entry on the Work Site.

1.4 Association's Supervision of Work. Association shall designate a person to whom District can communicate with for all purposes in connection with the Work, ("Owner's Representative"). Owner's Representative shall be available to the District to receive notifications, complaints, etc. from the District about any aspect of the Work. Association shall supervise and direct the Work using Association's best skill and

attention. Association shall be responsible for and have control over construction means, methods, techniques, sequences, and procedures as well as coordinating all portions of the Work under this Agreement, except where this Agreement gives other specific instructions concerning these matters. Association shall be responsible to the District for acts and omissions of Association's employees, contractors, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct contract with Association. Association shall furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of the Work; organize the procurement of all materials and equipment; and keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with this Agreement. The District may request the removal of any superintendent, staff member, agent, or employee of any contractor, subcontractor, material or equipment supplier, and their agents, employees, invitees, for cause. Association will exert its best efforts to accommodate any such request of District to the extent Association possesses the contractual or other legal authority to accommodate such request from District without liability, cost or expense to Association. Association shall enforce strict discipline and good order among Association's contractors, subcontractors, and other persons carrying out the Work in accordance with this Agreement.

1.4.1 Tobacco and Drug Free Workplace. Association acknowledges that the District is a tobacco and drug free workplace. Association shall be responsible to ensure that tobacco products, drugs, and alcohol will not be used by Association's employees, contractors, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work on or at the Montgomery site. District may request the removal of any superintendent, staff member, agent, or employee of any contractor, subcontractor, material or equipment supplier, and their agents, employees, and invitees from the Work Site for use of tobacco products, drugs or alcohol at the Montgomery site. Association will exert its best efforts to accommodate any such request of District to the extent Association possesses the contractual or other legal authority to accommodate such request from the District without liability, cost or expense to Association.

1.5 Work Schedule. Association acknowledges that students may be attending Montgomery during the course of Association's Work at the site. Association agrees to meet with the District and representatives of Montgomery to develop a mutually acceptable construction schedule and phasing plan ("Work Schedule") so as to minimize any disruption to the existing operations at Montgomery. Prior to commencement of any Work under this Agreement, Association shall provide the District with a proposed construction schedule and phasing schedule for the Work required to be performed under this Agreement delineating the areas in which Work will be performed and the proposed time line for such Work, for the District's review and approval which approval will not be unreasonably withheld. Association shall notify the District in writing upon the completion of each phase set forth in the approved phasing schedule. District reserves the right to enforce compliance of any further work on the phasing schedule in accordance with the compliance provision set forth in Section 1.15 of this Agreement. Resurfacing of the two existing tennis courts immediately adjacent

to the Arena site, and addition of the new courts described in Section 1.1 shall be completed before work starts on the Arena and the courts located on the Arena site become unusable.

1.5.1 Hours of Work. The Work required under this Agreement may be performed any time between the hours of 6:00 a.m. and 10:00 p.m. on any day of the week subject to local ordinance. Prior to commencement of the Work, Association agrees to coordinate the Work schedule with the District. Whenever the type of Work being performed on or near the Montgomery site reasonably requires, Association shall provide flag men as necessary, as well as other safety mechanisms to minimize the risk to students going to and from school.

1.5.2 Commencement of Work. Prior to the commencement of any Work at Montgomery site Association shall (1) provide District with a construction schedule and phasing schedule as required by Section 1.5 of this Agreement; (2) provide District with evidence of the financial ability of the Association to pay any and all costs for the Work in form and substance satisfactory to the District; and (3) provide District with the appropriate certificates of insurance as required by Section 3 of this Agreement.

1.6 Prevailing Wage. It shall be the sole responsibility of Association to determine whether to pay prevailing wages for any or all Work required under this Agreement and to comply with such determination. As a material part of this Agreement, Association agrees to assume all risk of liability arising from any decision not to pay prevailing wages for the Work required by this Agreement.

