

ORIGINAL
STAMPED IN REC

RESOLUTION NO.: R-2007-064

Authorizing the City Manager to execute a Lease between the Richland-Lexington Riverbanks Parks District a/k/a The Riverbanks Park Commission and the City of Columbia for the Saluda River Walk portion of the Three Rivers Greenway

BE IT RESOLVED by the Mayor and City Council this 28th day of November, 2007, that the City Manager is authorized to execute the attached Lease between the Richland-Lexington Riverbanks Parks District a/k/a The Riverbanks Park Commission and the City of Columbia for the Saluda River Walk portion of the Three Rivers Greenway.

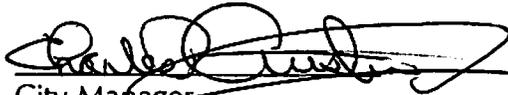
Requested by:

S. Allison Baker, Assistant City Manager



Mayor

Approved by:

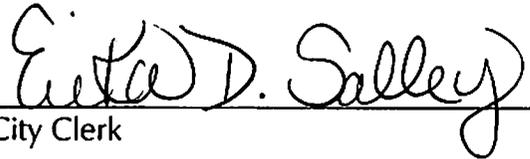

City Manager

Approved as to form:



Interim City Attorney

ATTEST:



City Clerk

Introduced: 11/28/2007
Final Reading: 11/28/2007

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

LEASE

This lease dated _____, 2007, between The Richland-Lexington Riverbanks Parks District a/k/a The Riverbanks Parks Commission, with its principal place of business at 500 Wildlife Parkway Road, Columbia, South Carolina 29202-1060, (the "Lessor"), and The City of Columbia, South Carolina, a municipal corporation, with a principal place of business at 1737 Main Street, Columbia, SC (the "Lessee").

The Lessor hereby grants and leases unto the Lessee, subject to the terms and conditions herein and the reservations of easements set forth and enumerated (including those set forth in Exhibit B attached once the Second Phase is added), the "Premises" described hereinbelow in the attached Exhibit A which is incorporated by reference. Exhibit B describes the Premises as expanded upon the addition of the Second Phase to this Lease as set out in Paragraph 15.

TO HAVE AND TO HOLD the said Premises unto the Lessee subject to the following terms and conditions:

1. Purpose. The purpose of this lease is to provide the Lessee with an ownership interest in the Premises to permit the Lessee to patrol and police the area in order to curtail unauthorized use of the premises, and to permit the Lessee to cooperate with others in the creation of the Saluda River Walk portion of the Three Rivers Greenway Project ("Project").
2. Repairs. Lessee shall keep the Premises in good repair, ordinary wear and tear excepted, unless such repairs are made necessary by the act or negligence of the Lessor; however, such repair and maintenance obligation of Lessee shall not apply to the bathroom facility (which is to be constructed as a part of the Second Phase of Project) nor the bridge referred to in Exhibit B attached. At the expiration of the term, Lessee shall peaceably yield up the Premises to the Lessor in as good condition as when delivered to Lessee, ordinary wear and tear, damage by fire, the elements, act of the public enemy, or casualty excepted; all notices to quit or vacate are expressly waived, any law, usage or custom to the contrary notwithstanding.
3. Lessor Entry. The Lessee agrees that at any time during the term the Lessor, Lessor's landlord, or their agents, may enter the Premises for any reasonable purpose associated with their public purposes or their interests as landlords.
4. Assignment. Except as stated in Paragraph 11 below, the Lessee will not

make or permit to be made any alterations or additions to the Premises, nor assign, mortgage, or pledge this lease, nor sublet the whole or any part of the Premises without the written consent of Lessor and South Carolina Electric & Gas Co. Any such consent shall apply solely to the particular transaction consented to and shall not constitute a waiver by the Lessor of the provisions of this lease as to other transactions.

