



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



COPY

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THIS LEASE AGREEMENT is executed by and between THE CITY
OF SAN DIEGO, a municipal corporation, hereinafter called
"CITY," and ~~SOFA (Strongly Oriented for Action of San Diego)~~ ^{Strongly Oriented for Action of San Diego (SOFA),} a nonprofit
California Corporation, hereinafter called "LESSEE."

RECITALS

1. On February 24, 1976, by Resolution No. 215406 City Council authorized the City Manager to negotiate an exclusive option to lease agreement with SOFA for the purpose of developing subsidized family leased housing under the terms of the United States Department of Housing and Urban Development (hereinafter HUD) Section 8 New Construction Program, on City-owned property located at the northwest corner of Marine and Cuvier Streets in La Jolla, encompassing approximately 19,527 square feet of vacant land.
2. LESSEE as consideration for this lease has offered the nominal rent of \$1 per year, receipt acknowledged, and as additional consideration has agreed to construct 8 housing units on the property and has agreed to ^{make} said 8 housing units available to low-income persons during the entire term of this lease, either pursuant to the HUD Section 8 Program, or pursuant to any other available local, state, or federally sponsored rent subsidy program in effect during the term of this lease.

3. LESSEE shall execute an Annual Contribution Contract with HUD, which contract shall provide for rental subsidies for the units during a period of 20 years, and the execution of such contract is relied upon by CITY and is additional consideration to CITY for making the leased property available to LESSEE at a nominal rent rate.
4. The parties hereto specifically agree that the entire purpose and intent of this lease and the development on the leased property is to make housing available to low-income persons during the entire term of this lease and that anything to the contrary herein notwithstanding, LESSEE and its successors and assigns shall take all reasonable and necessary actions to accomplish the said purpose and intent.

NOW, THEREFORE, in consideration of the recitals and covenants herein, and other good and valuable consideration, it is mutually agreed as follows:

- I. DEMISED PREMISES. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described and delineated on Exhibit A attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises."
 - A. PERMITTED USE. Said premises are leased to LESSEE only for the purpose of providing low-income rental housing under HUD's Section 8 Housing Assistance Payments Plan, New Construction Project, or under any succeeding program to the Section 8 Program or under any other federal, state or local-assisted low-income rental housing program approved by CITY.
 - B. OBLIGATION TO DILIGENTLY USE. LESSEE covenants to use said premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof.

- C. RELATED COUNCIL ACTIONS. By the granting of this lease, the City Council of The City of San Diego is not obligating itself with regard to any other discretionary action relating to development or operation of said premises. Such discretionary action includes, but is not limited to, rezonings, variances, environmental clearances, or any other governmental agency approvals which are required.

II. TERM OF AGREEMENT.

- A. COMMENCEMENT AND TERMINATION. The term of this agreement shall be fifty (50) years commencing on the date of execution hereof by CITY.
- B. SURRENDER OF PREMISES. At the expiration or earlier termination of this lease, LESSEE shall execute, acknowledge and deliver to CITY, within five days after written demand by CITY, a valid and recordable quitclaim deed covering all of the leasehold premises and fixtures free and clear of all liens and encumbrances.

III. CONSIDERATION.

- A. RENT. The rent during the term of this agreement is payable to the Office of the City Treasurer annually. The rent shall be \$1 per year, receipt acknowledged.
- B. ADDITIONAL CONSIDERATION. As additional consideration for this lease and in addition to the above specified rent which is acknowledged to be less than the fair market value of the property, LESSEE shall on or before December 31, 1977, execute an Annual Contributions Contract, and during the entire term of this lease, LESSEE shall not increase its rents received from low-income sub-lessees above the authorized fair market rental approved by HUD nor above the rental necessary to meet all of LESSEE's cost of operation of the lease premises. At any time during the entire term of this lease, that rents received on an annual basis, exceed the operating expenses of the project, SOFA shall pay to the City these excess funds as additional rent on the site. LESSEE shall furnish a copy of the actual cost of operating the project to the City Manager annually for review and approval. The City Manager shall have thirty (30) days after receipt of such data within which to object to any costs set forth therein, and failure of the City Manager to object in writing to LESSEE within such thirty (30) day period shall constitute approval by the City.

- C. INSPECTION RECORDS. When CITY desires to inspect the records and accounts of LESSEE in order to determine LESSEE's compliance with the terms of this agreement, CITY shall have the right at all reasonable times to inspect any records pertinent to the subject under study. LESSEE agrees to cooperate in such inspection and to make the pertinent records available to CITY at LESSEE's place of business in the City of San Diego.
- D. DEVELOPMENT AS ADDITIONAL CONSIDERATION. LESSEE agrees as additional consideration to develop the leased premises in accordance with the City-approved Development Plan described in Section IV, B 8, Development of this agreement.

V. COVENANTS AND CONDITIONS.

A. CITY COVENANTS.

1. Quiet Possession. LESSEE, paying the said rent and performing the covenants and agreements herein, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the said premises for the term hereof. If CITY for any reason whatsoever cannot deliver possession of the said premises to LESSEE at the commencement of said term as hereinbefore specified, or if LESSEE is dispossessed through action of a title superior to CITY'S, then and in either of such events, this lease shall not be void or voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the rent covering the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the demised premises.
2. Right to Assign and Sublet. When in the opinion of the City Manager, and subject to the approval of the City Council whenever required, if it is deemed consistent with the best interests of the CITY, LESSEE may assign this lease or any interest therein and may sublease any portion thereof to an assignee or sublessee who has, in the opinion of City Manager, the financial capability and overall competence to successfully operate the assigned or subleased premises. The consent of the City Manager and/or City Council will not be unreasonably withheld. This lease and any interest herein shall not be assignable by operation of law without the written consent of the City Manager. Any or all of the following actions will be considered trafficking in the leasehold which is not a permitted activity under this contract and will be considered as contrary to the CITY'S best interests:
 - a. Assignment or subleasing by LESSEE for a consideration in excess of a reasonable return on the actual value of the LESSEE'S installed improvements and/or services rendered.
 - b. Subleasing of the primary function of the lease or subleasing of a major portion of the leasehold.
 - c. If CITY has been notified in writing of the existence of a trust deed or mortgage secured by the leasehold, CITY agrees to give the trustee or beneficiary notice of any sublease or assignment prior to CITY'S approval thereon.

- d. Approval of any assignment conditioned upon Assignee or Sublessee agreeing in writing that they will assume the rights and obligations thereby assigned or subleased and that they will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired.
- e. Notwithstanding any of the above provisions, Lessee may sublease any specific housing unit to any sublessee holding a proper HUD Section 8 certificate without City or City Manager's specific approval.
3. Right to Encumber. CITY does hereby consent and agree that LESSEE may encumber this lease, its leasehold estate and its improvements thereon owned by LESSEE by deed of trust, mortgage, chattel mortgage or other security type instrument to assure the payment of a promissory note or notes of the LESSEE. CITY further agrees that in the event said deed of trust or mortgage or other security type instrument should at any time be in default and be foreclosed, the CITY will accept the mortgagee or beneficiary thereof, if reputable, qualified and financially responsible, as its new tenant under this lease with all the rights, privileges and duties granted and imposed in this lease contract. In the event said mortgagee or beneficiary desires to assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY, CITY hereby agrees that upon the filing of an application for consent to such assignment, CITY will give its consent thereto.

B. LESSEE COVENANTS.

4. Affirmative Action. LESSEE agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, LESSEE agrees to abide by the Affirmative Action Program for Lessees as it now exists or is hereafter amended. A copy of the program, effective as of the date of this agreement, is on file in the Office of the City Clerk as Document No. 746205 and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by the CITY for its Affirmative Action Program each year.

5. Compliance with Law. LESSEE agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the said premises, or the operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the premises, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees assessed or levied upon the LESSEE or the leased premises including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by LESSEE or by reason of the business or other activities of LESSEE upon or in connection with the leased premises. The judgment of any court of competent jurisdiction, or the admission of LESSEE or any sublessee or permittee in any action or proceeding against them, or any of them, whether CITY be a party thereto or not, that LESSEE, sublessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.
6. Construction/Alterations. LESSEE agrees not to construct or install any buildings or structures on said premises or otherwise improve or alter said premises in any manner except in accordance with plans and specifications previously submitted to the City Manager and approved by him in writing. LESSEE shall not make any major structural or architectural design alterations to approved buildings, structures or improvements installed on said premises except in accordance with plans and specifications previously approved in writing by the City Manager. This provision shall not limit or set aside any obligation of LESSEE under this lease to maintain said premises in a decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make any improvements or alterations to said premises or to assume any expense therefor.
7. Construction Bond. LESSEE agrees to file with CITY, prior to commencement of any construction performed upon the premises a faithful performance bond in the amount of 100% of the construction costs of the work to be performed. Said bond may be in cash or may be a corporate surety bond satisfactory to CITY or in a combination of both. Said bond shall insure that the construction commenced by LESSEE shall be completed in accordance with approved plans, or at option of the CITY, that the uncompleted construction be removed and the premises restored to a condition satisfactory to CITY. The surety bond will be filed with CITY and any cash used as a part of the bond may be deposited with CITY to be held in trust for the purpose specified above or may be placed in an escrow or other trust approved by CITY. Upon application by LESSEE, CITY may waive this

requirement to file a bond. In the event that LESSEE fails to file any such required bond, this lease may be terminated by CITY.