1.7 Permits, Licenses and Approvals. Association shall be responsible for obtaining all necessary permits, licenses and approvals from the State of California, including the Division of the State Architect or any other entity with jurisdiction over the Work. Association shall secure and pay for all permits and licenses necessary to perform the Work required under this Agreement. Association shall provide verification that permits, licenses and approvals have been obtained promptly upon demand from the District. District shall fully cooperate with Association in order to obtain all permits, licenses and approvals and, generally, in order to fulfill the purpose and intention of this Agreement. Further, District agrees to execute all necessary and further documents as may be necessary to effectuate this Agreement. Association shall ensure that all Work performed under this Agreement complies with all applicable federal, state, county and local government rules and regulations.

1.8 Protection of Students, District Employees, District Property and Work. Association shall be responsible for all damages to any persons or property that occur as a result of Association's fault or negligence in connection with the Work to be performed under this Agreement and shall be responsible for the proper care and protection of all materials delivered and Work performed until completion of the Work and final acceptance by the District. All Work shall be solely at the Association's risk. Association shall take all necessary precautions for safety of employees on the Work site and shall comply with all applicable safety laws and building codes to prevent

accidents or injury to persons on, about or adjacent to premises where Work is being performed. Association shall erect and properly maintain at all times, as required by conditions and progress of Work, all necessary safeguards, signs, barriers, light, and watchman for protection of workers, District's students and employees, members of the public and shall post danger signs warning against hazards created by conditions in the course of construction. Association shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereof, and repair any damage thereto caused by construction operations.

1.8.1 Emergency Situation. In an emergency affecting safety of life or of Work or of adjoining property, Association, without special instruction or authorization from District, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury and Association shall so act if so authorized or instructed by a duly authorized representative of the District.

1.8.2 Preventive Measures. To ensure the safety of the students at Montgomery and protection of the Work Site, Association shall do all the following at the Work site:

(a) For any working area outside the fenced stadium, enclose such working area, including trailers, temporary buildings, worker parking, materials, storage containers and lay down area, with a temporary chain link fence or other substantial barricade, arrange Work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities and perform Work which may interfere with school activities either before or after school hours.

(b) Coordinate with District to ensure supervision of the Work area one (1) hour before and one (1) hour after school, during class passing periods and at any other time mutually determined by District and Association in order to ensure the safety of the students.

(c) Provide substantial barricades around any shrubs or trees indicated to be preserved.

(d) Transport materials and equipment to the Work site over a route acceptable to District and permitted by local ordinance. Any temporary road constructed for such purpose shall be removed and the area restored to its original condition at completion of the Work.

(e) When directed by District, District's Inspector of Record, or any other District representative, take preventive measures to reduce objectionable dust or noise.

(f) Confine any apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District and shall not unreasonably encumber premises with Association's materials, and enforce all instructions of District regarding signs, advertising, fire, danger signals,

barricades, and require that all persons employed on Work comply with all regulations while on construction site.

(g) Comply with all stormwater control requirements of the City of El Cajon, including completion of a Stormwater Prevention Plan, if required.

1.8.3 Fingerprinting Requirements. In addition to the preventative measures indicated above, Association agrees to take any other necessary precautions to ensure that Association's contractors, subcontractors, or employees will have limited contact with District students during the course of the Agreement. Provided that Association 1) implements the preventative measures indicated above; 2) implements any other necessary steps to ensure the safety of the students at Montgomery; and 3) will have limited contact with students during the course of the Work to be performed under this Agreement, Association will be deemed exempt from the fingerprinting requirements pursuant to Education Code sections 45125.1 and 45125.2.

1.9 Completion of Work. Association shall complete all Work to be performed under this Agreement in accordance with the Work Schedule, or as otherwise mutually agreed by the Parties through formal amendment to this Agreement ("Completion Date"). The Work shall be deemed completed when the entire Work, as defined in Section 1 of this Agreement has been substantially completed to the reasonable satisfaction of the District's Inspector of Record, as evidenced by a Letter of Completion submitted by the District's Inspector of Record to District and Association.

