

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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LEASE
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THIS LEASE is made and entered, in duplicate, as of December 1, 2007 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on November 20, 2007, by and between the CITY OF LONG BEACH, a municipal corporation ("Lessor"), and LONG BEACH ORGANIC, a California nonprofit corporation ("Lessee"), whose address is 1336 Gladys Avenue, Long Beach, California 90804.

WHEREAS, Lessee is dedicated to promoting sustainable organic gardening practices and local food consumption in urban areas and provides educational programs for gardeners of all ages; and

WHEREAS, Lessee requires a facility from which to provide such a program; and

WHEREAS, Lessor desires to provide such a facility;

NOW, THEREFORE, Lessor and Lessee, in consideration of the mutual terms, covenants and conditions herein, agree as follows:

1. Lease. Lessor hereby leases to Lessee and Lessee hereby accepts "as is" and leases from Lessor the area depicted on Exhibit "A" attached hereto and incorporated herein by this reference ("Property") commonly known as Grace Park Community Gardens at the Plymouth & Elm Mini Park. Lessee acknowledges that Lessee has not received and Lessor has not made any warranty, express or implied, as to the condition of the Property or fitness for its intended or actual use.

2. Term. The term of this Lease shall commence at midnight on December 1, 2007, and shall end at 11:59 p.m. on December 31, 2011. Lessor shall have the option to extend the term of this Lease for two (2) separate, consecutive periods of two (2) years each.

3. Use. The Property shall be used solely for growing garden products for Lessee, its officers, directors, and members and for educational programs

1 related to gardening. No other use of the Property is authorized or permitted. Sale of
2 gardening products is prohibited. Lessee shall not use the Property in any manner that
3 will create a nuisance or unreasonable annoyance, or constitute waste. Lessee shall use
4 the Property in such a manner as to comply with all laws pertaining to wages and hours
5 of employment, occupational safety, fire, health and sanitation.

6 3.1 Operating Hours. Lessee, its officers, directors, and members shall
7 enter the property on the following times: Monday through Friday, 7:00 a.m. to dusk and
8 Saturday and Sunday, 9:00 a.m. to dusk.

9 3.2 Community Garden Rules and Policies. Lessee shall provide a copy
10 of the Community Garden Rules and Policies similar to those established on Exhibit "B"
11 to each of its tenants. Lessee is responsible for ensuring that the property is maintained
12 in a safe, clean and sanitary condition. Should Lessee fail to ensure that its tenants
13 maintain the property, the provisions of Section 9 - Maintenance will apply.

14 4. Rent. Lessee shall pay to Lessor as rent the sum of One Dollar
15 (\$1.00) per year, in advance, without deduction, setoff, notice or demand, on the first day
16 of the new term.

17 5. Improvements. A. All of Lessee's proposed plans for improvement
18 shall be submitted to and receive the written approval of the Director of the Department of
19 Parks, Recreation and Marine. Before commencing any work on the Property, Lessee
20 shall obtain and deliver to Lessor evidence of compliance with all applicable codes,
21 ordinances, regulations, and requirements for permits. Lessee shall perform all work on
22 the Property in accordance with all applicable laws, regulations and ordinances, including
23 but not limited to the Americans with Disabilities Act of 1990.

24 B. No improvements except those approved as provided in Subsection
25 (A) above shall be made to the Property.

26 C. Lessee shall pay for all permits, inspections and the like relating to
27 the improvement of the Property.

28 D. Lessor shall have no obligation to build, maintain, repair, or replace

1 any improvements on the Property, whether existing at the commencement of this Lease
2 or subsequently added to the Property.