8. Development. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City-Manager and filed in the Office of the City Clerk as Document No. _____. To the extent applicable to the proposed development, said plan shows the design, materials of construction, elevations and colors of all structures, the plot plan of all structures and above-ground improvements, the uses of all facilities, the schedule of development, the estimated construction costs and financing plan and such other factors as are necessary or desirable in the opinion of the City Manager. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk.

9. Indemnity. LESSEE agrees that CITY, its agents, officers and employees, shall not be liable for any claims, alleged liabilities, penalties, fines or for any damage to the goods, properties or effects of LESSEE, its sublessees or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether alleged to have been caused by or resulting from any acts or omission of LESSEE or its sublessees in or about the leased premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. LESSEE agrees to indemnify and save free and harmless CITY and its authorized agents, officers, and employees against any of the foregoing alleged liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor.

10. Insurance Coverage. During the entire term of this lease, LESSEE agrees to procure and maintain public liability insurance which names CITY as an additional insured with an insurance company satisfactory to CITY licensed to do business in California to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of CITY or LESSEE, its sublessees or any person acting for CITY,

or LESSEE or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of CITY, or LESSEE, or its sublessees, or any person acting for CITY or LESSEE, or under its control or direction. Such PD and PL insurance shall also provide for and protect CITY against incurring any legal cost in defending claims for alleged loss. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in the amount of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00)

COMBINED SINGLE LIMIT LIABILITY. LESSEE agrees to submit a policy of said insurance to the CITY on or before the effective date of this agreement indicating full coverage of the contractual liability imposed by this agreement and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least thirty days prior written notice thereof to CITY. If the operation under this agreement results in an increased or decreased risk in the opinion of the City Manager, then LESSEE agrees that the minimum limits hereinabove designated shall be changed accordingly upon request by the City Manager. LESSEE agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the LESSEE may be held responsible for the payment of damages to persons or property resulting from LESSEE'S activities, the activities of its sublessees or the activities of any person or persons for which LESSEE is otherwise responsible.

LESSEE also agrees to procure and maintain during the entire term of this lease, a policy of fire, extended coverage and vandalism insurance on all permanent property of an insurable nature located upon the leased premises. Said policy shall name the CITY as an additional insured and shall be written by an insurance company satisfactory to CITY licensed to transact business in the State of California and shall be in an amount sufficient to cover at least 80% of the replacement costs of said property. LESSEE agrees to submit a certificate of said policy to the CITY on or before the effective date of this lease. Said policy shall contain a condition that it is not to be terminated or cancelled without at least thirty (30) days prior written notice to CITY by the insurance company. LESSEE agrees to pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to CITY and LESSEE and said proceeds shall constitute a trust fund to be reinvested in rebuilding or repairing the damaged property or said proceeds may be

disposed of as specified in Section IV, 16, Waste, Damage or Destruction, hereof; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold, then and for that period all policies of fire insurance, extended coverage and vandalism shall be made payable jointly to the mortgagee or beneficiary, the named insured, and CITY, and shall be disposed of jointly by the parties for the following purposes:

- a. As a trust fund to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust with the excess remaining after full payment of said debt to be paid over to LESSEE and CITY to pay for reconstruction, repair, or replacement of the damaged or destroyed improvements in progress payments as the work is performed. The balance of said proceeds shall be paid to LESSEE.

Provided, further however, nothing herein shall prevent LESSEE, at its option and with the approval of said mortgagee or beneficiary, from filing a faithful performance bond in favor of said mortgagee or beneficiary and CITY in an amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary; and CITY.

- b. In the event that this lease is terminated by mutual agreement and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be jointly retained by CITY and said mortgagee or beneficiary to the extent necessary to first discharge the debt secured by said mortgage or deed of trust and then to restore the premises in a neat and clean condition. Said mortgagee or beneficiary shall hold the balance of said proceeds for CITY and LESSEE as their interests may appear.

LESSEE agrees to increase the limits of liability when, in

the opinion of CITY, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits. LESSEE agrees, at his sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering said premises, buildings and appurtenances.

11. Labor and Materialmen's Bond. LESSEE agrees to save CITY free and harmless, indemnify it against all claims for labor and materials in connection with improvements, repairs or alterations to the leased premises, and the cost of defending against such claims, including reasonable attorney's fees. In the event that improvements, repairs or alterations are constructed on the leased premises by other than the CITY, and a lien is filed, LESSEE agrees to file with CITY within five days a bond sufficient to pay in full all claims of all persons seeking relief under the lien. The bond shall be acknowledged by LESSEE as principal and by a corporation satisfactory to CITY licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.
12. Legal Proceedings. LESSEE agrees that should it become necessary for CITY to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this lease, the prevailing party will be entitled to legal costs in connection therewith, including reasonable attorney's fees as determined by the court. The parties agree that the law of the State of California shall be used in interpreting this lease agreement and will govern all disputes under this lease agreement and will determine all rights and obligations hereunder. Personal service either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this lease agreement.
13. Maintenance. LESSEE agrees to assume full responsibility for the operation and maintenance of said premises throughout the term hereof without expense to CITY unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve said premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to CITY and in compliance with all applicable laws. LESSEE agrees that CITY shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with said premises and LESSEE hereby waives all rights to make repairs or to cause any work to be performed at the expense of CITY as provided for in Sections 1941 and 1942 of the California Civil Code.

14. Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, physical handicap or medical condition in LESSEE'S use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.
15. Utility Costs. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection therewith. All utilities installed by LESSEE shall be installed underground.
16. Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage, or LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

C. RESTRICTIVE CONDITIONS

17. Administration and Notices. Control and administration of this lease is under the jurisdiction of the City Manager of CITY as to CITY'S interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by

law to be given or served upon CITY may be given or served by registered letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention Property Director, City Administration Building, 202 "C" Street, San Diego, California 92101. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE, Mortgagee, Trustee or Beneficiary may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to said LESSEE at the leased premises or at such other address designated in writing by LESSEE, Mortgagee, Trustee or Beneficiary or may be personally served upon them or any person hereafter authorized by them to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served upon personal service or forty-eight hours after mailing in the manner required herein.

18. City Approval and Consent. The approval or consent of the CITY, wherever required in this agreement, shall mean the approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
19. Eminent Domain. In the event the leased premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then the interests of CITY and LESSEE (or Beneficiary or Mortgagee if there is a Trust Deed or Mortgagee then in effect), in the award and the effect of the taking upon this lease agreement shall be as follows:
 - a. In the event of such taking of only a part of the leased premises, leaving the remainder of said premises in such location and in such form, shape and size as to be used effectively and practicably in the opinion of CITY for the conduct thereon of the operations permitted hereunder, this lease shall terminate and end as to the portion of the leased premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the leased premises not so taken and from and after such date the contract rent, or in the event there is a minimum rent specified herein, then the minimum rental required by this lease to be paid by LESSEE to CITY shall be reduced in the proportion to which the value of the leased premises so taken bears to the total value of the demised premises; provided, however, CITY shall have the right, with the consent of LESSEE, to substitute like adjacent property and maintain the rent schedule without diminution.

- b. In the event of the taking of only a part of the leased premises leaving the remainder of said premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, in the opinion of CITY, for the conduct thereon of the operations permitted hereunder, this lease and all right, title and interest thereunder shall cease on the date title to said premises or the portion thereof so taken vests in the condemning authority.
 - c. In the event the entire leased premises are so taken, this lease and all of the right, title and interest thereunder shall cease on the date title to said premises so taken vests in the condemning authority.
 - d. In the event of any taking under Subparagraphs a, b, or c, hereinabove, the only portion of any award of compensation which shall be paid to LESSEE shall be the fair market value of LESSEE'S interest in the improvements placed upon that portion of the leased premises which are taken by the condemning agency. It is the intention of this provision that LESSEE shall not in any condemnation receive any bonus or penalty by reason of LESSEE'S contractual rights in connection with the property condemned.
 - e. Notwithstanding the foregoing provisions of this section, CITY may, in its discretion and without affecting the validity and existence of this lease, transfer the CITY'S interests in said premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE shall retain whatever rights it may have to recover from the said authority the fair market value of LESSEE'S interest in the improvements taken by the authority and which LESSEE has placed upon the leased premises in accordance with the provisions of this lease.
20. Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy and sanitary condition, CITY shall have the right, after ten days written notice to LESSEE, to have any necessary maintenance work done for and at the expense of LESSEE and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done in order to keep said premises in a decent, safe, healthy and sanitary condition. Further, if at any time the CITY determines that said premises are not in a decent, safe, healthy and sanitary condition, CITY may at its sole option, without additional notice, require

LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy and sanitary. Said bond shall be in an amount adequate in the opinion of the CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

