



THE CITY OF SAN DIEGO

June 15, 2006

Dear Lessees:

Effective immediately please make a correction to the General Provisions section of your lease outline with the City of San Diego.

Under the NOTICES section there is a paragraph informing lessees where to mail any written notices. This needs to be changed to the following address:

City of San Diego
Real Estate Assets Department
Attention: Real Estate Assets Director
1200 Third Avenue, Suite 1700 (M. S. 51A)
San Diego, CA 92101-9586

Sincerely,

James Barwick
Real Estate Assets Director

KC/cj

I:\WPO\2006\L-LESSEES.doc



Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706

ORIGINAL

THE CITY OF SAN DIEGO

THE VIETNAMESE FEDERATION OF SAN DIEGO,
a California Corporation

PROPERTY USE AGREEMENT

DOCUMENT NO. W-10382-1
FILED FEB 10 1997
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

PROPERTY USE AGREEMENT OUTLINE

SECTION 1: USES	1
1.1 <u>Uses</u>	1
1.2 <u>CITY Use</u>	1
1.3 <u>Public Use</u>	1
SECTION 2: TERM	2
2.1 <u>Term</u>	2
SECTION 3: CONSIDERATION	2
3.1 <u>Consideration</u>	2
3.2 <u>Default</u>	2
3.3 <u>Assignment/Subletting/Encumbrance</u>	2
3.4 <u>Inspection of Records</u>	2
SECTION 4: INSURANCE	5
4.1 <u>Insurance</u>	5
4.2 <u>Waste, Damage, or Destruction</u>	7
4.3 <u>Indemnity</u>	7
SECTION 5: MAINTENANCE	8
5.1 <u>Maintenance</u>	8
5.2 <u>Improvements</u>	8
5.3 <u>Liens</u>	8
5.4 <u>Taxes</u>	8
5.5 <u>Hazardous/Toxic Waste</u>	8
5.6 <u>Asbestos Disclosure</u>	10
SECTION 6: GENERAL PROVISIONS	10
6.1 <u>Notices</u>	10
6.2 <u>Political Activities</u>	11
6.3 <u>Compliance with Law</u>	11
6.4 <u>City Approval</u>	11
6.5 <u>Nondiscrimination</u>	11
6.6 <u>Compliance with City's Equal Opportunity Contracting Program</u>	12
6.7 <u>Partial Invalidity</u>	13
6.8 <u>Legal Fees</u>	13
6.9 <u>Number and Gender</u>	13
6.10 <u>Captions</u>	13
6.11 <u>Entire Understanding</u>	13
6.12 <u>City Employee Participation Policy</u>	14

6.13	<u>Drug-Free Workplace</u>	14
6.14	<u>Disabled Access Compliance</u>	15
SECTION 7:	SPECIAL PROVISIONS	16
7.1	<u>Bylaws</u>	16
7.2	<u>Corporate Authority</u>	16
7.3	<u>Standard of Employees</u>	16
7.4	<u>Relocation Payments</u>	16
7.5	<u>Option to Purchase</u>	16
SECTION 8:	SIGNATURE PAGE	18
SECTION 9:	EXHIBITS	19
9.1	<u>Legal Description</u>	19
9.2	<u>Exhibit B Community Services</u>	20
9.3	<u>Exhibit C - Parcel Map(s)</u>	21
9.4	<u>Exhibit E - Corporate Name</u>	22

PROPERTY USE AGREEMENT

This PROPERTY USE AGREEMENT, hereinafter called "Agreement," is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and The Vietnamese Federation of San Diego, a California Corporation, hereinafter called "The Vietnamese Federation."

CITY is the legal owner of a 25% undivided interest in that certain real property "Premises" situated in the CITY of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this Agreement, also commonly known as 7833 Linda Vista Road, whereas, the Vietnamese Federation is the legal owner of the remaining 75% undivided interest in the subject real property.

SECTION 1: USES

- 1.1 Uses. It is expressly agreed that the Premises are to be used by the Vietnamese Federation solely and exclusively for the purposes of providing community services as described in Exhibit "B" and for such other incidental purposes as may be first approved in writing by the CITY Manager and for no other purpose whatsoever.

