

DRAFT

DECEMBER 29, 1999

**GUARANTY AGREEMENT
CONCERNING THE BALLPARK DESIGN-BUILD
PROCUREMENT CONSULTANT AGREEMENT**

from

PADRES L.P., a Delaware limited partnership

to and for the benefit of

**THE CITY OF SAN DIEGO, REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO, THE CENTRE CITY
DEVELOPMENT CORPORATION, PUBLIC FACILITIES
FINANCE AUTHORITY OF THE CITY OF SAN DIEGO
AND THE BOND TRUSTEE**

EXHIBIT 1

GUARANTY AGREEMENT

This Guaranty Agreement [Guaranty] is made and dated as of _____, _____, by Padres, L.P., a Delaware limited partnership [Padres], to and for the benefit of the City of San Diego [City], the Redevelopment Agency of the City of San Diego [Agency], the Centre City Development Corporation [CCDC], the Public Facilities Finance Authority of the City of San Diego [PFFA] and the Trustee under that certain Indenture and Bond Purchase Agreement [Trustee] regarding the financing of the City's investment in the ballpark and redevelopment project.

RECITALS

- A. On August 4, 1998, the Padres signed that certain Memorandum of Understanding Concerning a Ballpark District, Construction of a Baseball Park and a Redevelopment Project with the City, the Agency and CCDC [MOU].
- B. On December 1, 1998, the San Diego City Clerk certified to the San Diego City Council that at the statewide general election on November 3, 1998, at least fifty percent plus one votes were cast in favor of a ballot measure placed before the voters by the San Diego City Council authorizing the City to enter into the MOU.
- C. On December 1, 1998, the City and the Agency, by their authorized representatives, signed the MOU.
- D. On December 11, CCDC, by its authorized representative, signed the MOU.
- E. On March 31, 1999, the City and Padres reached agreement on a variety of matters called for in the MOU including the sufficiency of assurances regarding the private ancillary development adjacent to the proposed new ballpark, the conveyance of a first priority lien on the Padres' franchise, and the necessary additional funding source for the new ballpark project's construction budget.
- F. Section XLVIII of the MOU prohibits the Padres from assigning the MOU or Padres' rights thereunder prior to the Opening Date. However, Padres desire to have Padres Construction, L.P., a California limited partnership [PCL], perform certain of its obligations under the MOU concerning the construction of the proposed new ballpark pursuant to Section VII of the MOU. In reliance on the representations and promises made by Padres in this Guaranty, Beneficiaries (defined below) consent to PCL's performing such obligations.
- G. As contemplated by Article XL of the MOU, the Parties have agreed to more specifically set forth their rights and obligations in additional agreements, including a Design-Build Procurement

Consultant Agreement [Design-Build Agreement], as from time to time modified, amended, restated, supplemented, extended or renewed.

H. One of the parties to that Design-Build Agreement is PCL.

I. Beneficiaries will enter into the Design-Build Agreement on the condition that Padres guarantee complete and timely payment and performance by PCL of all of PCL's obligations and responsibilities under the Design-Build Agreement.

NOW THEREFORE, in consideration of the recitals and covenants of the Padres set forth in this Guaranty, and to induce the execution and delivery of the Design-Build Agreement by the City, and in consideration thereof, Padres hereby covenants and agrees to and for the benefit of Beneficiaries as follows:

ARTICLE I

DEFINITIONS

1.1 General Incorporation. Capitalized terms used but not defined herein shall have the meanings given them in the MOU, Design-Build Agreement, or such other agreement as the parties may determine, as applicable.

1.2 Additional Definitions. In addition to the foregoing, the following terms shall have the meanings set forth below:

1.2.1 *Beneficiaries* shall mean the City, Agency, CCDC, PFFA and Trustee, jointly and severally.

1.2.2 *Guarantor* shall mean and refer to Padres.

1.2.3 *Obligations* shall mean and refer to the amounts payable by, and the performance, covenants and agreements (whether direct, indirect or by assignment) of, PCL under the Design-Build Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

2.1 Guarantor hereby represents and warrants that:

2.1.1 Existence and Powers. Guarantor is a duly organized and validly existing limited partnership under the laws of the State of Delaware, with the full legal right, power and authority to enter into and perform its obligations under this Guaranty.