1.9.1 Enforced Delay, Extension of Time of Performance. In addition to specific provisions of this Agreement, performance by Association hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walk-outs, riots, floods, earthquakes, inclement weather, fires, casualties, landslides, shortages of supplies or labor beyond the control of Association, acts of God, governmental restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, litigation, delays caused by changes to the Plans by District, any other delays caused by District or District's representatives or agents or any similar basis for excused performance. If written notice of such delay is given to District within sixty (60) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon. Such an extension shall commence to run from time of commencement of cause.

1.10 Clean Up. Association at all times shall keep premises reasonably free from debris such as waste, rubbish, and excess materials and equipment caused by this Work. Association shall not leave debris under, in or about the Montgomery. Upon completion of Work, Association shall remove temporary fencing, barricades, planking and similar temporary facilities from Montgomery. Association shall also wash down the exterior of adjacent buildings, as well as any affected asphalt and concrete areas. In the event the District determines that Association failed to clean-up as required by this Section 1.10, District shall provide a list of items that need to be

completed to Association. In the event Association has not cleaned up such listed items within fifteen (15) calendar days of receipt of District's list of items, the District may perform the clean-up and pursue all available remedies provided by law. Association shall provide its own trash and debris receptacles and arrange for emptying of such receptacles.

1.11 Inspection Requirements. The District's Inspector of Record shall have access to all operations involving the Work to be performed under this Agreement and shall be provided reasonable advanced notice of the time and place for operations which he desires to observe. The District's Inspector of Record shall be provided with all necessary samples of materials and Work for testing purposes reasonably requested by the District's Inspector of Record. The District's Inspector of Record shall have the right to observe the Work at any time and shall have free access to any or all parts of Work at any time provided however, the District's Inspector of Record shall observe and comply with any and all safety rules and policies established by the Association for the Work. Association shall furnish District's Inspector of Record reasonable facilities for obtaining such information respecting progress and manner of Work and character of materials. Copies of any written reports, including any photographs, technical data, or other information prepared by, on behalf or at the direction of the District's Inspector of Record with respect to the Work shall be provided to Association within 24 hours of completion of said report, photograph, technical data or other information. Inspection of the Work shall not relieve Association from any obligation to fulfill its obligations under this Agreement.

1.11.1 Final Inspection. Final inspection will be made by the District's Inspector of Record upon written notification from Association to District that the Work has been completed. Association shall receive a list (punch list) of items found to materially deviate from the Approved Plans and shall promptly correct them. Upon written notification from Association that all items have been corrected, the District or District's representative will reinspect for final acceptance of the Work. Failure of Association to complete punch list items will necessitate further reinspection by the District or District's representative. All costs of inspections and reinspection shall be borne by Association. Before calling for final inspection, Association shall determine that the following Work has been performed:

- (a) Construction of the Project;
- (b) All utilities reconnected and operating Work completed;
- (c) Grounds cleared of Association's equipment, raked clean of debris, and trash removed from site;
- (d) Work cleaned, free of stains, scratches, and other foreign matter, replacement of damaged and broken material;

1.12 Acceptance of Work. Upon completion of the Work required by this Agreement to the satisfaction of the District, the Work that has been performed by the Association shall be presented to the District for acceptance. The District shall have no obligation to accept the Work if all Work is not consistent with the Approved Plans and reasonably satisfactory to the District. Title to the Project shall at all times be held in, fee by the District.

1.12.1 Liability for Work Prior to Formal Acceptance. Until the District has formally accepted all Work performed by Association in accordance with the Agreement, Association shall be solely responsible for any and all damage to the Work and for all damages or injuries to any person or property from any cause related to the Work, other than damages or injuries which result from the negligence or willful misconduct of the District, its officers, agents or independent contractors who are directly employed by the District. District will not enter or use or permit others to enter or use any portion of the Work site, except as otherwise permitted by Subsection 1.3.1 of this Agreement, until the District has formally accepted all Work performed by Association and delivered to Association a Letter of Completion in accordance with Section 1.9 of this Agreement.