The use of the Premises for any unauthorized purpose shall constitute a substantial default and subject this agreement to termination at the sole option of the CITY.

- 1.2 CITY Use. The premises shall be available to CITY for civic events and special programs, free of charge, except where The Vietnamese Federation has scheduled events or programs. After every CITY use, the premises shall be left in the same condition found, and The Vietnamese Federation shall not be required to incur any additional costs by reason of CITY use.
- 1.3 Public Use. The general public shall not be wholly or permanently excluded from any portion of the premises. The Vietnamese Federation may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public and are designed to allow The Vietnamese Federation to use the premises for the purposes specified herein. The Vietnamese Federation agrees that all activities conducted on the premises will be as stated in Section 1.1, Uses, hereof.

The Vietnamese Federation shall, at all times during the agreement term, maintain a CITY-approved sign identifying the property as City-owned and available for public use consistent with the terms of this agreement. The sign shall be installed by The Vietnamese Federation at a location agreeable to CITY.

SECTION 2: TERM

- 2.1 Term. The term of this agreement shall be Fifty (50) years commencing on the date of execution hereof by CITY.

SECTION 3: CONSIDERATION

- 3.1 Consideration. Consideration for this agreement shall be a Six Hundred Dollars (\$600.00) per year Agreement Fee payable by the Vietnamese Federation in advance on the first day of each year. Checks should be made payable to the City Treasurer and mailed to the office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, San Diego, California. This Agreement Fee amount shall be prorated at the commencement and termination of this Agreement.
- 3.2 Default. In the event that the Vietnamese Federation shall default in the performance of any covenant or condition required by this Agreement to be performed by the Vietnamese Federation and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any default is not curable within thirty (30) days, and the Vietnamese Federation shall fail to commence to cure the default(s) within said thirty (30) day period, then CITY may, at its option, without further notice, terminate this agreement.
- 3.3 Assignment/Subletting/Encumbrance. Vietnamese Federation shall not assign or sublease any interest herein or any right or privilege appurtenant hereto, or suffer any other person, except employees, agents, and guests of Vietnamese Federation, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance.
- Vietnamese Federation shall not encumber the premises.
- 3.4 Inspection of Records.

- a. Records. The Vietnamese Federation shall, at all times during the agreement term, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day.

In the event of admission charges or rentals, The Vietnamese Federation shall issue serially numbered tickets for each such admission or rental and shall keep an adequate record of such tickets, as well as a record of unissued tickets..

All retail sales and charges may be recorded by a system other than cash registers or other comparable devices provided such system is approved by CITY.

- b. Financial Statements. Within sixty (60) days after the end of each Agreement year as previously established herein, The Vietnamese Federation will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of rents paid CITY for the year are classified according to the categories of business established for any percentage rental and for any other business conducted on or from the premises. Said statement shall be signed by The Vietnamese Federation or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon The Vietnamese Federation.
- c. Right to Inspect. All The Vietnamese Federation's books of account, records, and supporting documentation, as described under Section 3.5a. hereinabove, will be kept for at least five (5) years and made available to CITY in one location within the

City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the premises. The CITY, at its discretion, shall have the right to inspect and audit the business of The Vietnamese Federation, its agents, sublessees, concessionaires, and licensees operating on and in connection with the premises as necessary and appropriate for CITY to determine the amounts of rent due CITY in compliance with the requirements of this agreement.

At CITY'S request, The Vietnamese Federation shall promptly provide, at The Vietnamese Federation's expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for Agreement information or reports concerning the premises. Such data will include, if required, a detailed breakdown of The Vietnamese Federation's receipts and expenses.

d. Audit Cost. The full cost of CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case The Vietnamese Federation hereby agrees to pay CITY'S cost of audit(s):

- (1) The audit(s) reveal an underpayment of more than five percent (5%) or more than \$10,000, whichever is less, between the rent due as reported and paid by The Vietnamese Federation pursuant to this Agreement and rent due as determined by the audit(s); or
- (2) The Vietnamese Federation has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this section hereof.