21. Holding Over. The occupancy of the demised premises after the expiration of the term of this agreement shall be construed to be a tenancy from month to month, and all other terms and conditions of this agreement shall continue in full force and effect.
22. Merger. The voluntary or other surrender of this lease by LESSEE, or a mutual cancellation thereof, shall not work a merger and shall, at the option of CITY, terminate all or any existing subleases or subtenancies or may, at the option of CITY, operate as an assignment to it of any or all such subleases or subtenancies.
23. Oral Representation. It is specifically understood and agreed hereby that this lease contains the complete expression of the whole agreement between the parties hereto, and that there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied by the said parties, except as are fully set forth herein; and further, that this lease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the said parties.
24. Ownership of Improvements. All improvements, except personal property, which have been installed by LESSEE in accordance with the provisions of this agreement, shall at the option of CITY become the property of CITY upon expiration or sooner termination of this agreement. LESSEE shall have the right to remove from the demised premises only that personal property hereinafter defined, at any time prior to the expiration or earlier termination of this agreement, provided that such removal would not, in the opinion of CITY, restrict the operation of the demised premises to the extent that the rent paid to CITY is reduced as a direct result therefrom. LESSEE'S removal of any such personal property shall be at LESSEE'S own expense and shall be conditioned upon LESSEE'S repairing any damage to the remaining improvements and upon LESSEE leaving the demised premises in good order and condition. In the event LESSEE does not so remove said personal property prior to the expiration of this agreement, CITY may remove, sell or destroy the same at

the expense of LESSEE, and if the proceeds of the sale are not adequate, LESSEE shall promptly pay to CITY its reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to CITY'S property resulting from such removal, sale or destruction. At the option of CITY, any personal property not removed by LESSEE may be deemed abandoned and may be removed and sold by CITY and all income received by CITY therefrom shall be the property of CITY exclusively.

25. Remedies of City.

a. Default by Lessee. In the event that:

- (1) LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail to cure said default within thirty days following the service on LESSEE of a written notice from CITY specifying the default complained of; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against him any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE in or to the said premises or in or to further possession thereof and CITY may thereupon enter and take possession of said premises and expel LESSEE and all persons so claiming rights thereto. Provided, however, in the event that any default described in Part a, (1) of this section is not curable within thirty (30) days after the service of a written notice upon LESSEE, CITY shall not terminate this lease pursuant to said default if LESSEE immediately commences to cure said default and diligently pursues such cure to completion.

Provided, further, in the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall not terminate this lease until it first shall have served upon the mortgagee or beneficiary written notice of the default or defaults complained of, and the

mortgagee or beneficiary shall have thirty (30) days from service of such notice within which to commence such cure as may be necessary and this lease shall not terminate if said mortgagee or beneficiary shall prosecute said cure with reasonable diligence thereafter, and said thirty-day period shall be extended during the time required for said mortgagee or beneficiary to perfect, through litigation or through foreclosure, its rights to cure.

Provided however, that in the event rent paid to CITY is calculated on the basis of a percentage or percentages of LESSEE'S gross income, and during said period required for mortgagee or beneficiary to perfect a cure of any default or defaults which have been caused by LESSEE'S failure to pay said rent; then in those events if CITY is paid the minimum rent due under this agreement, CITY will not prosecute its right to terminate the mortgagee's or beneficiary's interest. Provided further, that when the mortgagee or beneficiary has secured control of said premises, and before an assignment to a new LESSEE, mortgagee or beneficiary shall cause to be paid to CITY, any amounts due CITY as a result of the gross income of the said premises exceeding that amount necessary for payment of the minimum rent. In computing the gross rent upon which the computation of the CITY rent is based, reasonable administrative expenses of a court appointed receiver may first be deducted.

b. City Recourse. If the mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:

(1) CITY may correct or cause to be corrected said default or defaults and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY of a statement of all or part of said costs.

(2) CITY may correct or cause to be corrected said default or defaults and may pay the costs thereof (including costs incurred by CITY in enforcing this provision) from the proceeds of any insurance fund held by CITY and LESSEE or by CITY and mortgagee or beneficiary or CITY may use said funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent

to correct said default or defaults or to pay the costs of such correction performed by or at the direction of CITY.

- (3) CITY may terminate this lease as to the rights of LESSEE herein by assuming liability for any trust deed or mortgage. LESSEE will assume and agrees to pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related notes by CITY. CITY may, as an alternative, substitute for said terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary.

Should said default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in said leasehold whose qualifications have been approved by CITY for assignment of the leasehold interest shall have the absolute right to

substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease and this lease shall not terminate if such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself and commence performance within said thirty-day period after service upon it of said written notice by CITY of the default. In the event of the election by the mortgagee or beneficiary to so substitute itself to LESSEE'S estate hereunder, the CITY expressly consents to said substitution and authorizes said mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the original LESSEE hereunder, subject to cure of the default if possible by mortgagee or beneficiary, and LESSEE expressly agrees to assign all its interest in and to its leasehold estate in that event.

- c. Abandonment by Lessee. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate LESSEE'S right to possession, and CITY may enforce all its rights and remedies under said lease, including, but not limited to, the right to recover the rent as it becomes due under the lease. For purposes of this section, the following do not constitute a termination of LESSEE'S right to possession:

- (1) Acts by CITY of maintenance, or preservation, or efforts to relet the property.
- (2) The appointment of a receiver upon initiative of CITY to protect the CITY'S interest under the lease.

d. Damages. Damages which CITY may recover in the event of default under this lease include the worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the date of award, or for any shorter period of time specified in this lease, exceeds the amount of such rental loss for the same period that the LESSEE proves could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

26. Reservation of City Rights. CITY hereby reserves all rights, title and interest in any and all gas, oil, minerals and water beneath said leased premises. CITY shall have the right to enter said leased premises for the purpose of making repairs to or developing municipal services. CITY hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and across said leased premises for utilities, thoroughfares, or access as it may deem advisable for the public good. Provided, however, CITY shall not unreasonably interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements of LESSEE located on the leased premises resulting from CITY'S exercising the rights retained in this paragraph. Such reimbursement shall include a reduction in the annual rent proportionate to the amount of said physical damage as determined by the City Manager. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to the rights reserved herein.

27. Time is of the Essence. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successor of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns or sublessees of LESSEE.

28. Waiver. The waiver by CITY of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or conditions, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by CITY shall not be deemed to be a waiver of any preceding breach by LESSEE of any term, covenant or condition of this lease, regardless of CITY'S knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of CITY to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease shall not be construed as in any manner changing the terms hereof and shall not prevent CITY from enforcing any provision hereof.

29. "Notwithstanding any other provision of this lease, including the provisions of IV. B. 25., nothing herein contained shall be deemed to limit or deny the rights of sublessees pursuant to the Section 8 New Construction Program lease, as approved by HUD; including but not limited to the termination of sublessees, and in the event of conflict, the provisions of the Section 8 New Construction Program lease shall govern."

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through the City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date NOV 23 1977

BY [Signature]
ASSISTANT TO THE City Manager

LESSEE

Date Feb 23 1977

BY Charles Brook

BY Danah H. Fayman

APPROVED as to form and legality this 6 day of December, 1977.

JOHN W. WITT, City Attorney

BY [Signature]
Deputy

BWH:GRR/fs
9/17/76
Property Department



YAP 3091 - ROACH SUB
YAP 897 - SEPTORS ADD - BLKS 1, 2 & POR 13 & LOTS A, B & C
RQS 1175, 1269, 1742

EXHIBIT A

[illegible]

791

Lot 3, Block 1 of
F. T. Scripps
Addition to La Jolla Park

**REGULATORY AGREEMENT FOR NONPROFIT MORTGAGORS
UNDER SECTION 236 OF THE NATIONAL HOUSING ACT, AS AMENDED**

Project No.

Mortgagee

Amount of Mortgage Note

Date

Mortgage: Recorded:

State

County

Date

Book

Page

This Agreement entered into this

day of

, 19

between

whose address is

their successors, heirs, and assigns (jointly and severally, hereinafter referred to as Owners) and the undersigned Secretary of Housing and Urban Development and his successors, acting by and through the Federal Housing Commissioner (hereinafter called Commissioner).