1.12.2 Liability after Acceptance of Work. After the District has formally accepted the Work, Association and District shall enter into an indemnity agreement whereby the Association will agree in perpetuity to maintain appropriate insurance naming the District and its Board members and employees as additional insured's and also to defend, protect, hold harmless and indemnify the Association , its Board members and employees for any and all losses, damages, expenses, liabilities and costs including but not limited to attorneys fees and costs for any and all losses, damages or injuries which result from any use of the Project by anyone.

1.13 Warranty. Besides guarantees required elsewhere, Association shall, and hereby does, guarantee all work for a period of one year after date of acceptance of work by District. Association shall repair or replace any or all such work, together with any other work, which may be displaced in so doing, that may prove defective in workmanship and/or materials within a one-year period from date of acceptance without expense whatsoever to District. District will give notice of observed defects with reasonable promptness. Association shall notify District upon completion of repairs.

In the event of failure of Association to comply with above-mentioned conditions within one month after being notified in writing, District is hereby authorized to proceed to have defects repaired and made good at the expense of Association. Association hereby agrees to pay costs and charges therefor immediately on demand.

If, in the opinion of the District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District or to prevent interruption of operations of the District, the District will attempt to give the notice required by this article. If the Association cannot be contacted or does not comply with the District's request for correction within a reasonable time as

determined by the District, the District may, notwithstanding the provisions of this article, proceed to make such correction or provide such attention. The costs of such correction or attention shall be charged against the Association. Such action by the District will not relieve the Association of the guarantees provided in this article or elsewhere in this contract.

This article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Association shall furnish District with all appropriate guarantee or warranty certificates upon completion of the project.

2. MAINTENANCE AND REFURBISHMENT.

2.1 Maintenance. Association shall maintain and repair the Arena at its sole cost and expense to the reasonable satisfaction of District's Board, and shall refurbish any portions of the Arena that become hazardous or unsightly.

3. INSURANCE.

3.1 Insurance Requirements. Prior to commencement of any Work required by this Agreement, Association or Association's contractor shall provide certificates of insurance and endorsements showing that Association or Association's contractor has liability insurance consistent with the provisions of this section. Association or Association's contractor shall procure and maintain for the duration of this Agreement, insurance of the types and in the amounts described below and in a form and from insurers satisfactory to the District.

3.2 Coverage. Coverage shall be at least as broad as the latest version of the following:

(a) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

(b) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto).

3.3 Limits. Limits of Insurance shall be no less than the following:

(a) General Liability: One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage, and an aggregate limit of one million dollars (\$1,000,000). If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.

(b) Automobile Liability: One million dollars (\$1,000,000) per accident for bodily injury and property damage.

3.4 Acceptability of Insurers. All insurers shall have a current A.M. Best's rating of no less than A:VIII and shall be licensed to do business in California.

3.5 Required Provisions. The general liability and automobile policies are to contain, or be endorsed to contain the following provisions:

"The Cajon Valley Union School District, the Association, the Board of Education and each member of the Board, its officers, employees, agents and volunteers shall be named as additional insureds on all policies with respect to: liability arising out of activities performed by or on behalf of Association including materials, parts or equipment furnished in connection with such activities; products and completed operation of the Association; premises owned, occupied or used by the Association; or automobiles owned, leased, hired or borrowed by the Association. The insurance coverage shall be primary insurance as respects the District, the Association, the Board of Education and each member of the Board, its officers, employees, agents and volunteers or if excess, shall stand in an unbroken chain of coverage excess of the Association's and its contractor's scheduled underlying coverage. The insurance coverage shall have no special limitations on the scope of protection afforded to the District, the Association, the Board of Education and each member of the Board, its officers, employees, agents and volunteers. Any insurance or self-insurance maintained by the District, the Association, the Board of Education and each member of the Board, its officers, employees, agents and volunteers shall be excess of Association's General Contractor's insurance and shall not be called upon to contribute with it."