The Vietnamese Federation shall pay any deficiency determined by the audit(s) plus interest on such amount within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against incoming rents. Any overpayment determined after the end of this agreement will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- e. Default. The Vietnamese Federation's failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Agreement, a breach of this Agreement and cause for termination.

SECTION 4: INSURANCE

4.1 Insurance. The Vietnamese Federation shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or The Vietnamese Federation or by authorized representatives of CITY or The Vietnamese Federation on or in connection with the use or operation of the premises.
- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and The Vietnamese Federation. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the premises, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

The Vietnamese Federation's responsibility to maintain said insurance also includes the following:

- (3) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in

of the Agreement, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the Agreement. At least thirty (30) days prior to the expiration of each policy, The Vietnamese Federation shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Agreement.

- (4) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving The Vietnamese Federation sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. The Vietnamese Federation also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.
- (5) Accident Reports. The Vietnamese Federation shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (6) Failure to Comply. If The Vietnamese Federation fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. The Vietnamese Federation shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by The Vietnamese Federation on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection, if The Vietnamese Federation fails or refuses to take out or maintain insurance as required in this Agreement or fails to provide the proof

of insurance, CITY has the right to declare this Agreement in default without further notice to The Vietnamese Federation, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 4.2 Waste, Damage, or Destruction. The Vietnamese Federation agrees to give notice to CITY of any fire or other damage that may occur on the Premises within ten (10) days of such fire or damage. The Vietnamese Federation 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 CITY. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, The Vietnamese Federation 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, at CITY'S option, The Vietnamese Federation agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in the Insurance section hereof.

The Vietnamese Federation agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by The Vietnamese Federation within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

- 4.3 Indemnity. The Vietnamese Federation agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to The Vietnamese Federation's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the Premises or the work and operations to be performed by the Vietnamese Federation, its employees, invitees, guests or agents under this Agreement, and all expenses of investigating and defending against same; provided, however, that the Vietnamese Federation's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence,

or sole willful misconduct of the CITY, its agents, officers, or employees.

SECTION 5: MAINTENANCE

- 5.1 Maintenance. The Vietnamese Federation agrees to assume full responsibility and all costs for the operation and maintenance of the Premises throughout the term. The Vietnamese Federation will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and with all applicable laws. The Vietnamese Federation agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the Premises.
- 5.2 Improvements. Any and all improvements, structures, installations, or demolition shall require prior written approval by the CITY Manager.
- 5.3 Liens. The Vietnamese Federation shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs against such claims, including reasonable attorney's fees.

The Vietnamese Federation will file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

- 5.4 Taxes. The Vietnamese Federation agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon the Vietnamese Federation, CITY, or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, maintained by the Vietnamese Federation or levied by reason of the business or other Vietnamese Federation activities related to the real property, including any licenses or permits. The Vietnamese Federation recognizes and agrees that this Agreement may create a possessory interest subject to the payment of taxes levied on such interest, and that The Vietnamese Federation shall pay all such possessory interest taxes. The Vietnamese Federation further agrees that payment of such taxes, fees and assessments will not reduce any Agreement fees due CITY.
- 5.5 Hazardous/Toxic Waste. It is understood that prior to the execution of this Agreement, The Vietnamese Federation was the previous

owner of the entire Premises and assumes all past, present and future liability and/or responsibility for any hazardous/toxic waste in, on, under, or from the Premises.

The Vietnamese Federation will not allow the installation of underground storage tanks or release of hazardous substances in, on, under, or from the Premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the CITY Clerk as Document 769704 and by this reference is incorporated herein.

In the event of any release of a hazardous substance, the Vietnamese Federation shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

The Vietnamese Federation agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from the Vietnamese Federation's operations on the Premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If the Vietnamese Federation knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Premises, the Vietnamese Federation shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if the Vietnamese Federation knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, the Vietnamese Federation shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. The Vietnamese Federation will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the

Premises. In addition, the Vietnamese Federation shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this Agreement, the Vietnamese Federation, at CITY'S sole option, shall cause an environmental assessment of the Premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of the Vietnamese Federation and shall establish what, if any, hazardous substances exist on, in, or under the Premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. The Vietnamese Federation shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 5.6 Asbestos Disclosure. It is understood that prior to the execution of this Agreement, The Vietnamese Federation was the previous owner of the entire Premises and assumes all past, present and future liability for any asbestos contained in, on, under, or from the Premises.