2.1.2 Due Authorization and Binding Obligation. Guarantor has duly authorized the execution and delivery of this Guaranty, and this Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

2.1.3 No Conflict. Neither the execution or delivery by Guarantor of this Guaranty nor the performance by Guarantor of its obligations hereunder (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to Guarantor, (b) conflicts with, violates or results in a material breach of any term or condition of Guarantor's limited partnership agreement or any judgment, decree, agreement or instrument to which Guarantor is a party or by which Guarantor or any of its property or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (c) will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of Guarantor except as expressly permitted or contemplated hereby or by the MOU or Design-Build Agreement.

2.1.4 No Governmental Approval Required. No approval, authorization, order or consent of, or declaration, registration of filing with, any governmental authority is required of Guarantor for the valid execution and delivery by Guarantor of this Guaranty, or performance hereunder, except such as shall have been duly obtained or made.

2.1.5 No Litigation. Other than [case names to be inserted at time of execution] there is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending or, to Guarantor's knowledge, threatened against Guarantor which has a likelihood of an unfavorable decision, ruling or finding that would materially and adversely affect the validity or enforceability of this Guaranty, or the ability of Guarantor to timely pay and perform the Obligations.

2.1.6 No Legal Prohibition. No applicable law in effect on the date as of which this representation is made which would prohibit the performance by Guarantor of this Guaranty or the transactions contemplated herein.

2.1.7 Consent to Design-Build Agreement. Guarantor acknowledges that it is a party to, is fully aware of and accepts the terms of the Design-Build Agreement.

2.1.8 Approval by Major League Baseball. Guarantor has obtained all required approvals of the National League and the Office of the Commissioner of Baseball to execute, deliver

and perform the obligations under this Guaranty.

2.1.9 Consideration. This Guaranty is made in furtherance of the purposes for which Guarantor has been organized, and the assumption by Guarantor of its obligations hereunder will result in a material benefit to Guarantor.

2.1.10 Financial Capacity. Guarantor has sufficient unencumbered capital and other resources available to perform its obligations hereunder, and shall maintain same at all time while this Guaranty is in effect.

ARTICLE III

GUARANTY COVENANTS

3.1 Guarantee to Beneficiaries. Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Beneficiaries, jointly and severally: a) the full and prompt payment when due of each and all of the payments required to be credited or made by PCL under the Design-Build Agreement (including all modifications, amendments, restatements, supplements, extensions and renewals thereof) to, or for the account of, Beneficiaries, when the same shall become due and payable in accordance with their terms, and b) the full and timely performance and observance of all of the Obligations.

3.2 Beneficiaries' Rights Against Guarantor. This Guaranty shall constitute a guarantee of payment and performance when due, and not of collection. Guarantor specifically agrees that in the event of a failure by PCL to timely pay or perform any of the Obligations, Beneficiaries (or any of them) shall have the right from time to time to proceed first and directly against Guarantor under this Guaranty and without proceeding against PCL or exhausting any other remedies against PCL which Beneficiaries may have. Without limiting the foregoing, Guarantor agrees that it shall not be necessary, and Guarantor shall not have the right, and specifically waives any right it may have, to require, as a condition of enforcing this Guaranty, that Beneficiaries: a) file suit or proceed to obtain a personal judgment against PCL or any other person that may be liable for the Obligations or any part of the Obligations, b) make any other effort to obtain payment or performance of the Obligations from PCL other than providing PCL with any notice of such nonpayment or nonperformance as may be required under the terms of the Design-Build Agreement or required to be given to PCL under applicable law, c) foreclose against or seek to realize upon any security for the Obligations, or d) exercise any other right or remedy to which Beneficiaries are or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof. Notwithstanding the right of Beneficiaries to proceed immediately and directly against Guarantor, Beneficiaries (or any successor) shall not be entitled to more than a single full performance of the Obligations in regard to any breach or non-performance thereof. Subject to the foregoing, at Beneficiaries election, which may be made in their sole judgement,