3.6 Verifications. Association and Association's contractors shall furnish the District with original certificates of insurance and endorsements effecting coverage required by this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

3.7 Workers' Compensation and Employer's Liability Insurance. Prior to commencement of any Work required by this Agreement, Association or Association's General Contractor shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the Work site, regardless of whether such coverage or insurance is mandatory or merely elective under the law and the Association shall indemnify, defend, protect and hold harmless the District, its officers, officials, board members, agents, and employees from and against any and all claims, suits, actions or demands arising from any failure of the Association or any of Association's contractors or subcontractors to maintain such

insurance. Before beginning any Work, Association shall furnish to the District satisfactory proof that Association has taken out for the period covered by the Work under this Agreement, full compensation insurance for all persons directly employed by Association or through contractors or subcontractors carrying out the Work contemplated under this Agreement, all in accordance with the Workers' Compensation and Insurance Act, Division IV of the Labor Code of the State of California and any Acts amendatory thereof.

3.7.1 Certificate of Workers' Compensation. Association shall provide the District with a certificate of Workers Compensation and Employer's Liability insurance coverage.

3.8 All Coverages. Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to the District. District agrees to provide such notice within five (5) business days after District has executed final acceptance of the Work.

4. INDEMNITY.

4.1 Indemnification by Association. Prior to District's acceptance of the Work, Association agrees to and does hereby to defend, protect, indemnify and hold harmless the District, its officers, officials, board members, agents, and employees from and against any and all claims or demands made and every liability, loss, damage, or expense of any nature whatsoever, including attorney fees, asserted by any person or entity arising out of or in connection with the Work to be performed by Association under this Agreement which may be incurred by reason of:

(a) Liability for damage for (1) death or bodily injury to persons, (2) injury to, loss or theft of property, or (3) any other loss, damage or expense arising under either (1) or (2) above, sustained by the Association or any other person, firm or corporation employed by the Association upon or in connection with the Work called for in this Agreement, except for liability for damages referred to above which result from the negligence or willful misconduct of the District, its officers, agents or independent contractors who are directly employed by the District.

(b) Any injury to or death of persons or damage to property sustained by any person, firm or corporation, including the District, including all damages due to loss or theft arising out of, or in any way connected with the Work covered by this Agreement, whether on or off school district property, caused by any act, neglect, default or omission of the Association or any person firm or corporation employed by the Association either directly or by independent contract, except for liability for damages which result from the negligence or willful misconduct of the District, its officers, employees, agents or independent contractors who are directly employed by the District.

(c) Any dispute between Association and Association's contractors, subcontractors, suppliers and Association's Guarantor, except for disputes which result from the negligence or willful misconduct of the District, its officers, employees, agents or independent contractors who are directly employed by the District.

(d) No officer, official, volunteer, board member or direct employee of the District or the Association shall be personally responsible for any liability arising under or by virtue of this Agreement.

4.2 Defense by Association. The Association, at Association's own expense, cost, and risk, shall defend, with legal counsel reasonably acceptable to the District, any and all actions, suits, or other proceedings that may be brought or instituted against the District, its officers, officials, board members, agents or employees on any such claim, demand or liability set forth in Section 4.1 for which Association has the obligation to indemnify District and shall pay or satisfy any judgment that may be rendered against the District, its officers, officials, board members, agents or employees in any action, suit or other proceedings as a result thereof.

4.3 Indemnification by District. District agrees to and does hereby agree to defend, protect, indemnify and hold harmless Association, its officers, officials, board members, agents, and employees from and against any and all claims or demands made and every liability, loss, damage, or expense of any nature whatsoever, including attorney fees and costs, asserted by any person or entity arising out of or in connection with the Work to be performed by Association under this Agreement and/or District's use of the Project which may be incurred by reason of:

(a) Liability for damage for (1) death or bodily injury to persons, (2) injury to, loss or theft of property, or (3) any other loss, damage or expense arising under either (1) or (2) above, sustained by the Association or any other person, firm or corporation employed by the Association upon or in connection with the Work called for in this Agreement which result from the negligence or willful misconduct of the District, its officers, agents or independent contractors who are directly employed by the District.