5. Insurance. Nothing in this lease shall be read to require the Lessee to obtain or maintain any insurance protecting the Premises; nor shall the Lessor be required to obtain or maintain insurance protecting the Premises.
6. Signs. The Lessee shall not install any signs on any part of the Premises without the Lessor's written consent which will not be unreasonably withheld.
7. Utilities. The Lessee will pay for the supply of any utilities required by Lessee to the Premises.
8. Premises "As Is". The Premises are accepted by the Lessee in its "as is" condition; and the Lessor shall not be responsible for any defect or change of condition in said Premises, nor for any damage thereto, nor to any person, nor to goods or things contained therein due to any cause whatsoever except the act or negligence of the Lessor.
9. Damage. If the Premises shall be damaged by fire, other casualty, or act of the public enemy so as to be substantially destroyed, then this lease shall terminate and any unearned rent paid in advance by Lessee shall be apportioned and refunded to it. The Lessee agrees to give the Lessor immediate notice of any damage to the Premises.
10. Default and Remedies. If the Lessee fails to perform or observe any of the covenants contained herein on its part to be observed and performed for ten days after notice by Lessor, (a) the Lessor may forthwith terminate or cancel this lease by notifying Lessee as hereinafter provided, and upon such termination or cancellation the Lessee shall be liable to the Lessor for all damages Lessor sustains by reason of Lessee's breach of covenant and of such termination or cancellation; or (b) the Lessor may forthwith re-enter the Premises without notice and upon re-entry may let the Premises or any part thereof as agent for Lessee and receive the rent therefor, applying the same first to the payment of such expense as the Lessor may be put to in entering and letting the Premises and then to the payment of the rent and the fulfillment of the Lessee's covenants hereunder. A waiver by the Lessor of any breach or breaches by the Lessee of any one or more of the covenants or conditions hereof shall not bar forfeiture or any other rights or remedies of the Lessor for any subsequent breach of any

such or other covenants and conditions.

11. Improvements to the Premises. The Lessee shall have the right to make improvements to the Premises so as to upgrade its usage (i.e. for "recreational purposes" through the implementation of the Three Rivers Greenway Project); and in the performance of its public duties. Any such improvements shall be at Lessee's expense. Upon termination of this lease, all permanent improvements shall become the property of the Lessor, unless removed by Lessee before the end of the final term of this lease.

12. Notices. Any notices to be given hereunder by one party to the other shall be in writing and given by personal delivery to the executive officer of the other party or sent by registered or certified mail, postage prepaid, addressed as follows:

To Lessee: City Manager, City of Columbia
Post Office Box 147
Columbia, SC 29202

To Lessor: Executive Director
Riverbanks Zoo and Garden
P.O. Box 1060
Columbia, SC 29202-1060

The address to which any notice, demand, or other writing may be given, made or sent to any party as above provided may be changed by written notice given by such party as above provided.

13. Sublease. A portion of the premises herein described is subleased by Lessor to Lessee with permission of the main landlord under an underlying lease from South Carolina Electric and Gas Company ("SCE&G") dated February 24, 1971 (filed in Richland County ROD Book D200 at page 684). The sublet portions of the Premises are expressly made subject to all terms and conditions of said underlying lease; and the Lessee agrees to use the Premise in accordance with the terms of said underlying lease (i.e. for "recreational purposes" through the implementation of the Three Rivers Greenway Trail Project). Lessee agrees not to do or omit to do anything which will breach any of the terms thereof. This agreement is entered into with the knowledge and permission of SCE&G as evidenced by the signatures below. If the underlying lease is terminated, the sublease shall terminate simultaneously; and any unearned rent paid in advance shall be refunded to the Lessee, provided that such termination is not the result of a breach by Lessee.

14. Quiet Possession. The Lessor covenants that upon paying the rent as

herein reserved and performing all the covenants and agreements herein contained, the Lessee may quietly enjoy the Premises, subject, however, to the terms of the SCE&G lease to Lessor and subject to the terms of any mortgages which may now or hereafter affect the Premises.