In consideration of the endorsement for insurance by the Commissioner of the above described note or in consideration of the consent of the Commissioner to the transfer of the mortgaged property, and in order to comply with the requirements of Section 236 of the National Housing Act, as amended, and the Regulations adopted by the Commissioner pursuant thereto, Owners agree for themselves, their successors, heirs and assigns, that in connection with the mortgaged property and the project operated thereon and so long as the contract of mortgage insurance continues in effect, and during such further period of time as the Commissioner shall be the owner, holder or reinsurer of the mortgage, or during any time the Commissioner is obligated to insure a mortgage on the mortgaged property:

1. Owners, except as limited by paragraph 18 hereof, shall promptly make all payments due under the note and mortgage; provided, however, that the Commissioner shall make payments to the mortgagee on behalf of the Owners in accordance with the interest reduction contract between the mortgagee and the Commissioner.
2. (a) Owners shall establish or continue to maintain a reserve fund for replacements by the allocation to such reserve fund in a separate account with the mortgagee or in a safe and responsible depository designated by the mortgagee, concurrently with the beginning of payments towards amortization of the principal of the mortgage insured or held by the Commissioner of an amount equal to \$ _____ per month unless a different date or amount is approved in writing by the Commissioner. Such fund, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America shall at all times be under the control of the mortgagee. Disbursements from such fund, whether for the purpose of effecting replacement of structural elements and mechanical equipment of the project or for any other purpose, may be made only after receiving the consent in writing of the Commissioner. In the event of a default in the terms of the Mortgage, pursuant to which the loan has been accelerated, the Commissioner may apply or authorize the application of the balance in such fund to the amount due on the mortgage debt as accelerated.
- (b) Where Owners are acquiring a project already subject to an insured mortgage, the reserve fund for replacements to be established will be equal to the amount due to be in such fund under existing agreements or charter provisions at the time Owners acquire such project, and payments hereunder shall begin with the first payment due on the mortgage after acquisition, unless some other method of establishing and maintaining the fund is approved or required in writing by the Commissioner.
- (c) Owners shall establish and maintain, in addition to the reserve fund for replacements, a residual receipts fund by depositing thereto, with the mortgagee, the residual receipts, as defined herein, within 60 days after the end of the semiannual or annual fiscal period within which such receipts are realized. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purpose as he may determine.
3. Real property covered by the mortgage and this Agreement is described in Schedule A attached hereto.
4. The Owners covenant and agree that:
 - (a) with the prior approval of the Commissioner, they will establish for each dwelling unit (1) a basic rental charge determined on the basis of operating the project with payments of principal and interest under a mortgage bearing interest at one percent and (2) a fair market rental charge determined on the basis of operating the project with payments of principal, interest and mortgage insurance premiums due under the insured mortgage on the project;
 - (b) the rental charged for each unit, which will include all utilities except telephone, will be equal to 25% of the tenant's income or the basic rental, whichever is greater, but in no event shall the rental charged exceed the fair market rental;
 - (c) they shall limit admission to the project to those families whose incomes do not exceed the limits prescribed by the Commissioner, with the exception of those tenants who agree to pay fair market rental;
 - (d) preference for occupancy shall be given to those families displaced from an urban renewal area, or as a result of governmental action, or as a result of a disaster determined by the President to be a major disaster, and to those families whose incomes are within the lowest practicable limits for obtaining rental units in the project;
 - (e) on forms approved by the Commissioner they will obtain from each prospective tenant, prior to admission to the project, a certification of income, and a recertification of income from all tenants who are not paying fair market rental at intervals as required by the Commissioner;

(f) if any recertification reveals a change in income whereby the tenant becomes eligible for a lower or higher rental, such adjustment in rental charged shall be made, provided that rental shall never be less than basic rental and shall never exceed fair market rental;

(g) in a manner prescribed by the Commissioner, they will obtain written evidence substantiating the information given on the tenants' certifications and recertifications of income and shall retain the evidence in their files for three years;

(h) they shall require all tenants who do not pay the fair market rental to execute a lease in the form prescribed by the Commissioner, and shall not rent any unit in the project for less than 30 days nor more than one year;

(i) they shall remit to the Commissioner on or before the tenth day of each month the amount by which the total rentals collected on the dwelling units exceeds the sum of the approved basic rentals for all occupied units, which remittance shall be accompanied by a monthly report on a form approved by the Commissioner, provided that a monthly report must be filed even if no remittance is required;

(j) they shall not restrict occupancy by reason of the fact that there are children in the family, except in those projects that are designed primarily for elderly persons;

(k) they will rent commercial facilities, if any, at not less than the rental approved by the Commissioner;

(l) no change will be made in the basic rental or fair market rental unless approved by the Commissioner;

(m) no tenant shall be permitted to rent more than one unit at any given time without the prior written approval of the Commissioner;

(n) if there are rent supplement units in the project, the determination as to the eligibility of tenants for admission to such units and the conditions of continued occupancy shall be in accordance with the Rent Supplement Contract executed by the Owners and Commissioner which is incorporated in and made a part of this Agreement.

5. Upon prior written approval of the Commissioner, the Owners may charge to and receive from any tenant such amounts as from time to time may be mutually agreed upon between the tenant and the Owners for any facilities and/or services which may be furnished by the Owners or others to such tenant upon his request, in addition to the facilities and services included in the approved Rental Schedule.

6. Owners agree that no dividends of any kind will be paid on the capital stock issued by the corporation, except as the charter may authorize due to domiciliary requirements.

7. Owners shall not without the prior written approval of the Commissioner:

(a) Convey, transfer, or encumber any of the mortgaged property, or permit the conveyance, transfer or encumbrance of such property;

(b) Assign, transfer, dispose of, or encumber any personal property of the project, including rents, or pay out any funds, except for reasonable operating expenses and necessary repairs;

(c) Convey, assign, or transfer any beneficial interest in any trust holding title to the mortgaged property, or the interest of any general partner in a partnership owning the mortgaged property, or any right to manage or receive the rents and profits from the mortgaged property;

(d) Remodel, add to, reconstruct, or demolish any part of the mortgaged property or subtract from any real or personal property of the project;

(e) Engage in any other business or activity, including the operation of any other rental project, or incur any liability or obligation not in connection with the project;

(f) Require, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the covenants of the lease. Any fund collected as security deposits shall be kept separate and apart from all other funds of the project in a trust account the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account;

(g) Permit the use of the dwelling accommodations of the project for any purpose except the use which was originally intended, or permit commercial use greater than that originally approved by the Commissioner;

(h) Incur any liability, direct or contingent, other than for current operating expenses, exclusive of the indebtedness secured by the mortgage and necessarily incident to the execution and delivery thereof;

(i) Pay any compensation, including wages or salaries, or incur any obligations, to themselves, or any officers, directors, stockholders, trustees, partners, beneficiaries under a trust, or to any of their nominees;

(j) Enter into any contract or contracts for supervisory or managerial services.

8. Owners shall maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition. In the event all or any of the buildings covered by the mortgage shall be destroyed or damaged by fire or other casualty, the money derived from any insurance on the property shall be applied in accordance with the terms of the insured mortgage.

9. Owners shall not file any petition in bankruptcy, or for a receiver, or in insolvency, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors or permit an adjudication in bankruptcy, the taking possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale and fail to have such adverse actions set aside within forty-five days.

10. (a) Owners shall provide for the management of the project in a manner satisfactory to the Commissioner. Any management contract entered into by Owners, or any of them, involving the project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by the Commissioner addressed to the Owners. Upon receipt of such request Owners shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Commissioner for continuing proper management of the project.

(b) Payment for services, supplies, or materials shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished.

(c) The mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at any reasonable time by the Commissioner or his duly authorized agents. Owners shall keep copies of all written contracts or other instruments which affect the mortgaged property, all or any of which may be subject to inspection and examination by the Commissioner or his duly authorized agents.

✓ (d) The books and accounts of the operations of the mortgaged property and of the project shall be kept in accordance with the requirements of the Commissioner.

✓ (e) Within sixty days following the end of each fiscal year the Commissioner shall be furnished with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared in accordance with the requirements of the Commissioner, certified to by an officer or responsible Owner and, when required by the Commissioner, prepared and certified by a Certified Public Accountant, or other person acceptable to the Commissioner.

✓ (f) At the request of the Commissioner, his agents, employees, or attorneys, the Owners shall furnish monthly occupancy reports and shall give specific answers to questions upon which information is desired from time to time relative to the income, assets, liabilities, contracts, operation, and condition of the property and the status of the insured mortgage.

(g) All rents and other receipts of the project shall be deposited in the name of the project in a bank, whose deposits are insured by the F.D.I.C. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for expenses of the project and remittances to the Commissioner as required under Paragraph 4(i) above. Any owner receiving funds of the project shall immediately deposit such funds in the project bank account and failing so to do in violation of this Agreement shall hold such funds in trust. Any owner receiving property of the project in violation of this Agreement shall immediately deliver such property to the project and failing so to do shall hold such property in trust.

✓ 11. Owners will comply with the provisions of any Federal, State, or local law prohibiting discrimination in housing on the grounds of race, color, creed, or national origin, including Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241), all requirements imposed by or pursuant to the Regulations of the Department of Housing and Urban Development (24 CFR, Subtitle A, Part 1) issued pursuant to that title, and regulations issued pursuant to Executive Order 11063.

12. Upon a violation of any of the above provisions of this Agreement by Owners, the Commissioner may give written notice, thereof, to Owners, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice thereof to the Commissioner, be designated by the Owners as their legal business address. If such violation is not corrected to the satisfaction of the Commissioner within thirty days after the date such notice is mailed or within such further time as the Commissioner reasonably determines is necessary to correct the violation, without further notice the Commissioner may declare a default under this Agreement effective on the date of such declaration of default and upon such default the Commissioner may:

(a) (1) If the Commissioner holds the note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the mortgage;

(2) If said note is not held by the Commissioner - notify the holder of the note of such default and request the holder to declare a default under the note and mortgage, and the holder after receiving such notice and request, but not otherwise, at its option, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the mortgage, or assign the note and mortgage to the Commissioner as provided in the Regulations;

(b) Collect all rents and charges in connection with the operation of the project and use such collections to pay the mortgagor's obligations under this Agreement and under the note and mortgage and the necessary expenses of preserving the property and operating the project;

(c) Take possession of the project, bring any action necessary to enforce any rights of the Owners growing out of the project operation, and operate the project in accordance with the terms of this Agreement until such time as the Commissioner in his discretion determines that the Owners are again in a position to operate the project in accordance with the terms of this Agreement and in compliance with the requirements of the note and mortgage;

(d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Commissioner arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain;

(e) Terminate the interest reduction payments to the mortgagee made pursuant to Paragraph 1 hereinabove.