(b) Any injury to or death of persons or damage to property sustained by any person, firm or corporation, including the District, including all damages due to loss or theft arising out of, or in any way connected with the Work covered by this Agreement, whether on or off school district property which result from the negligence or willful misconduct of the District, its officers, employees, agents or independent contractors who are directly employed by the District.

(c) Any dispute between Association and Association's contractors, subcontractors, suppliers and Association's Guarantor which results from the negligence or willful misconduct of the District, its officers, employees, agents or independent contractors who are directly employed by the District.

(d) Any injury to or death of persons or damage to property sustained by any person, firm or corporation, including the Association, caused by use of the Project by District or any person, firm or corporation other than Association.

(e) Liability for any injury, death, loss, damage, claim of any nature whatsoever, including but not limited to attorneys fees and costs, arising from use of the Project by anyone that arise after acceptance of the Work by District. Provided however, this provision is not intended to operate to release or waive any rights, remedies, claims or causes of action by the District against Association's General Contractor, other contractors, agents, subcontractors in connection with the Work.

4.4 Defense by District. The District, at District's own expense, cost, and risk, shall defend, with legal counsel acceptable to the Association, any and all actions, suits, or other proceedings that may be brought or instituted against the Association, its officers, officials, board members, agents or employees on any such claim, demand or liability set forth in Section 4.3 for which District has the obligation to indemnify Association and shall pay or satisfy any judgment that may be rendered against the Association, its officers, officials, board members, agents or employees in any action, suit or other proceedings as a result thereof.

4.5 Personal Liability. No officer, official, board member or direct employee of the District or Association shall be personally responsible for any liability arising under or by virtue of this Agreement.

5. GENERAL PROVISIONS.

5.1 Assignment. Neither party may assign or transfer all or any portion of its rights or obligations contained in this Agreement without obtaining the prior written consent of the other party, which consent shall not be unreasonably withheld. Any purported assignment without the other party's prior written consent shall be void.

5.2 Binding Effect. This Agreement shall be binding on all heirs, successors and assigns of Association and the District.

5.3 No Third Party Beneficiary. This Agreement is entered into solely for the benefit of District, Association, and the heirs, successors, transferees, and assigns of each party to the Agreement. Other than District and Association, and their heirs, successors, transferees and assignees, no third person shall be entitled, directly or indirectly, to base any claim or to have any right arising from, or related to, this Agreement.

5.4 Time of Essence. Time is expressly declared to be of the essence in the performance of each and every provision of this Agreement.

5.5 Entire Agreement. This Agreement contains the entire agreement and understanding concerning the Work to be performed at for the Project. District and Association understand, acknowledge and agree that no party, or the agents or attorney for any party, has made any promise, representation or warranty of any kind

whatsoever, express or implied, not contained herein or therein to induce the execution of this Agreement. District and Association understand, acknowledge and agree that this Agreement has been executed in reliance upon any promise, representation, or warranty not contained herein.

5.6 Amendments. This Agreement may not be amended except by a writing signed by the District and Association.

5.7 Applicable Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Any legal or administrative action arising out of this Agreement shall be conducted in San Diego County, California.

5.8 Attorney's Fees. If any party to this Agreement commences an action against another party to this Agreement, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees, expert fees and all other costs of such action.

5.9 Warranty of Authority. The persons executing this Agreement on behalf of the District and Association represent and warrant that they are duly authorized to execute this Agreement and to bind their respective party to all terms and conditions of this Agreement.

5.10 Severability. If any section, subsection, sentence, clause or phrase of this Agreement, or the application thereof to any of the Parties, is for any reason held invalid or unenforceable, the validity of the remainder of the Agreement shall not be affected thereby and may be enforced by the parties to this Agreement.