3 E. Lessee shall keep the Property free of any mechanic's,
4 materialman's or similar lien for any work done, labor performed or material furnished by
5 or for Lessee, and Lessee shall defend, indemnify and hold Lessor, its officials and
6 employees harmless from and against all claims, liens, demands, causes of action,
7 liability, loss, costs and expenses, including reasonable attorneys' fees, of whatsoever
8 kind or nature for any such work done, labor performed or materials furnished on the
9 Property or to the Lessee. In addition, if a lien is imposed on the Property, Lessee shall
10 notify Lessor, record a valid release of lien within thirty (30) days after the date of filing of
11 said lien or deposit with Lessor cash in a amount equal to 125% of the amount of said
12 lien and authorize payment to the extent of said deposit to any subsequent judgment
13 holder with regard to said lien.

14 F. Lessee shall bear all costs and expenses incurred in improvement to
15 the Property.

16 G. Upon expiration or sooner termination of this Lease, all
17 improvements to the Property shall become the property of Lessor (at no cost to Lessor)
18 unless Lessor requires Lessee to remove said improvements. If Lessor requires Lessee
19 to remove said improvements, Lessee shall do so within sixty (60) days following the date
20 of expiration or sooner termination.

21 6. Nondiscrimination. Subject to applicable laws, rules and regulations,
22 Lessee shall not discriminate against any person or group on the basis of race, religion,
23 national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap or
24 disability in the performance of its obligations hereunder.

25 7. Subsurface Use Restrictions. The parties agree that this Lease
26 covers only the surface of the Property and only so much of the subsurface as is
27 reasonably necessary for Lessee's use of the Property as permitted in this Lease.
28 Lessee shall not drill any wells on the Property.

1 8. Utilities. Lessee shall pay for water services. Lessee shall pay for
2 the installation and use of telephone service if so desired. Lessee shall be responsible
3 for the disposal of all waste/trash. Lessor will not provide trash containers nor trash
4 removal services.

5 9. Maintenance. Lessee shall, at Lessee's sole cost and to the
6 satisfaction of Lessor, maintain the Property and all improvements thereon in good
7 condition, in substantial repair, in a safe, clean, and sanitary condition, and in compliance
8 with applicable laws. Lessee's duty to maintain shall include the duty to repair and
9 replace the improvements as needed. Lessee shall keep the Property free of trash,
10 garbage and litter. Lessee shall remove graffiti on the Property within forty-eight (48)
11 hours after notice from Lessor. If Lessee fails to correct a maintenance problem within
12 fifteen (15) days after notice or such longer period as may be established by Lessor,
13 Lessor may make the necessary correction and the cost thereof, including but not limited
14 to the cost of labor, materials, equipment and administration, shall be additional rent and
15 shall be paid by Lessee within ten (10) days after receipt of a statement of said cost from
16 Lessor. Lessor may, at its option, choose other remedies available herein or by law.
17 Lessee hereby waives to the extent permitted by law any right to make repairs at the
18 expense of Lessor.

19 10. Taxes. Lessee acknowledges that this Lease may create a
20 possessory interest subject to property taxation and that Lessee may be liable for
21 payment of taxes levied on such interest. Lessee shall promptly pay, prior to
22 delinquency, all taxes, assessments and other governmental fees that may be levied
23 against the Property, and any improvements or personal property located on the Property
24 and on any possessory interest created by this Lease, and provide proof of payment to
25 Lessor on demand.

26 11. Insurance. A. Concurrent with the execution of this Lease, Lessee
27 shall procure and maintain, at Lessee's cost, during the term of this Lease from an
28 insurer admitted in California or having a minimum rating of or equivalent to A:VIII in

1 Best's Insurance Guide comprehensive general liability insurance coverage with a
2 combined single limit of at least One Million Dollars (\$1,000,000) for each occurrence or
3 Two Million Dollars (\$2,000,000) general aggregate. Lessor, its officials, employees and
4 agents shall be covered as additional insureds with respect to liability arising from
5 activities performed by or on behalf of Lessee. Said insurance shall be primary insurance
6 with respect to Lessor and shall contain a cross liability endorsement.

7 B. Upon the execution of this Lease, Lessee shall deliver to Lessor
8 certificates of insurance with original endorsements evidencing the coverage required by
9 this Lease, and this Lease shall not take effect until Lessee delivers same. The
10 certificates and endorsements shall be signed by a person authorized by the insurer to
11 bind coverage on its behalf. Lessor reserves the right to require complete certified copies
12 of all policies at any time.