Beneficiaries may, following demand upon Guarantor hereunder, perform or cause to be performed the Obligations on Guarantor's behalf. In such event, Guarantor shall reimburse Beneficiaries immediately on demand for all costs and expenses, including all attorneys' fees and costs, that Beneficiaries may incur in performing or causing the performance of the Obligations, together with interest thereon from the date incurred until paid at _____ percent (___%). Beneficiaries shall not be obligated to undertake any of the foregoing actions, and shall not incur any liability to Guarantor, PCL or any other person as a result of taking or not taking any of the foregoing actions. No such actions or inactions by Beneficiaries will release or limit the liability of Guarantor hereunder. Notwithstanding any other provision in this paragraph 3.2, the liability of Guarantor shall be effective and the Obligations shall immediately be paid and performed only upon any failure by PCL in the timely payment or performance of any Obligation and the giving of such notice or demand, if any, to PCL and Guarantor as may be required under the Design-Build Agreement or this Guaranty, and the failure of PCL to perform or cure any default within the time periods set forth in the Design-Build Agreement provided, however, that in no event shall any such cure period exceed 90 days.

3.3 Guaranty Absolute and Unconditional. The obligations of Guarantor hereunder are absolute, irrevocable and unconditional and shall remain in full force and effect until the Obligations have been fully discharged in accordance with their respective terms, and shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, the Obligations or any other defense that PCL may have) based on any claim that Guarantor may have against PCL, any Beneficiary, or any other person. Without limiting the foregoing, the obligations of Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by or further consent of Guarantor):

3.3.1 a non-material default by a Beneficiary under any agreement to which Guarantor or PCL is a party or in which Guarantor or PCL has any interest;

3.3.2 any exercise or failure, omission or delay by Beneficiaries (or any of them) in any exercise of any right, power or remedy conferred on Beneficiaries by the MOU, this Guaranty or the Design-Build Agreement provided, however, that this provision shall not affect any applicable statute of limitations defense available to Guarantor;

3.3.3 any transfer or assignment of rights, obligations or interests under the MOU or the Design-Build Agreement by any party thereto that is permitted under such agreement, other than as permitted by section XXII.A. of the MOU or Sections 4.1 and 4.4 of this Guaranty.

3.3.4 any permitted assignment for the purpose of creating a security interest in or mortgage against all or any part of the respective interests of a Beneficiary, or any other person in the

Design-Build Agreement;

3.3.5 any renewal, extension, amendment, change or modification in respect of any of the Obligations or other terms or conditions of the MOU, Design-Build Agreement or this Guaranty that is otherwise permitted by any such agreement;

3.3.6 the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets of PCL or Guarantor; any marshaling of the assets or liabilities of PCL or Guarantor; any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against PCL or Guarantor, or any of the property of either of them; or any allegation or contest of the validity or enforceability of the MOU, this Guaranty or the Design-Build Agreement in any such proceeding or otherwise (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that Guarantor shall and does hereby waive all rights and benefits which might accrue to it, as against any Beneficiary's rights hereunder, by reason of any such proceeding);

3.3.7 except as expressly permitted by Sections 4.1 and 4.4 of this Guaranty, any sale or other transfer by Guarantor or any of its affiliates of any of their respective interests in PCL now or hereafter owned, directly or indirectly, or any change in the ownership of PCL;

3.3.8 any failure on the part of PCL for any reason to perform or comply with any agreement with Guarantor;

3.3.9 the failure on the part of Beneficiaries to provide any notice to Guarantor or PCL, except to the extent that such failure would provide PCL with a defense against any claim by any Beneficiary;

3.3.10 any failure of any party to the Design-Build Agreement to mitigate damages resulting from any default by PCL or Guarantor under the Design-Build Agreement or by Guarantor hereunder, except to the extent that such failure would provide PCL with a defense against any claim by any Beneficiary;

3.3.11 the merger or consolidation of any party to the Design-Build Agreement into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any other person, so long as no Beneficiary disposes of assets necessary for its performance under the MOU or the Design-Build Agreement;

3.3.12 any legal disability or incapacity of any party to the MOU or Design-Build Agreement;

3.3.13 a finding by a court of competent jurisdiction that entering into the MOU or Design-Build Agreement by PCL or Guarantor was invalid, not properly authorized, or in excess of the powers of such party;

3.3.14 the termination of the Design-Build Agreement by PCL pursuant to the terms thereof, except to the extent any such termination would relieve PCL of liability under such agreement.

3.3.15 the obtaining by Beneficiaries of the guaranty or other credit support or security of any person other than Guarantor; or

3.3.16 any performance by Guarantor from time to time hereunder, unless and until all the Obligations have been paid and performed in full in accordance with their terms.