5.11 Notices. All notices, demands and communications between District and Association shall be in writing and given by personal delivery; registered mail, return receipt requested, with postage prepaid, Federal Express or other reliable private express delivery service to the following addresses:

TO DISTRICT: G. Wayne Oetken
Assistant Superintendent, Business Services
Cajon Valley Union School District
189 Roanoke Road, Box 1007
El Cajon, CA 92022-1007

TO ASSOCIATION: David Waitley
The Waitley Group
2570 West Victoria Drive
Alpine, CA 91901

The foregoing names, addresses and phone numbers may be changed at any time by written notice as provided above.

5.12 Interpretation. In interpreting this Agreement, it shall be deemed that it was prepared jointly by the Parties with full access to legal counsel of their own. No ambiguity shall be resolved against any party on the premise that it or its attorneys were solely responsible for drafting this Agreement or any provision thereof.

5.13 Recitals. The recitals set forth above are fully incorporated into the terms of this Agreement by reference.

5.14 Exhibits. All Exhibits attached hereto or referenced herein are incorporated into this Agreement by reference.

5.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

5.16 Approvals. Whenever this Agreement requires or provides for the approval by any party, such party may not unreasonably deny or delay such approval.

6. OPERATION OF ARENA.

6.1 Joint Use of Arena. The Arena will be used jointly by the Association and the District according to the terms set forth in this Section 6.

6.2 District Priority. The District shall have exclusive use and control of the Arena from one hour prior to, until one hour after, regular school hours when school is in session at Montgomery.

6.3 Association Use. At all times other than those described in Section 6.2, the Association shall, to the extent allowed by law, have exclusive use of the Arena. The Association shall have exclusive use of the Arena office space at all times.

6.4 Fiscal Provisions. District shall not be liable for any costs associated with the construction or maintenance of the Arena. Nor shall District be liable for any obligations or liabilities of the Association occurring prior to or during the term of this Agreement.

6.5 Parking and Restrooms. Association, and persons using the Arena for Association sponsored activities, shall be allowed to utilize the Montgomery Facility Parking Lot to park their vehicles during times other than those in which the District has exclusive use and control of the Arena pursuant to Section 6.2. No Montgomery restroom facilities will be available to Association or participants in Association activities. The parties contemplate that Association activity participants will utilize nearby restrooms at Kennedy Park.

6.6 Security. The Arena and Association's office will be kept locked at all times when not in use, and will be secured so as to prevent vandalism and misuse.

6.7 Monthly Fee. Association shall pay District a fee of \$1,000 per month commencing on the first day of the month following one year having elapsed

since completion of installation of the Arena. After the first year of fee payment, the monthly fee shall be increased by the same percentage as the Department of Labor Consumer Price Index for the San Diego Region has increased during the prior 12 months. Each year thereafter, the fee shall be increased by the percentage increase in the Department of Labor Consumer Price Index for the preceding 12-month period not to exceed 3% per year.

6.8 Utilities. Association will obtain and pay for any utilities it requires for its use of the Arena, and will secure a separate electric meter for its electricity supply.

6.9 Representatives of the Association and the District will meet at least twice each calendar year to discuss operation of the Arena and concerns or priorities regarding its joint use. Meetings may be held more frequently at the request of either party.

7. TERM.

7.1 Termination. This Agreement shall terminate five years from the date set forth above, and shall terminate automatically prior to its expiration upon the happening of any of the following events:

- (a) Cessation of operations by the Association for a period greater than 30 days.
- (b) Dissolution of the Association.
- (c) Mutual agreement of the parties.

Provided that this Agreement may be extended upon the Association's request for an additional three-year period at the discretion of District's Governing Board.

7.2 Termination for Cause. District shall have the right to terminate this Agreement in the event that the presence of the Arena becomes, due to deterioration of its condition or its repeated misuse for non-recreational purposes, detrimental to Montgomery or to the surrounding community.

7.3 Restoration of Original Condition. Within 30 days from the date of termination of this Agreement, whether due to expiration or for any other reason set forth in Section 7.1, Association will remove the Arena from the premises and restore the site to its original condition. For purposes of securing its performance under this Section 7.3, Association will, prior to commencement of work to install the Arena, provide District with a bond in the amount of \$500,000, which bond shall provide for the payment of District's actual costs in the event that the Arena has not been completely removed and the site restored to its original condition within the time period set forth in this section and District elects to secure the removal by contract or with its own forces.