13 C. Said insurance shall contain an endorsement requiring thirty (30)
14 days prior written notice form insurers before cancellation or change of coverage.

15 D. Said insurance may provide for such deductibles or self-insured
16 retention as may be acceptable to Lessor's City Manager or his designee. In the event
17 such insurance does provide for deductibles or self-insured retention, Lessee shall fully
18 protect Lessor, its officials and employees in the same manner as these interests would
19 have been protected had the policy or policies not contained a deductible or retention
20 provisions. With respect to damage to property, Lessor and Lessee hereby waive all
21 rights of subrogation, one against the other, but only to the extent that collectible
22 commercial insurance is available for said damage.

23 E. The procuring of said insurance shall not be construed as a limitation
24 of Lessee's liability or as full performance on Lessee's part of the indemnification and
25 hold harmless provisions of this Lease. Lessee understands and agrees that,
26 notwithstanding any insurance, Lessee's obligation to defend, indemnify and hold Lessor,
27 its officials and employees harmless hereunder is for the full amount of any damage,
28 injuries, loss, expense, costs, or liability caused by the condition of the Property or in any

1 manner connected with or attributed to the acts or omissions of Lessee, its officers,
2 agents, employees, subtenants, licensees, patrons or visitors, or the operations
3 conducted by Lessee, or the Lessee's use, misuse or neglect of the Property.

4 F. Any modification or waiver of the insurance requirements herein shall
5 only be made with the written approval of the Lessor's Risk Manager or designee.

6 12. Relocation. Lessee agrees that nothing contained in this Lease shall
7 create any right in Lessee for any relocation assistance or payment pursuant to the
8 provisions of Title 1, Division 7, Chapter 16 of the California Government Code from
9 Lessor on the expiration or termination of this Lease.

10 13. Notice. Any notice required hereunder shall be in writing and
11 personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid
12 to Lessor at 333 W. Ocean Blvd., Long Beach, California 90802 Attn: City Manager, and
13 to the Lessee at 1336 Gladys Ave., Long Beach, California 90804. Notice shall be
14 deemed effective on the date of mailing or on the date personal delivery is obtained,
15 whichever occurs first. Change of address shall be given as provided herein for notices.

16 14. Hazardous Materials. Lessee shall not cause or permit any
17 hazardous or toxic material to be brought on, treated, kept, used, stored, disposed of,
18 discharged, released, produced or generated in, on, under or about the Property by
19 Lessee, its members, employees, contractors, sublessees, assignees or invitees.
20 Lessee shall comply with California Health and Safety Code Section 25359.7 or its
21 successor statute regarding notice to Lessor on discovery by Lessee of the presence or
22 suspected presence of any hazardous materials on the Property.

23 15. Indemnity. Lessee shall defend, indemnify and hold Lessor, its
24 officials, employees and agents harmless from all claims, demands, damages, causes of
25 action, losses, liability, costs, or expenses, including reasonable attorneys fees, of any
26 kind or nature whatsoever (collectively referred to in this Section and Section 16 as
27 "claims") arising from the occupancy, use, or misuse of the Property by Lessee, Lessee's
28 members, employees, agents, subtenants, licensees, patrons, concessionaires, or

1 visitors, or any breach of this Lease, from the condition of the Property, the alleged
2 negligent acts or omissions of Lessee, Lessee's employees or agents, or any breach or
3 default in the performance of any obligations on Lessee's part to be performed under this
4 Lease.

5 16. Assignment. Lessee shall not assign or transfer this Lease or any
6 interest herein, nor sublease the Property or any part thereof (collectively referred to as
7 "transfer"). Lessee shall not grant any franchises, easements, rights of way, or permits
8 in, on, or across the Property. In the event of transfer without the prior written consent of
9 Lessor, such transfer shall be voidable at Lessor's election and, if voided by Lessor, shall
10 convey no interest. Any transfer without Lessor's prior written consent shall constitute a
11 default of this Lease.