13. As security for the payment due under this Agreement to the reserve fund for replacements, and to secure the Commissioner because of his liability under the endorsement of the note for insurance, and as security for the other obligations under this Agreement, the Owners respectively assign, pledge and mortgage to the Commissioner their rights to the rents, profits, income and charges of whatever sort which they may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents in the insured mortgage referred to herein. Until a default is declared under this Agreement, however, permission is granted to Owners to collect and retain under the provisions of this Agreement such rents, profits, income, and charges, but upon default this permission is terminated as to all rents due or collected thereafter.

14. As used in this Agreement the term:

(a) "Mortgage" includes "Deed of Trust", "Chattel Mortgage", and any other security for the note identified herein, and endorsed for insurance or held by the Commissioner;

(b) "Mortgagee" refers to the holder of the mortgage identified herein, its successors and assigns;

(c) "Mortgagor" means the original borrower under the mortgage and its successors and assigns;

(d) "Owners" refers to the persons named in the first paragraph hereof and designated as Owners, their successors or assigns; such term includes a nonprofit corporation executing this Agreement in its capacity as a contract purchaser of the project pursuant to a Sales Agreement with a Builder-Seller mortgagor;

(e) "Mortgaged Property" includes all property, real, personal, or mixed, covered by the mortgage or mortgages securing the note endorsed for insurance or held by the Commissioner;

(f) "Project" includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situate, used in or owned by the business conducted on said mortgaged property, which business is providing housing and other such activities as are incidental thereto;

(g) "Residual Receipts" means any cash remaining after:

(1) the payment of:

(i) All sums due or currently required to be paid under the terms of any mortgage or note insured or held by the Federal Housing Commissioner;

(ii) All amounts required to be deposited in the reserve fund for replacements;

(iii) All obligations of the project other than the mortgage insured or held by the Commissioner unless funds for payment are set aside or deferment of payment has been approved by the Commissioner;

(iv) Remittances due to the Commissioner as required by Paragraph 4(i); and

(2) the segregation of:

(i) An amount equal to the aggregate of all special funds required to be maintained by the project;

(ii) All tenant security deposits held;

(iii) That portion of rentals which must be remitted to the Commissioner in accordance with Paragraph 4(i), but not yet due.

(h) "Family" means (1) two or more persons related by blood, marriage, or operation of law, who occupy the same unit; (2) a handicapped person who has a physical impairment which is expected to be of long continued and indefinite duration, substantially impedes his ability to live independently, and is of such a nature that his ability to live independently could be improved by more suitable housing conditions; (3) a single person, 62 years of age or older; or (4) a single person less than 62 years of age provided that occupancy by such persons is limited to 10% of the dwelling units in the project;

(i) "Income" means the gross annual income of the family from all sources before taxes and withholding, after giving effect to exclusions allowed by the Commissioner;

(j) "Default" means a default declared by the Commissioner when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Commissioner after written notice.

15. This instrument shall bind, and the benefits shall inure to, the respective Owners, their heirs, legal representatives, executors, administrators, successors in office or interest, and assigns, and to the Commissioner and his successors so long as the contract of mortgage insurance continues in effect, and during such further time as the Commissioner shall be the owner, holder, or reinsurer of the mortgage, or obligated to reinsure the mortgage.

(a) In the event this Agreement is executed by a nonprofit corporation in its capacity as a contract purchaser of the project pursuant to a Sales Agreement with a Builder-Seller mortgagor, said nonprofit corporation agrees that all of the provisions hereof shall continue to bind it in its capacity as title owner of the project upon consummation of the purchase. In the event the purchase is not consummated at final endorsement or such later time as may be agreed to in writing by the Commissioner, its obligations hereunder shall terminate.

16. Owners warrant that they have not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

17. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

18. The following Owners:

do not assume personal liability for payments due under the note and mortgage, to the reserve for replacements, or for matters not under their control, provided that such Owners shall remain liable under this Agreement only with respect to the matters hereinafter stated; namely:

(a) for funds or property of the project coming into their hands which, by the provisions hereof, they are not entitled to retain; and

(b) for their own acts and deeds or acts and deeds of others which they have authorized in violation of the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first hereinabove written.

Seal

WITNESS

Owners

By

SECRETARY OF HOUSING AND URBAN DEVELOPMENT
acting by and through the FEDERAL HOUSING COMMISSIONER

By
Authorized Agent

Property
5/A

(R. 77-1683)
(REV.)

RESOLUTION NO. 219742

NOV 23 1977

WHEREAS, by Resolution No. 215406, adopted February 24, 1976, the Council authorized the City Manager to negotiate an exclusive option to lease agreement with SOFA (Strongly Oriented for Action), for the purpose of developing subsidized family leased housing under the terms of the United States Department of Housing and Urban Development (hereinafter HUD) Section 8 New Construction Program, on City-owned property located at the northwest corner of Marine and Cuvier Streets in La Jolla; and

WHEREAS, the property to be leased is Utility Department property and is therefore subject to the covenants of the Utility Bonds and it is necessary to remove the property to be leased from the bond covenants and to designate substitute property as being subject to said covenants; and

WHEREAS, Council Policy 700-10 of The City of San Diego, adopted April 4, 1975, provides for leasing or sale of City property and states specifically that discounts can be granted by Council where such discounts are justified as exceptional cases; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

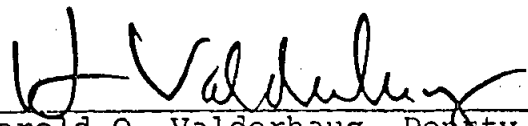
That availability of the Marine and Cuvier Streets, La Jolla site for the development of low-income family housing under the HUD Section 8 Program is hereby approved.

BE IT FURTHER RESOLVED, that the removal of the bond covenants on the Utility Department property at Marine and Cuvier Streets which property has a value as determined by Property Department Staff of \$168,600, and the replacing of the bond covenants on 4.8 acres of City-owned land, with a value of \$174,000 as determined by an independent fee appraiser and approved by staff, in the 4400 Block, South side of Federal Boulevard, legally known as a Portion of Lot 19, Horton's Purchase, is hereby authorized and approved.

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a Lease Agreement with SOFA, a non-profit corporation, for the City-owned property at Marine and Cuvier Streets, La Jolla for a period of 50 years, for the purpose of providing low-income family housing, under the terms and conditions set forth in the form of lease agreement on file in the office of the City Clerk as Document No. 758859.

BE IT FURTHER RESOLVED, that this resolution shall be and become effective on December 3, 1977.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug, Deputy

HOV:dm
11-16-77(REV.)
Or.Dept.:HACS

Passed and adopted by the Council of The City of San Diego
on November 23, 1977, by the following vote:

YEAS: Johnson, O'Connor, Hubbard, Williams, Gade, Strobl, Haro, Wilson.

NAYS: None.

ABSENT: Morrow.

AUTHENTICATED BY:

PETE WILSON,
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR,
City Clerk of The City of San Diego, California.

(SEAL)

By ALLYN D. NEVITT, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. 219742
passed and adopted by the Council of The City of San Diego,
California, on November 23, 1977.

CHARLES G. ABDELNOUR,
City Clerk of The City of San Diego, California.

(SEAL)

By , Deputy.

IN WITNESS WHEREOF, for the purposes of forming the Corporation under the laws of the State of California, we, the undersigned, constituting the incorporators of this Corporation, and including all of the persons named herein as the first Directors have personally executed these Articles of Incorporation on this 28th day of July, 1972.

Lonnie C. Wormley
LONNIE C. WORMLEY

Lawrence L. Angel
LAWRENCE L. ANGEL

Marie F. Stephens
MARIE F. STEPHENS

Robert Henkel
ROBERT HENKEL

Francis J. Foote
FRANCIS J. FOOTE

Doris Lowrie
DORIS LOWRIE

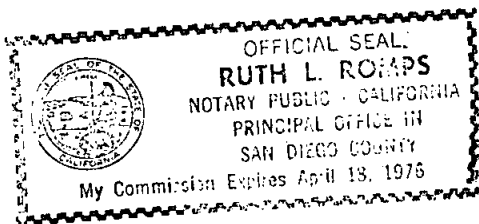
Thomas C. Harden
THOMAS C. HARDEN

M. D. Woodbury
M. D. WOODBURY

Douglas Nau
DOUGLAS NAU

STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN DIEGO)

On the 28th day of July, 1972, before me, the undersigned, a Notary Public in and for said County and State, personally appeared LONNIE C. WORMLEY, LAWRENCE L. ANGEL, MARIE F. STEPHENS, ROBERT HENKEL, FRANCIS J. FOOTS, DORIS LOWRIE, THOMAS C. HARDEN, M. D. WOODBURY and DOUGLAS NAU, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same.



Ruth L. Romps

Notary Public in and for Said
County and State

ARTICLES OF INCORPORATION
OF
LA JOLLA MARINE APARTMENTS INC.

ARTICLE I

(a) The name of the corporation, (hereinafter referred to as "the Corporation") is LA JOLLA MARINE APARTMENTS, INC.