8. DISPUTE RESOLUTION.

8.1 Meet and Confer. Each Party shall be free to bring any difference or dispute with respect to this Agreement or any related Agreement to the attention of the other at any time without prejudicing such Party's rights under this Agreement. The Parties shall use their best efforts to negotiate in good faith a mutually acceptable agreement as to such matters.

8.2 Mediation. If the Parties are unable to resolve any difference or dispute in the manner provided in section 8.1, above, then the parties agree to mediate such difference or dispute within ten(10) days of either Party serving the other a written notice that an impasse has occurred. Such mediation shall be held before a single neutral mediator agreed upon by the Parties. If the Parties are unable to agree on the selection of the mediator, the mediator shall be appointed by the Presiding Judge of the San Diego Superior Court upon the request of either Party. Mediation shall be conducted by the Local Rules of the San Diego Superior Court. The cost of the Mediation, if any, shall be equally borne by the Parties, and neither Party shall be entitled to costs or attorney's fees in connection with the Mediation proceeding.

8.3 Arbitration. If the Parties are unable to resolve their dispute(s), after following the procedures set forth in Section 8.1 and 8.2, above, the issues under disagreement (except all matters of a monetary nature which shall be determined pursuant to Section 8.4, below) shall be finally resolved by binding arbitration in accordance with the provisions of the California Code of Civil Procedure ("CCP"), section 1280, et seq., as follows:

8.3.1. The arbitration proceeding shall be conducted in San Diego County, California and shall be commenced within ten (10) days of the written request of either Party. The arbitrator shall be selected by the Parties, but if the Parties cannot agree on the arbitrator, the arbitrator shall be appointed by the Presiding Judge of the San Diego Superior Court upon the request of either Party.

8.3.2. The decision of the arbitrator shall be final and conclusive upon the Parties. In connection with the proceeding limited discovery may be permitted in accordance with CCP sections 1283.05 and 1283.1(b) (or successor statute), subject to the approval of the arbitrator. The cost of the arbitration and the Parties respective legal fees shall be borne by the Parties in the manner specified by the arbitrator. Judgment on the arbitration award may be made in any court having jurisdiction.

8.3.3. Appealable Decision. Any decision by the Arbitrator that has the effect of overturning or invalidating a decision by

District to terminate this Agreement may be appealed to the Superior Court.

8.4 Binding "Baseball" Arbitration. If the parties are unable to agree upon matters pertaining to a monetary nature after "meet and confer" and "mediation", as described above, they shall submit such disagreements to binding arbitration in accordance with this Section. The arbitration proceeding and selection of arbitrator shall be the same as provided in Section 8.3.1. The matter shall be submitted to the arbitrator within ten (10) days of the arbitrator's appointment. Within five (5) days of the appointment, each Party shall present to the other an offer of settlement; if the dispute is not settled, then within five (5) days thereafter, each Party shall submit to the arbitrator, and simultaneously exchange with the opposite Party, its last and best offer together with any supporting documents which support their claim/defense. Within five (5) days of the written submissions of both parties, the arbitrator shall make the award and shall be limited to awarding only one or the other of the two offers submitted. No discovery shall be permitted, except as allowed by the Arbitrator, and in accordance with CCP 1283.05 and 1283.1(b) (or successor statute). The decision of the arbitrator shall be final and binding. The Party whose offer is not selected by the arbitrator shall pay the arbitrator's fee and the related costs of the proceeding, including reasonable attorney's fees and costs incurred by the other Party in the proceeding. Judgment upon the arbitration award may be made in any court having jurisdiction.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year above.

CAJON VALLEY UNION SCHOOL
DISTRICT

SAN DIEGO SOCCER ASSOCIATION,
INC.

By: _____
G. WAYNE OETKEN
Assistant Superintendent, Business
Services

By: _____