12 17. Captions and Organization. The various headings and numbers
13 herein and the grouping of the provisions of this Lease into separate Sections,
14 paragraphs and clauses are for convenience only and shall not be considered a part
15 hereof, and shall have no effect on the construction or interpretation of this Lease.

16 18. Joint Effort. This Lease is created as a joint effort between the
17 parties, is fully negotiated as to its terms, covenants and conditions, and no provision
18 shall be construed against either party as the drafter.

19 19. Waiver of Rights. The failure or delay of Lessor to insist on strict
20 enforcement of any term, covenant, or condition herein shall not be deemed a waiver of
21 any right or remedy that Lessor may have and shall not be deemed a waiver of any
22 subsequent or other breach of any term, covenant, or condition herein. The receipt and
23 acceptance by Lessor of delinquent rent shall not constitute a waiver of any other default
24 but shall only constitute a waiver of timely payment for the rent payment involved. Any
25 waiver by Lessor of any default or breach shall be in writing. Lessor's consent to or
26 approval of any act by Lessee requiring Lessor's consent or approval shall not be
27 deemed to waive Lessor's consent or approval of any subsequent act of Lessee.

28 20. Partial Invalidity. If any term, covenant, or condition of this Lease is

1 held by a court of competent jurisdiction to be invalid, void or unenforceable, the
2 remainder of the provisions hereof shall remain in full force and effect and shall in no way
3 be affected, impaired or invalidated thereby.

4 21. Successors in Interest. This Lease shall be binding on and inure to
5 the benefit of the parties and their successors, heirs, personal representatives and
6 approved transferees, and all parties hereto shall be jointly and severally liable
7 hereunder.

8 22. Lessor's Right to Re-Enter. Lessee shall peaceably deliver
9 possession of the Property to Lessor on the effective date of termination of this Lease.
10 On giving notice of termination to Lessee, Lessor shall have the right to re-enter and take
11 possession of the Property on the effective date of termination without further notice of
12 any kind and without institution of summary or regular legal proceedings. Termination of
13 the Lease and re-entry of the Property by Lessor shall in no way alter or diminish any
14 obligation of Lessee under the Lease and shall not constitute an acceptance or
15 surrender. Lessee waives any and all right of redemption under any existing or future law
16 in the event of eviction from the Property and in the event Lessor re-enters and takes
17 possession, Lessee agrees that should the manner or method used by Lessor in re-
18 entering or taking possession give Lessee a cause of action for damages or in forcible
19 entry and detainer, the total amount of damages to which Lessee shall be entitled in any
20 such action shall be One Dollar (\$1.00). Lessee agrees that this Section may be filed in
21 any such action and that, when filed, it shall be a stipulation by Lessee fixing the total
22 damages to which Lessee is entitled in such action.

23 23. Time. Time is of the essence in this Lease, and every provision
24 hereof.

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

27 25. Waiver of Claims. Lessor shall not be liable for and Lessee hereby
28 waives all claims against Lessor, its officials, employees and agents for loss, theft, or

1 damage to equipment, furniture, trade fixtures, records, plants and other property on or
2 about the Property, or injury to or death of persons on or about the Property from any
3 cause except to the extent caused by the gross negligence or willful misconduct of
4 Lessor.

5 26. Default. If Lessee does not comply with any term, covenant, or
6 condition of this Lease, whether material or not, and Lessee's failure to comply is not
7 cured within ten (10) days after Lessor notifies Lessee of such failure, then Lessor may
8 terminate this Lease by giving to Lessee notice of termination, and Lessee shall
9 immediately surrender possession of the Property.

10 27. Right of Entry. Lessor shall have the right of access to the Property
11 at all reasonable times and, in the case of emergency, at any time, and if Lessee is not
12 present to give access in emergencies, then Lessor may forcibly enter and such entry
13 shall not in any way be construed or deemed a forcible or unlawful entry. Lessee shall
14 not be entitled to compensation for any inconvenience, nuisance or discomfort
15 occasioned by Lessor's entry.