Should any money due or owing under this Guaranty not be recoverable from Guarantor due to any of the matters specified in subsections 3.3.1 through 3.3.17, above, or for any other reason, then in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from Guarantor as though Guarantor were the principal obligor in place of PCL pursuant to the terms of the Design-Build Agreement and not merely a guarantor, and shall be paid by Guarantor forthwith. Notwithstanding anything to the contrary expressed herein, nothing herein shall be deemed to amend, modify, clarify, expand or reduce PCL's rights, benefits, duties or obligations under the Design-Build Agreement.

3.4 Defenses, Set-Offs and Counterclaims. Guarantor shall be entitled to exercise or assert any legal and equitable rights or defenses which PCL may have under the Design-Build Agreement or under applicable law, and the obligations of Guarantor hereunder are subject to any counterclaims, set-offs or deductions, if any, which PCL is permitted to assert pursuant to the Design-Build Agreement or such applicable law.

3.5 Waivers by Guarantor. Guarantor hereby unconditionally, expressly and irrevocably waives:

3.5.1 notice from Beneficiaries of acceptance of this Guaranty;

3.5.2 to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against Guarantor except as set forth in the MOU or the Design-Build Agreement;

3.5.3 to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations for the underlying claim;

3.5.4 any right to require Beneficiaries to proceed first against PCL;

3.5.5 any right to require Beneficiaries to proceed first against any person or the security provided by or under the Design-Build Agreement except to the extent the Design-Build Agreement specifically requires a proceeding first against any person (except PCL) or security, provided that failure by Beneficiaries to first proceed as required under the Design-Build Agreement shall not exonerate Guarantor of its obligations hereunder, but shall (to the extent so provided in the Design-Build Agreement) only be a condition to Guarantor's performance hereunder;

3.5.6 any requirement that PCL be joined as a party to any proceeding for the enforcement of any term of the Design-Build Agreement;

3.5.7 the requirement of, or notice of, the filing of claims by Beneficiaries in the event of receivership or bankruptcy of PCL; and

3.5.8 except as set forth in the Design-Build Agreement, all demands upon PCL or any other person and all other formalities the omission of any of which, or delay in the performance of which might, but for the provisions of this section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

3.5.9 notice of the existence, creation, payment, nonpayment, performance or nonperformance of all or any of the Obligations;

3.5.10 all diligence in collection or protection of or realization upon the Obligations or any thereof, any obligation hereunder or any security for or guaranty of any of the foregoing;

3.5.11 any right to direct or affect the manner or timing of Beneficiaries' enforcement of their rights or remedies;

3.5.12 any and all other rights, benefits, protections and other defenses available to Guarantor now or at any time hereafter, including, without limitation, under California Civil Code sections 2787 to 2855, inclusive, and California Code of Civil Procedure sections 580a, 580b, 580d or 726, and all successor sections; and

3.5.13 all other principles or provisions of law, if any, that conflict with the terms of this Guaranty, including, without limitation, the effect of any circumstances that may or might constitute a legal or equitable discharge of a guarantor or surety.

3.6 Irrevocability. Guarantor hereby further waives all rights to revoke this Guaranty at any time, and all rights to revoke any agreement executed by Guarantor at any time to secure the payment and performance of Guarantor's obligations under this Guaranty.

3.7 Statutory Waiver of Rights and Defenses Regarding Election of Remedies. Guarantor waives all rights and defenses arising out of an election of remedies by Beneficiaries, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Guarantor's rights of subrogation and reimbursement against PCL or any other obligor by the operation of any applicable law, including without limitation California Code of Civil Procedure section 580d, or otherwise.

3.8 Subordination of Rights. Guarantor agrees that any right of subrogation or contribution which it may have against PCL as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the Beneficiaries hereunder and under the Design-Build Agreement and that Guarantor shall not recover or seek to recover from PCL any payment made by it hereunder until Guarantor and PCL shall have fully paid, performed and discharged the Obligations in accordance with their terms.