(b) The principal office of the Corporation will be located in San Diego County, State of California.

(c) The Corporation is organized pursuant to the General Nonprofit Corporation Law of the State of California.

ARTICLE II

The purpose for which the Corporation is formed, and the business and objects to be carried on and promoted by it, are as follows:

(a) To provide, on a nonprofit basis, housing for low and moderate income families where no adequate housing exists for such groups, pursuant to Section 221(d)(3) and/or Section 236 of the National Housing Act, as amended.

(b) The Corporation is irrevocably dedicated to, and operated exclusively for nonprofit purposes; and no part of the income or assets of the Corporation shall be distributed to nor inure to the benefit of any director, officer, or member or to the benefit of any private individual.

(c) On the dissolution or winding up of this Corporation, its assets remaining after payment of, or provision for payment of, all debts and liabilities of this Corporation shall be distributed to the City of San Diego, California. It is provided, however, that the Corporation shall at all times have the power to convey any or all of its property to the Federal Housing Commissioner or his nominee.

ARTICLE III

The Corporation is empowered:

(a) To buy, acquire by gift, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to plan, construct, maintain, rehabilitate, alter, convert, improve and operate improvements thereon necessary or incident to the provisions of such housing as described in Article II hereof.

(b) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property.

(c) To do and perform all acts reasonably necessary to accomplish the purposes of the Corporation, including the execution of a Regulatory Agreement with the Federal Housing Commissioner and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory

Agreement and other instruments and undertakings shall remain binding upon the Corporation, its successors and assigns, so long as a mortgage on the Corporation's property is insured or held by the Federal Housing Commissioner.

(d) To engage in any kind of activity, and to enter into, perform, and carry out contracts of any kind, necessary to or incidental to the accomplishment of the purposes of the Corporation.

(e) Notwithstanding any of the above statements of purposes and powers, this Corporation shall not engage in activities that in themselves are not in furtherance of the purposes set forth in subparagraph (a) of Article II.

ARTICLE IV

The number of directors of the Corporation shall be nine, and the names and addresses of the persons who are to act as the first directors of this Corporation are:

<u>Names</u>	<u>Addresses</u>
Lonnie C. Wormley	7519 Cuvier Street La Jolla, California 92037
Marie F. Stephens	928 Diamond Street San Diego, California 92109
Francis J. Fo ^u ts	7415 Draper Street La Jolla, California 92037
Thomas C. Harden	6652 Avenida Manana La Jolla, California 92037
Douglas Nau	5835 Bellevue La Jolla, California 92037
Lawrence L. Angel	1251 Rhoda Drive La Jolla, California 92037

<u>Names</u>	<u>Addresses</u>
Robert Henkel	5432 La Jolla Hermosa La Jolla, California 92037
Doris Lowrie	5927 Soledad Mountain Road La Jolla, California 92037
M. D. Woodbury	2402 Loring Street San Diego, California 92109

The number of directors may be fixed or changed from time to time by amendment of the Articles of Incorporation of this Corporation or by amendment of the By-Laws of this Corporation adopted by the vote or written assent of the members of the Corporation entitled to exercise a majority of the voting power, or the vote of a majority of a quorum of a meeting of members called pursuant to the By-Laws.

ARTICLE V

The authorized number of members of the Corporation shall be three, and the initial members shall be SOFA, La Jolla Presbyterian Church and La Jolla United Methodist Church. The Board of Directors shall be constituted of three individuals from each member, and shall be an officer, director or member of SOFA, La Jolla Presbyterian Church or La Jolla United Methodist Church. If a director should cease to be an officer, director or member of SOFA, La Jolla Presbyterian Church or La Jolla United Methodist Church, that director shall also cease to be a director of the Corporation.

ARTICLE VI

The officers of the Corporation, as provided by the By-Laws of the Corporation, shall be elected by the directors of the Corporation in the manner therein set out, and shall serve until their successors are elected and have qualified.

UNION TITLE COMPANY

OF SAN DIEGO, CAL.

CAPITAL \$300,000

AND

TITLE INSURANCE AND TRUST COMPANY

OF LOS ANGELES, CAL.

CAPITAL AND SURPLUS \$2,500,000

SAN DIEGO OFFICES:

P.O. BOX 46

1028 SECOND STREET.

WILLIAM H. BURMAN, PRES.
O. F. BRANT, V. PRES.
O. P. CLARK, SECRET.
A. H. SWEET, CHAS. H. SWEET, JR.,
R. C. SPRING, J. H. SPRING,
F. W. STEARNS, J. H. STEARNS,
C. H. FORWARD, CHAS. H. FORWARD.

W. H. SALLER, J. H. SALLER, JR.,
O. F. BRANT, J. H. BRANT, JR.,
M. S. HELLMAN, J. H. HELLMAN, JR.,
H. W. O'MELVENY, NICE PRINCE,
L. J. BEYTON, W. L. BEYTON,
O. P. CLARK, S. W. CLARK,
W. M. CASWELL, J. H. CASWELL, JR.,
W. H. BURMAN, J. H. BURMAN, JR.,
H. C. ALLEN, J. H. ALLEN, JR.

LAW DEPARTMENT:
C. H. BROCK, J. H. BROCK, JR.,
J. N. HASTINGS, J. N. HASTINGS, JR.,
ERLE M. LEAF, ERLE M. LEAF, JR.,
CONSULTING COUNSEL:
O'MELVENY, MILLIKIN & FULLER.

95263

GUARANTEE

18-142

Made at the request of

After a careful examination of the records in the offices of the Clerk, the Recorder, the Auditor and the Tax Collector of the County of San Diego, State of California, and in the offices of the Auditor, the Tax Collector and the Superintendent of Streets of the City of San Diego, County of San Diego, State of California, in relation to the title to that certain tract of land hereinafter described, the

UNION TITLE COMPANY OF SAN DIEGO

a corporation, organized and existing under the laws of the State of California, and having its principal place of business at the City of San Diego, in the County of San Diego, State of California, certifies, and the

TITLE INSURANCE AND TRUST COMPANY

a corporation, organized and existing under the laws of the State of California, and having its principal place of business at the City of Los Angeles, in the County of Los Angeles, State of California, GUARANTEES that said title, as appears from said records, is vested in

City of San Diego,

a municipal corporation of the County of San Diego,

State of California.

Free from all encumbrances, except:

1. State and County taxes for the fiscal year 1921-22, now a lien, payable in October.
2. City taxes for the year 1921, now a lien, payable in June.

D E S C R I P T I O N .

Lot Three (3) in Block One (1) of F. T. Scripp's Addition to La Jolla Park, in the City of San Diego, County of San Diego, State of California, according to map thereof No. 897, filed in the office of the County Recorder of said San Diego County, July 22, 1903.

This Certificate and Guarantee does not include an examination of, or a report on:

1. Adverse and possessory claims or rights not shown by the official records hereinbefore mentioned.
2. Proceedings for municipal or district improvements involving local or special assessments, unless the amount of assessment therefor has become a lien of record in the manner provided by law.
3. Proceedings and assessments by any city other than San Diego for the improving of, or sewer in, any street or public place, forming an exterior boundary of the City of San Diego.
4. The validity of any tax sales, public assessments, attachments, leases, easements, declarations of homestead or money judgments mentioned in this Certificate and Guarantee.

Liability under this Certificate and Guarantee limited to \$ 1200.00

In Testimony Whereof, the UNION TITLE COMPANY OF SAN DIEGO has caused these presents to be duly signed by its President and attested by its _____ Secretary, under its corporate seal, and the TITLE INSURANCE AND TRUST COMPANY has caused these presents to be duly signed by its President, attested by its Assistant Secretary, under its corporate seal, and countersigned by its Manager this 2d day of April, 1921 at 9:00 A.M.

UNION TITLE COMPANY OF SAN DIEGO



By Geo. J. Forward President.

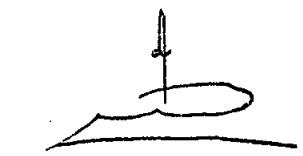
Attest: [Signature] Secretary.

TITLE INSURANCE AND TRUST COMPANY

By William H. Allen President.

Attest: [Signature] Assistant Secretary.

Unltd. #95263



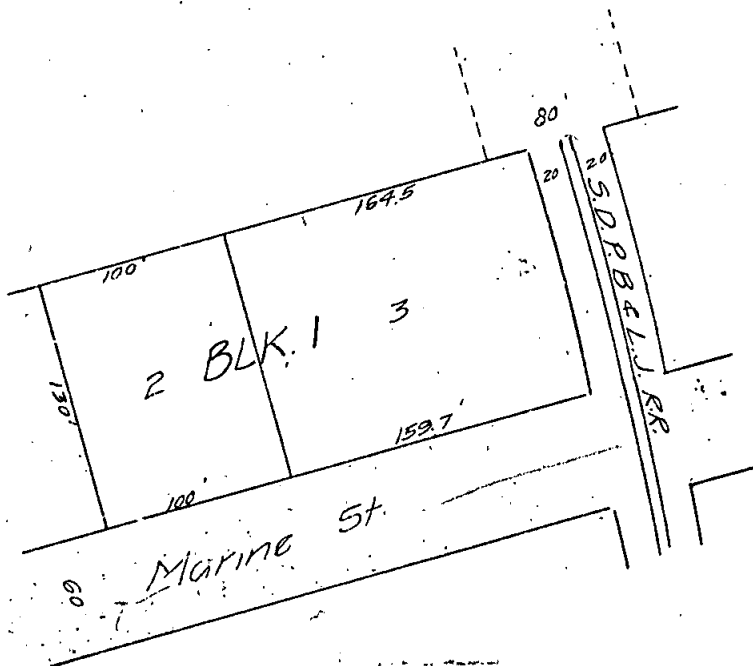
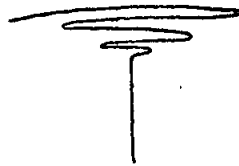
Plat Showing
Lot 3 Blk. 1

F.T. Scripps Add. to La Jolla Park

As per map thereof N^o 897

San Diego County

Cal.