16 28. Integration and Amendments. This Lease represents and constitutes
17 the entire understanding between the parties and supersedes all other agreements and
18 communications between the parties, oral or written, concerning the subject matter
19 herein. This Lease shall not be modified except in writing duly signed by the parties and
20 referring to this Lease.

21 29. Recordation. This Lease shall not be recorded.

22 30. Signs. Lessee shall not place, affix, maintain, or permit any sign,
23 advertisement, name, insignia, logo, descriptive material or similar item (collectively
24 "sign") on the Property without the prior written approval of Lessor. Any sign so approved
25 shall be maintained by Lessee, at is cost, in good condition. Any sign not approved by
26 Lessor may be removed by Lessor at Lessee's cost. The cost of removal shall be
27 additional rent.

28 31. Governing Law. The Lease shall be governed by and construed in

1 accordance with the laws of the State of California.

2 32. Compliance with Laws. Lessee, at its sole cost, shall comply with all
3 laws, ordinances, rules and regulations of and obtain such permits, licenses, and
4 certificates required by all federal, state and local governmental authorities having
5 jurisdiction over the Property and business thereon.

6 33. Condemnation. A. If the whole of the Property or improvements is
7 taken by right of eminent domain or otherwise for any public or quasi public use, then
8 when possession is taken thereunder by the condemnor or when Lessee is deprived of
9 practical use of the Property or improvements, whichever date is earlier, this Lease shall
10 terminate. If there is a partial taking so that the remaining portion of the Property or
11 improvements cannot be restored to that which existed prior to the taking, then this Lease
12 shall, at Lessee's option, terminate as of the time when possession was taken by the
13 condemnor or when Lessee was deprived of practical use of the Property, whichever
14 date is earlier.

15 B. If there is a taking by right of eminent domain, the rights and
16 obligations of the parties with reference to the award and the distribution thereof shall be
17 determined in accordance with this Section. The award shall belong to and be paid to
18 Lessor.

19 34. Abandoned Property. If Lessee abandons the Property or is
20 dispossessed by operation of law or otherwise, title to any personal property (including
21 but not limited to garden products) belonging to Lessee and left on the Property forty-five
22 (45) days after such abandonment or dispossession shall be deemed to have been
23 transferred to Lessor. Lessor shall thereafter have the right to remove and to dispose of
24 said property without liability to Lessee or to any person claiming under Lessee, and shall
25 have no duty to account therefore. Lessee hereby names Lessor's City Manager as
26 Lessee's attorney in fact to execute and deliver such documents or instruments as may
27 be reasonably required to dispose of such abandoned property and transfer title thereto.

28 35. Americans with Disabilities Act. Lessee shall have and be allocated

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1 the sole responsibility to comply with the Americans with Disabilities Act of 1990 ("ADA")
2 with respect to the Property and any improvements thereon, and Lessee shall defend,
3 indemnify and hold Lessor, its officials and employees harmless from and against any
4 and all claims of failure to comply with or violation of the ADA.

5 IN WITNESS WHEREOF, the parties have executed this Lease with all
6 formalities required by law as of the date first written above.