15. Additional Phase – The parties intend that this Lease will eventually encompass two phases (a "First Phase" and a "Second Phase"). The inclusion of the Second Phase into this Lease shall occur upon the letting of the construction contract by the City of Columbia, South Carolina for the construction of the Second Phase of the Project. This Lease initially covers the "First Phase" of the Project, that terminates at a line along the western edge of the Zoo parking lot down to the Saluda River as designated by the "crosshatched" portion and as shown on attached Exhibit A. The "Second Phase" will continue from that line eastward along the edge of the Saluda River across lands leased by the Lessor from South Carolina Electric and Gas Company and then continue into the 16-acre parcel owned in fee by the Lessor. The land to be leased after the inclusion of the Second Phase is described on Exhibit B to this Lease. The inclusion of the Second Phase shall be accomplished by the authorized signatories of the Lessor and Lessee executing a recordable Lease Addendum with the Lessee paying one and no/100 (\$1.00) Dollar to the Lessor.
16. Management Agreement. Lessor and Lessee agree to execute a Management Agreement once the Project construction is completed; and each will abide by said rules and regulations set forth in the Management Agreement during the tenancy so long as those rules do not impair or impede the Lessee's performance of its public duties.
17. Miscellaneous.
 - A. Any addition, variation or modification to this lease shall be void and ineffective unless made in writing and signed by the parties.
 - B. The captions of the various sections of this lease have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this sublease.
 - C. The validity, interpretation and effect of this lease are governed by and will be construed in accordance with the laws of the State of South Carolina.
 - D. The Lessee shall insure that all improvements undertaken in the provisions of this lease meet all applicable local, State, or Federal health and safety and environmental laws.

E. If any paragraph, section, subsection, provision, sentence, clause or portion of this lease is determined to be illegal, invalid or unenforceable, such determination shall in no way affect the legality, validity or enforceability of any other paragraph, section, subsection, provision, sentence, clause or portion of this Lease; and any such affected portion or provision shall be modified, amended or deleted to the extent possible and permissible to give the fullest effect to the purposes of the parties expressed in this lease; and the parties hereby declare that they would have agreed to the remaining parts of this lease if they had known that such provisions or portions hereof would be determined to be illegal, invalid or unenforceable.

F. This lease constitutes the entire understanding of the parties and supersedes any prior oral or written agreements with respect to the subject matter hereof.

18. Term and Rent Payments. Commencing on the date first mentioned above through March 3, 2068 the annual rental shall be \$1.00; and no term of the underlying lease referred to in Section 13 herein shall be effective under any circumstances to increase or escalate this annual rental during the term of this lease. Rental shall be payable in advance each and every year during the term.

The covenants and agreements contained herein are binding upon the parties hereto and their respective successors, legal representatives and assigns (if assignment has been allowed per paragraph 4 above).

IN WITNESS WHEREOF, the Parties have signed and sealed this document as of the date first mentioned above.

WITNESSES:

AS LESSOR:

THE RICHLAND-LEXINGTON RIVERBANKS
PARKS DISTRICT (a/k/a THE RIVERBANKS
PARKS COMMISSION)