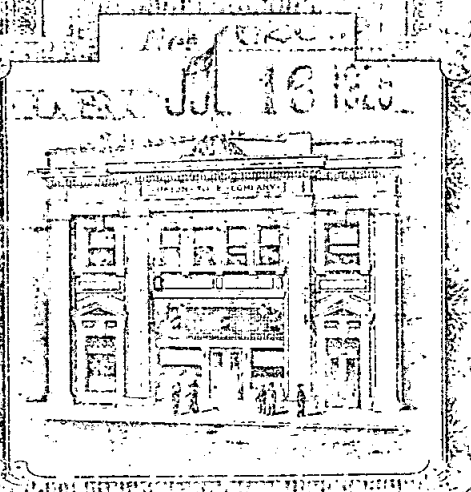


NUMBER

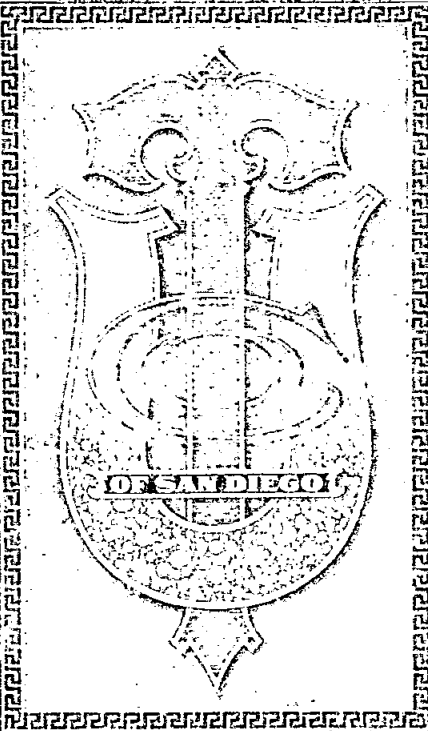
95263

UNION TITLE COMPANY

OF SAN DIEGO



CAPITAL
\$300,000.
1023 SECOND STREET
SAN DIEGO,
CALIFORNIA.



RESOLUTION NO. 216088

JUN 2 1976

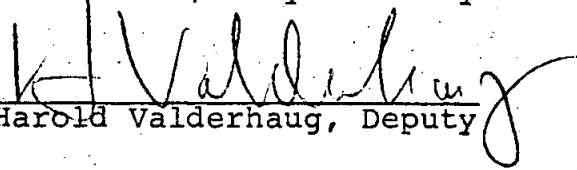
WHEREAS, the City owns three single family residences in La Jolla which were acquired several years ago as a part of the Fay Avenue extension project and at the present time the houses are leased to tenants who are certified to the City by the SOFA Organization; and

WHEREAS, it is desirable that the three residences continue to be rented to low income families and in order for such families to be able to afford to live in said residences it is necessary and desirable that the rent be fixed at an amount which is less than the current fair market rental for the residences; and

WHEREAS, the fair market rental amounts for the three residences have been determined to be \$200, \$225 and \$250, respectively, and it is recommended that they be made available to low income families for \$90, \$100 and \$150, respectively; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to rent the residences at 7023 Fay Avenue, 6204 Beaumont, and 7127 Fay Avenue for a monthly rental of not less than \$90, \$100 and \$150, respectively, to low income families.

APPROVED: JOHN W. WITT, City Attorney

By 

Harold Valderhaug, Deputy

HOV:n

5-20-76

Or. Dept. PS&S Committee

OPTION AGREEMENT

THIS OPTION AGREEMENT is executed this _____ day of _____, 1972,
by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called
"CITY", and ^{La Jolla Manne Apartments Inc,} ~~STRONGLY ORIENTED FOR ACTION,~~ ^{non-profit} a California corporation, hereinafter
called "OPTIONEE".

RECITALS

I. The CITY is the owner of Lot 3, ^{Block 1} F. T. Scripps Addition to La Jolla Park,
Map 697 located in the City of San Diego, County of San Diego, State of California
and incorporated herein by this reference and hereinafter referred to as the "premises".

II. OPTIONEE desires to obtain an option to lease from CITY said premises for
the purpose of construction, operation and maintenance of apartments upon the terms
and conditions set forth in the form of Lease Agreement, a copy of which is attached
hereto and marked EXHIBIT A.

COVENANTS

A. CITY hereby grants to OPTIONEE an option for the period of one (1) year
from the date of execution of this Option Agreement by CITY, which date is hereinabove
first set forth, to lease from CITY the said premises on the terms and conditions
set forth in the Lease Agreement attached hereto and marked EXHIBIT A. This Option
Agreement is subject to the terms and conditions herein, and may not be exercised
until said terms and conditions have been performed.

B. The consideration to CITY for granting this option shall be OPTIONEE'S
diligent attempt to carry out all of the terms and conditions of this option. As
further consideration for this option, in the event OPTIONEE decides not to exercise
its option to lease said property, OPTIONEE will deliver to CITY, all of OPTIONEE'S

engineering, architectural, feasibility and economic studies, drawings, reports and related materials prepared in connection with said premises.

C. This option may be exercised by OPTIONEE at any time prior to expiration of one (1) year from the date of execution hereof upon OPTIONEE first having performed to the satisfaction of the City Manager of CITY all of the terms and conditions of this Option Agreement as herein set forth.

OPTIONEE shall have the right to terminate this option at any time. If OPTIONEE fails to exercise this option in accordance with its terms and within the option period or an extension thereof, then this option and the rights of OPTIONEE shall automatically and immediately terminate without notice. Thereafter OPTIONEE covenants and agrees that they will properly execute, acknowledge and deliver to CITY within ten (10) days of request therefor, a quitclaim deed or any other document required by CITY or a title insurance company to verify the termination of this option agreement and will deliver to CITY at the same time the information called for in Paragraph B above.

D. CITY, its agents, officers and employees, shall not be liable, nor be held liable, for any claims, liabilities, penalties, fines, or for any damage to the goods, properties or effects of OPTIONEE or any of OPTIONEE'S representatives, agents, employees, guests, licensees, invitees, patrons or of any other person whomever, nor for personal injuries to, or deaths of any person whether caused by or resulting from any act or omission of OPTIONEE in or about the said premises, or any act or omission of any person or from any defect in any part of the said premises or from any other cause or reason whatsoever, except negligence of CITY. OPTIONEE further agrees to indemnify and save free and harmless CITY and its authorized agents, officers and employees against any of the foregoing liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor. Provided, however, that this provision shall not apply to any injury, death or property damage caused by CITY, its officers, employees or authorized agents.

E. By authorizing execution of this Option Agreement, the City Council of CITY is not obligated to take any other action relating to development of said property.

F. OPTIONEE may not assign this agreement or any interest therein without prior written approval of CITY. In the event an attempted assignment is made in violation of this provision then OPTIONEE'S rights under this agreement shall automatically terminate without notice.

TERMS AND CONDITIONS

1. CITY hereby grants OPTIONEE the right to go upon said premises for the purpose of making soil evaluations, engineering analyses and other site investigations upon filing with CITY evidence of insurance adequate, in the opinion of City Manager, to protect the CITY and the public for hazards resulting from OPTIONEE occupancy. OPTIONEE shall have no vested or possessory interest in said premises while this option remains unexercised, and CITY retains the right to use and enjoy its present possession of said premises.

2. Within nine (9) months from the date of this option, OPTIONEE must:

- a. Submit to CITY a Precise Plan of Development of said premises satisfactory to the City Manager. Said Precise Plan shall include a plot plan and sketch showing the location, architectural theme, schedule of construction and general exterior design and uses of all improvements including buildings, parking areas, landscape areas and appurtenant structures. Said Precise Plan shall be drawn on standard City of San Diego Engineering Department "D" Sheets. Upon City Manager's approval of said Precise Plan, it shall be filed in the Office of the City Clerk and the document number thereof shall be inserted in the space provided on the first page of said EXHIBIT B hereof. Approval of said Precise Plan by the City Manager shall not waive or be construed to waive any Federal, State, County or

Municipal law, code, ordinance or regulation having any jurisdiction over the development of said premises and the construction of any improvement thereon. OPTIONEE shall secure compliance with all such laws, codes, ordinances and regulations at its sole expense, including but not limited to the payment of all fees, charges and assessments, if any, necessary to develop the premises in accordance with said Precise Plan.