7 Lessor:
8 CITY OF LONG BEACH, a municipal
9 corporation

Lessee:
LONG BEACH ORGANIC, a California
nonprofit corporation

By 
City Manager

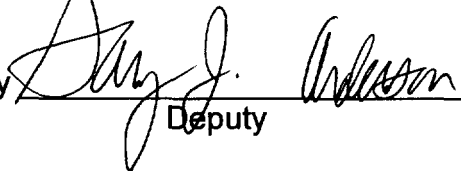
By 
President

11 EXECUTED PURSUANT
12 TO SECTION 301 OF
13 THE CITY CHARTER.

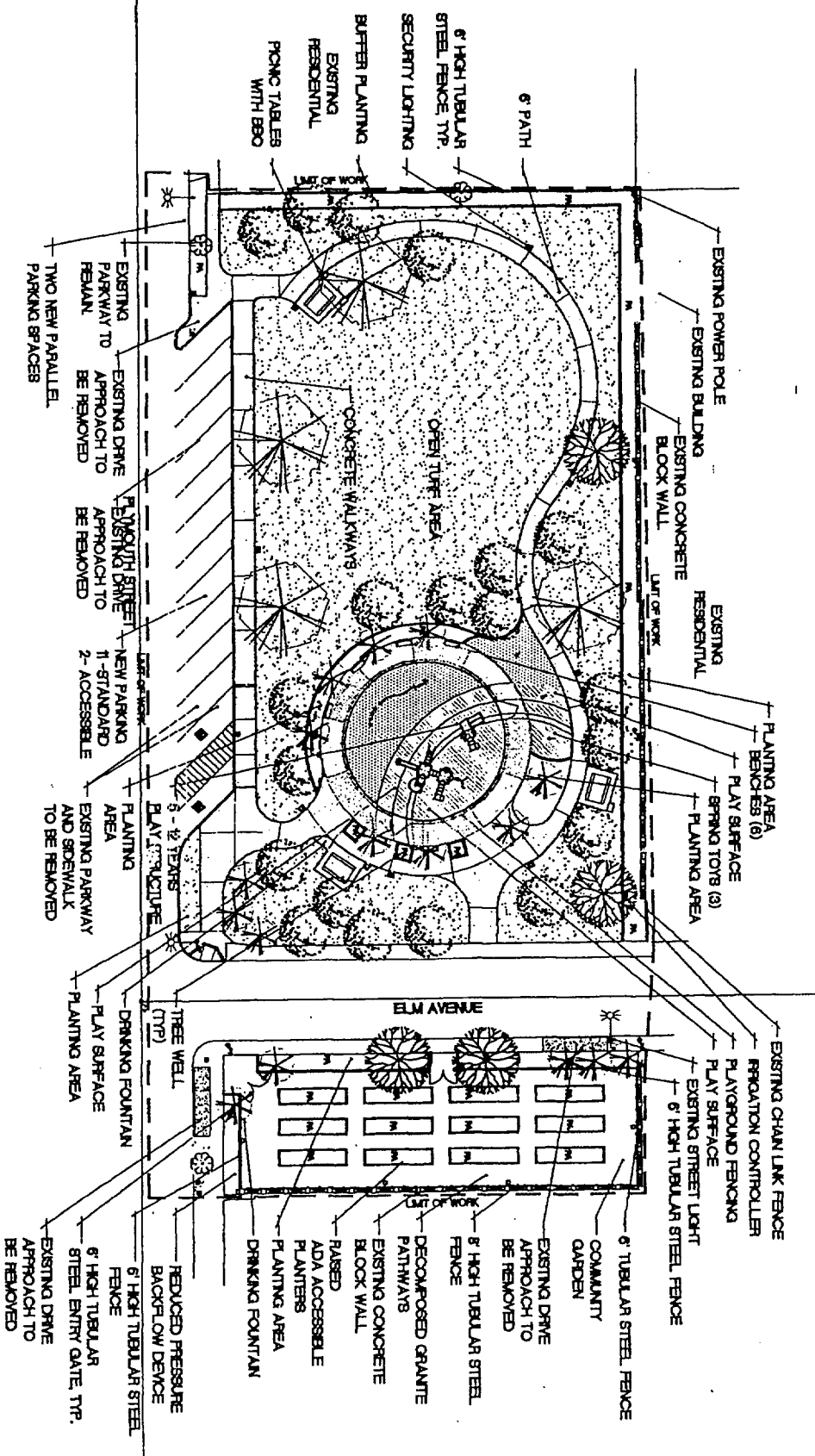
By 
Secretary

This Lease is approved as to form on February 11, 2008

ROBERT E. SHANNON, City Attorney

By 
Deputy

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City of Long Beach
PLYMOUTH & ELM MINI PARK
 Site Plan - Phase 1

10-6-04