3.9 Separate Obligations; Reinstatement. The obligations of Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall (1) to the extent permitted by law, constitute separate and independent obligations of Guarantor from its other obligations under this Guaranty, (2) give rise to separate and independent causes of action against Guarantor, and (3) apply irrespective of any indulgence granted to Guarantor by Beneficiaries. Guarantor agrees that this Guaranty shall automatically be reinstated if and to the extent that for any reason any payment or performance by or on behalf of PCL is rescinded or must otherwise be restored by Beneficiaries, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Design-Build Agreement or PCL's enforcement of such terms under applicable law.

3.10 Financial Condition. Guarantor represents and warrants that it is fully aware of the financial condition of PCL, and of PCL's ability to perform the Obligations. Guarantor delivers this Guaranty based solely upon its own independent investigation of PCL's financial condition and in no part upon any representation or statement of any Beneficiary with respect thereto. Guarantor further represents and warrants that it is in a position to and hereby does assume full responsibility for obtaining such additional information concerning PCL's financial condition as Guarantor may deem material to its

obligations hereunder, and Guarantor is not relying upon, nor expecting any Beneficiary to furnish it any information in such Beneficiary's possession concerning PCL's financial condition or concerning any circumstances bearing on the existence or creation, or the risk of nonpayment or nonperformance of the Obligations. Guarantor hereby waives any duty on the part of Beneficiaries to disclose to Guarantor any facts they may now or hereafter know about PCL, regardless of whether Beneficiaries have reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume or have reason to believe that such facts are unknown to Guarantor.

3.11 Term. This Guaranty shall take effect on the effective date of the Design-Build Agreement, and shall remain in full force and effect from such date until all of the Obligations have been fully paid and performed in accordance with their terms.

ARTICLE IV

GENERAL COVENANTS

4.1 Maintenance of Existence of Limited Partnership Status.

4.1.1 Consolidation, Merger, Sale or Transfer. Guarantor covenants that during the term of this Guaranty it will maintain its status as a Delaware limited partnership, will not dissolve or otherwise dispose of all or any material portion of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is Guarantor and the conditions in clause (2) below are satisfied; provided, however, that Guarantor may consolidate with or merge into another entity, or permit another entity to consolidate with or merge into Guarantor, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if (1) the successor entity (if other than Guarantor) (a) assumes in writing all the obligations of Guarantor hereunder and, if required by law, is duly qualified to do business in the State of California, and (b) delivers to Beneficiaries an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable, and (2) any such transaction does not result in a decline in Guarantor's (or any successor guarantor's) credit standing or in its ability to perform the Obligations, or if such transaction results in a decline in Guarantor's credit standing or the ability to perform the Obligations, the successor guarantor has provided credit enhancement satisfactory to Beneficiaries in their sole and absolute discretion, exercised in good faith.

4.1.2 Continuance of Obligations. If a consolidation, merger, sale or other transfer is made as permitted by this section 4.1, the provisions of this section 4.1 shall continue in full force and effect and no further consolidation, merger, sale or other transfer shall be made except in accordance with the provisions hereof. No such consolidation, merger, sale or other transfer shall have the effect of releasing Guarantor from its liability hereunder unless the successor entity has assumed the obligations in

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DECEMBER 29, 1999

Copy
City Attorney
1200 Third Avenue, Suite 1620
San Diego, California, 92101

e) For Trustee [To be inserted upon selection of Trustee]

Copy [To be inserted upon selection of Trustee]

f) For Padres:
Lawrence Lucchino, 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

Copy:
General Counsel
San Diego Padres
8880 Rio San Diego Drive, Suite 400
San Diego, California 92108
P.O. Box 122000
San Diego, California 92112

If mailed as described above, notice shall be deemed given, made or sent three (3) days after deposit in any government Post Office box, postage prepaid. The addresses set forth above for each of the parties may be changed by written notice given to the other party in accord with this paragraph.

4.4 Assignment. Guarantor shall not, voluntarily or by operation of law, assign or transfer the whole or any part of this Guaranty except in accordance with the provisions of section 4.1, above, and then only with the prior written consent of Beneficiaries, which consent may be withheld in their sole and absolute discretion.

4.5 Notice of Adverse Financial Condition. Guarantor shall notify Beneficiaries, each separately in writing, within ten (10) calendar days, after the occurrence of any of the following events:

4.5.1. The subjection of any right or interest of Guarantor in any of its assets to

attachment, execution or other levy, or to seizure under legal process.