- b. An engineering report issued by a licensed engineer, ~~or~~ engineering firm ^{or architect} showing the project to be feasible from an engineering standpoint.
 - c. Submit evidence satisfactory to the City Manager of ability to finance the cost of construction of improvements as proposed in said Precise Plan including assurance of disbursement of funds for 100% of the cost of said construction.
 - d. Submit a copy of a preliminary title report issued by a recognized title company showing the condition of the title of the property to be conveyed and a statement that OPTIONEE and Lender are willing to accept title subject to the terms listed therein.
 - e. Upon receipt of City Manager's written approval of said Precise Plan, apply for and obtain rezoning compatible with the uses proposed in said Precise Plan.
- COMPLETED**
- e.f. Incorporate as a legal California corporation for the purpose of operating the premises to be leased and provide CITY with a copy of the Articles of Incorporation which shall not be inconsistent or in conflict with the terms of the lease agreement.

3. It is mutually understood and agreed by the parties that zoning or Conditional Use Permits are legislative acts solely the prerogative of the Council of the City of San Diego acting independently of this agreement and pursuant to the Charter and Municipal Code of the City of San Diego and that no representations or assurances are made under this agreement relating to the Council's action upon the application for such zoning, Conditional Use Permit, or other legislative acts.

4. In the event OPTIONEE is unable to secure proper zoning or Conditional Use Permit, other legislative acts or satisfactory compliance of the conditions of option within the time limits specified, then this option may be terminated by either party without liability or payment of damages other than as may be specifically specified herein.

5. If the items listed in Paragraph 2 above are adequate in the opinion of the City Manager to give reasonable assurance that the project can and will be built as proposed, City Manager will so notify OPTIONEE. OPTIONEE may then exercise its option to lease said property by the execution of the lease agreement in the form attached hereto as EXHIBIT A. City Manager shall also execute said agreement without necessity for further action by the Council of the City of San Diego. Items (a) through (E) listed in Paragraph 2 hereinabove, will be attached to said lease agreement as EXHIBITS (A) through (E).

6. In the event any or all of said items listed above are not adequate in the opinion of the City Manager to give said reasonable assurance, then OPTIONEE shall have the three (3) remaining months of this option period to amend or revise said items to City Manager's satisfaction.

7. By written consent of the City Manager of CITY, the period within which this option may be exercised may be extended for an additional three (3) months, if in the opinion of City Manager OPTIONEE is unable to complete the conditions of this agreement due to circumstances beyond the control of OPTIONEE.

8. OPTIONEE shall exercise this option by giving CITY written notice of his election to do so, accompanied by a written Lease Agreement on the premises in the form of said EXHIBIT A executed by OPTIONEE in triplicate. CITY'S failure to execute the lease prior to the expiration of the term of this option shall not invalidate the Lease Agreement nor nullify OPTIONEE'S timely notice of his election to exercise this option unless notified in writing by CITY that OPTIONEE has not complied with the conditions of this Agreement. Determination of satisfactory performance of any and all of the conditions of this option and all approvals and consents required by CITY for OPTIONEE'S timely performance hereunder shall vest with the City Manager of CITY and such approvals and consents shall not be unreasonably withheld.

9. Upon the performance of the conditions herein contained to the satisfaction of the City Manager, and the exercise by OPTIONEE of this option in the manner provided in Paragraph 8 hereinabove, City Manager shall forthwith, without need for further authorization of the City Council of CITY, execute for and on behalf of CITY that Lease Agreement in the form of said attached EXHIBIT A.

IN WITNESS WHEREOF, this agreement is executed by CITY acting by and through its City Manager under and pursuant to Resolution No. _____ authorizing such execution and by OPTIONEE acting by and through its authorized officers.

THE CITY OF SAN DIEGO

Date _____

By _____
City Manager

STRONGLY ORIENTED FOR ACTION

By _____

By _____

APPROVED as to form and legality this _____ day of _____, 1972.

JOHN W. WITT, City Attorney

By _____
Deputy

BWH:gl

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER: *3/21 what happened 45*

TO:

CITY ATTORNEY

2. FROM: (ORIGINATOR)

Housing and Community Services

3. DATE

MAR 17 1977

4. SUBJECT:

Marine and Cuvier Site in La Jolla, Lease Agreement

5. PREPARATION OF:



RESOLUTION(S)



ORDINANCE(S)



AGREEMENT(S)



DEED(S)

Authorizing the City Manager to execute a 50-year lease with SOFA (Strongly Oriented For Action, a non-profit corporation), hereinafter called "lessee" for the City-owned property at Marine and Cuvier, said site to be used for the construction and operation of an 8-unit low-income family housing project under the U.S. Department of Housing and Urban Development Section 8 Housing Assistance Payment Program.

✓ Authorizing the removal of the bonded covenant on the Utility Department property at Marine and Cuvier, La Jolla, and replacing the bonded covenant on 4.8 acres of City-owned land in the 4400 Block, South side of Federal Blvd., legally known as a Portion of Lot 19, Horton's Purchase; ~~on such other property of comparable value.~~

✓ An Ordinance waiving the requirement of an independent fee appraisal on the property to be leased as set out in M.C. 220901.

6. SUPPORTING INFORMATION: (INCLUDE ONLY INFORMATION NOT COVERED ON FORM 1472A, "DOCKET SUPPORTING INFORMATION".)

City Clerk: Please send duplicate and three copies of the Lease Agreement and Resolution to: Edward W. Schuller - Housing Production - M.S. #500.

NOTE:

See City Manager Report.

**REPORT
TO
COUNCIL**

CHECK IF ITEM IS TO BE LISTED ON CONSENT AGENDA ☐

7. FOR INFORMATION CONTACT: (NAME & MAIL STA.)

8. TELEPHONE NO.

Edward W. Schuller

500

5567

9. CHECK IF "DOCKET SUPPORTING INFORMATION" ATTACHED ☐

10. COMPLETE FOR ACCOUNTING PURPOSES:

FUND	BUDGETED	UNBUDGETED
DEPT. & FUNCTION		
OBJECT ACCOUNT		
COST ACCOUNT		
WORK ORDER NO.		
C.I.P. NO.		
AMOUNT		

11. ROUTING AND APPROVALS

ROUTE (✓)	APPROVING AUTHORITY	APPROVAL	DATE SIGNED
✓	DEPARTMENT DIRECTOR	Housing & Community Services RB Kers	3/17/77
	CLEARING AUTH.	Affirm. Action	
	CLEARING AUTH.	Virginia Schuller	3/17/77
	DEPUTY CITY MANAGER		3/17
	AUDITOR		
✓	CITY ATTORNEY	H. Valderhaug	
✓	ORIGINATING DEPARTMENT		
	CITY MANAGER		
✓	CITY CLERK		

12. ESTIMATED COST:

DATE ISSUED:

FOR DOCKET OF:

SUBJECT: Marine and Cuvier Site in La Jolla, Lease Agreement

On the docket are resolutions authorizing the City Manager to execute a 50-year lease with SOFA (Strongly Oriented for Action, a non-profit corporation), hereinafter called "LESSEE" for the City-owned property at Marine and Cuvier, said site to be used for the construction and operation of an 8-unit low-income family housing project under the U.S. Department of Housing and Urban Development Section 8 Housing Assistance Payment Program.

RECOMMENDATION

That the Resolutions be adopted.

Background

On February 24, 1976 by Resolution No. 215406 the City Council authorized the City Manager to negotiate an exclusive option to lease agreement with SOFA for the purpose of developing subsidized family housing under the terms of the United States Department of Housing and Urban Development (HUD) Section 8 New Construction Program.

HUD has subsequently approved this site for Section 8 housing as well as the draft lease between the City and SOFA. SOFA has agreed to construct eight (8) housing units on this site and to make these housing units available for low-income families during the entire term of this lease, pursuant to the HUD Section 8 Program or pursuant to any other available local, state or federally sponsored rent subsidy program in effect during the term of this lease. SOFA will serve as the sponsor for this development, and will undertake operation and maintenance of the units upon completion.

An economic feasibility analysis of this housing project indicates that initially a 100% discount on the ground rent will be required in order to stay within the allowable HUD fair market rent. Under the term of the lease, the City would annually review and approve the records, accounts

and expenses of LESSEE, and all income over and above the operating expenses of the projects will be applied to the rent of the site from the City.

SOFA has fulfilled the requirements of their exclusive option to lease agreement and wish to enter into a lease immediately in order to proceed with the development of this project.

The Marine and Cuvier, La Jolla site is part of the City-owned land included in the Utilities Department's surplus property inventory. To make this site available for lease to SOFA, an exchange of sites for one of comparable appraised value is necessary. The 4.8 acres City-owned site, located in the 4400 block on the south side of Federal Boulevard, described in the City's Real Property Marketing Catalog on pages 26 and 27, meets the exchange requirements and is acceptable by the Utilities Department as meeting the value of the Marine and Cuvier property.

FISCAL IMPACT:

It is anticipated that by totally discounting the ground rent SOFA will be receiving a city subsidy of approximately \$13,488.00 per year. This represents an 8% return on the \$168,600.00 site appraised valuation.

Respectfully submitted,

R. E. GRAHAM
Deputy City Manager

ROSS/EWS