By: _____

Its: Commission Chairperson,

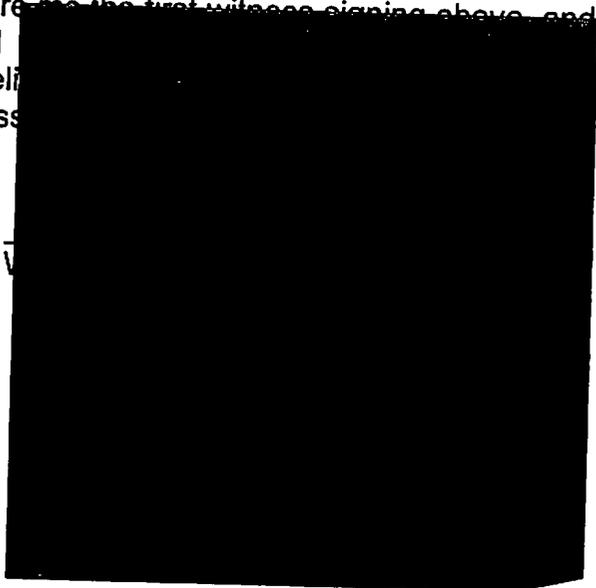
Executed on _____, 2007

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

PROBATE

PERSONALLY APPEARED before me the first witness signing above, and made oath that s/he saw the within-named _____ sign, seal and as their act and deed, deli _____ the second witness signing above witness _____ e with



SWORN to before me this _____ day of _____, 2007.

Notary Public for South Carolina
My commission expires: _____

WITNESSES:

AS LESSEE:

THE CITY OF COLUMBIA, SOUTH CAROLINA

By: 

Its: City Manager,

Executed on _____, 2007

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

)
)
)

PROBATE

PERSONALLY APPEARED before me the first witness signing above, and made oath that s/he saw the within-named _____ sign, seal and as their act and deed, deliver the within-written Lease and that s/he with the second witness signing above witnessed the execution thereof.

Witness

Witness

SWORN to before me this
____ day of _____, 2007.

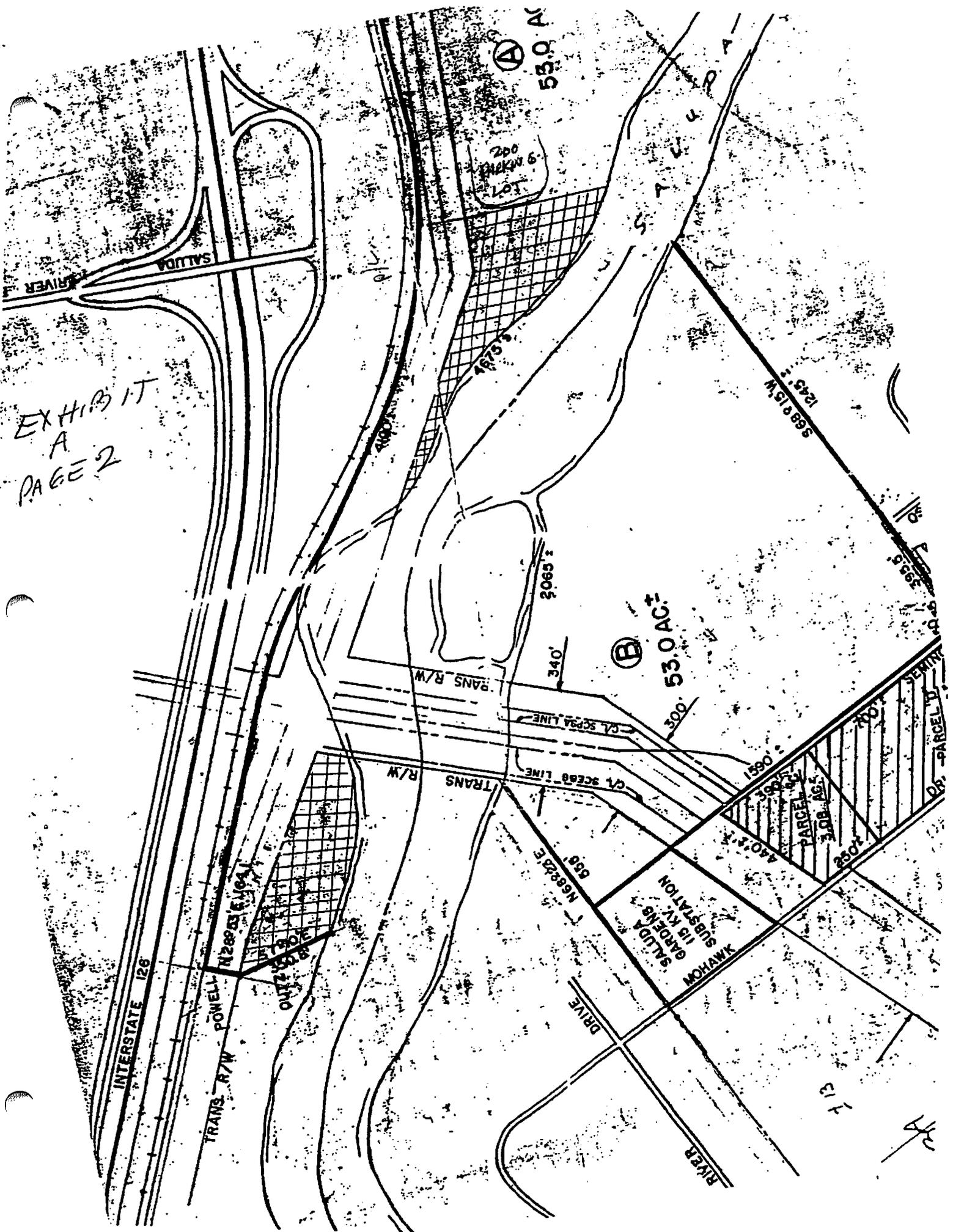
Notary Public for South Carolina
My commission expires: _____