4.5.2. The appointment of a receiver to take possession of the business operations or assets of Guarantor.

4.5.3. An assignment for the benefit of creditors, or the filing of a voluntary or involuntary petition in bankruptcy, by or against Guarantor.

4.6 Waiver. The waiver by any party of any breach by another party of any of the covenants, conditions or agreements in this Guaranty shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition or agreement herein, nor shall any failure on the part of any party to require exact, full and complete compliance by another party with any of the covenants, conditions or agreements of this Guaranty be construed as in any manner changing the terms hereof or to prevent any party from enforcing any provision hereof.

4.7 Partial Invalidity. If any term, covenant, condition or provision of this Guaranty is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Guaranty shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

4.8 Governing Law. This Guaranty shall be deemed to be made in the State of California, and shall be governed by and construed in accordance with the laws of the State of California.

4.9 Entire Understanding; Amendments. This Guaranty, together with the MOU and the Design-Build Agreement (where applicable), constitute the entire understanding and agreement between these parties with respect to the subject matter hereof, and the parties, by accepting same, acknowledge that there is no written or oral agreement between the parties relating to the subject matter of this Guaranty, other than those expressly identified in this section. The parties further agree that the MOU, Design-Build Agreement and this Guaranty supersede all prior offers, negotiations, discussions, agreements and writings of the parties specifically with respect to the subject matter of this Guaranty. Each of these parties acknowledges that no party, nor any agent or attorney of any party, has made any promise, representation, waiver or warranty whatsoever, express or implied, which is not expressly contained in these agreements, and each party further acknowledges that it has not executed these agreements in reliance upon any collateral promise, representation, waiver or warranty, or in reliance upon any belief as to any fact not expressly recited in these agreements. Guarantor acknowledges that it has obtained the advice of counsel in connection with the preparation, negotiation and execution of this Guaranty.

No modification, amendment or alteration of this Guaranty or the Design-Build Agreement shall be valid unless such modification, amendment or alteration is in writing signed by all parties to the

agreement being modified, amended or altered.

4.10 Jurisdiction. Each party to this Guaranty hereby consents to the exclusive jurisdiction of the state and federal courts sitting in the County of San Diego, State of California in any action on a claim arising out of, under or in connection with this Guaranty or the transactions contemplated by this Guaranty. Each party further agrees that personal jurisdiction over such party may be effected by service of process by registered or certified mail addressed as provided in Section 4.3 of this Guaranty, and that when so made shall be as if served upon such party personally within the State of California.

4.11 Enforcement Expenses and Attorneys' Fees. Guarantor shall pay Beneficiaries on demand all reasonable costs and expenses, legal and otherwise (including attorneys' fees), incurred by or on behalf of Beneficiaries in enforcing the observance of the covenants, agreements and obligations contained in this Guaranty (whether or not by legal proceedings). In the event that any dispute between Beneficiaries (or any of them) on the one hand, and Guarantor on the other hand, should result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses.

4.12 Construction. Whenever the singular number is used in this Guaranty and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa. In the event a claim is made by any party relating to any conflict, omission or ambiguity in this Guaranty, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Guaranty was prepared by or at the request of a particular party or its counsel.

4.13 Headings. The headings in this Guaranty are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Guaranty or any provision hereof.

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

4.15 MOU Unaffected. Nothing in this Guaranty shall affect the rights or obligations of the Parties as set forth in the MOU except that Beneficiaries have, in consideration of Guarantor agreeing to this Guaranty, consented to an assignment of certain obligations of Guarantor to PCL as more fully set forth herein and in the Design-Build Agreement.

IN WITNESS WHEREOF, this Guaranty is tendered to and for the benefit of Beneficiaries as of December _____, 1999.

DRAFT

DECEMBER 29, 1999

PADRES, L.P.
a Delaware limited partnership

By: _____

ACCEPTED:

CITY OF SAN DIEGO

Michael T. Uberuaga
City Manager

REDEVELOPMENT AGENCY OF THE
CITY OF SAN DIEGO

Michael T. Uberuaga
Executive Director

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DECEMBER 29, 1999

CENTRE CITY DEVELOPMENT
CORPORATION

Peter Hall
President

PUBLIC FACILITIES FINANCE
AUTHORITY OF THE CITY OF SAN
DIEGO

[TRUSTEE]