Exhibit A (2 pages)
to
Lease by the District to the City

The First Phase parcel subleased to the City of Columbia, South Carolina ("City") by the Richland-Lexington Riverbanks Park District ("District") consists of that portion of the District's 53-acre leased premises from South Carolina Electric and Gas Co., which portion is shown as "crosshatched" on page two of this Exhibit A attached. The eastern most boundary line of this First Phase is intended by the parties to correspond to a line drawn along the western edge of the paved parking lot that serves the District's Zoological Facility; said line runs from the SCE&G power line right of way on the north downward to the northern edge of the Saluda River.

NOTE: Page 2 of this Exhibit A is a portion of the SCE&G Co. Drawing No. 516-34 which details the Riverbanks Park 53 acre leased property, said drawing being on file in the land records of SCE&G, with a copy being held by the District in its file. The Drawing is referenced in the main lease by SCE&G to the District recorded in Richland County ROD Book D200 page 684.

EXHIBIT
A
PAGE 2



(A) 530 AC ±

(B) 530 AC ±

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Exhibit B
to
Lease by the Zoo to the City

The entire parcel leased and subleased to the City of Columbia, South Carolina ("City") by the Richland-Lexington Riverbanks Parks District ("District") upon the addition of the "Second Phase" consists of the unimproved woodlands area exterior to the Zoo facility improvements; and said line of demarcation is the existing perimeter fence which separates the Zoo facility from the Saluda River. The western, southern, and eastern limit of the leased parcel is the Saluda River, and the northern limit of the leased area is the south boundary line of the South Carolina Electric & Gas Company power line right of way, as shown on SCE&G Drawing No. 516-34, dated February 24, 1969 (on file at the said power company) and as shown on Plat Book X page 943 in the Office of the Richland County ROD.

The leased area includes a restroom building area to the west of the western portion of the Zoo perimeter fence; and the District reserves a right to access, ingress, and egress to the restroom building (once it is constructed) from the District's improved Zoo facility for itself, its successors, assigns, and its patrons.

The leased area also includes the pathway/driveway from the District's Zoo facility over the woodland area out to the bridge to access the botanical garden area on the south side of the Saluda River; and the District reserves a right of access, ingress and egress over the path or driveway to the bridge for itself, its successors, assigns, and patrons.

The leased area is in the shape of a "U" which is outlined by the River, the power line right of way and the perimeter fence of the improved zoo facility (which is not included within the lettered Premises).