CITY discloses to the Vietnamese Federation that portions of the structural components of the Premises may contain asbestos. The Vietnamese Federation acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. The Vietnamese Federation shall disclose the existence of asbestos on the Premises, as required by Health and Safety Code Section 25915. The Vietnamese Federation agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.

SECTION 6: GENERAL PROVISIONS

- 6.1 Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to The Vietnamese Federation at the Premises or at such other address designated in writing by The Vietnamese Federation; and to CITY as follows:

City Manager
Attention Real Estate Assets Manager
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this Agreement may by like notice designate a different address to which notices shall be sent.

- 6.2 Political Activities. The Premises shall be used exclusively for the purposes specified in the Use section, hereof. The Premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that The Vietnamese Federation shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 6.3 Compliance with Law. The Vietnamese Federation shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at The Vietnamese Federation's sole cost and expense. In addition, The Vietnamese Federation shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.
- 6.4 City Approval. The approval or consent of CITY, wherever required in this Agreement, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 6.5 Nondiscrimination. The Vietnamese Federation agrees not to discriminate in any manner against any person or persons on account

of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in The Vietnamese Federation'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.

6.6 Compliance with City's Equal Opportunity Contracting Program.

- a. **Equal Opportunity Contracting.** The Vietnamese Federation acknowledges and agrees that it is aware of, and will comply with, CITY Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the CITY Clerk and by this reference is incorporated herein. The Vietnamese Federation and all of its subcontractors are individually responsible to abide by its contents.

The Vietnamese Federation will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. The Vietnamese Federation will not discriminate against any employee or applicant for employment on any basis prohibited by law.

The Vietnamese Federation submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that The Vietnamese Federation will take to achieve the CITY'S commitment to equal employment opportunities.

The Vietnamese Federation agrees to insert the foregoing provisions in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor. The Vietnamese Federation agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

- b. **Local Business and Employment.** The Vietnamese Federation acknowledges that the CITY of San Diego seeks to promote employment and business opportunities for local residents and

firms in all CITY contracts. The Vietnamese Federation will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. The Vietnamese Federation agrees to hire qualified local residents and firms whenever feasible.

The Vietnamese Federation understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Agreement.

- 6.7 Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 6.8 Legal Fees. In the event of any litigation regarding this Agreement, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 6.9 Number and Gender. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 6.10 Captions. The Agreement section headings and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Agreement.
- 6.11 Entire Understanding. This Agreement contains the entire understanding of the parties. The Vietnamese Federation, by signing this Agreement, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself. Each of the parties in this Agreement agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement.

The failure or refusal of any party to read the Agreement or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Agreement will be valid unless it is in writing and signed by all parties.

6.12 City Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or The Vietnamese Federation shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or The Vietnamese Federation employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or The Vietnamese Federation. It is not the intent of this policy that these provisions apply to members of the City Council.

6.13 Drug-Free Workplace. The Vietnamese Federation shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The Vietnamese Federation's policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.

- c. The Vietnamese Federation shall include in each agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. The Vietnamese Federation and sublessees shall be individually responsible for their own drug-free workplace programs.

6.14 Disabled Access Compliance. The Vietnamese Federation agrees to comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. The Vietnamese Federation's compliance shall include but not necessarily be limited to the following:

- a. The Vietnamese Federation shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of The Vietnamese Federation.
- c. The Vietnamese Federation shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- d. Where required by law, The Vietnamese Federation shall comply with CITY'S disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of The Vietnamese Federation.

The Vietnamese Federation understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Agreement.

SECTION 7: SPECIAL PROVISIONS

- 7.1 Bylaws. Membership in The Vietnamese Federation's organization shall be open to anyone meeting the requirements of its rules and bylaws. All restrictions, rules, bylaws, and fees, if any, and changes thereto proposed by The Vietnamese Federation's organization shall, before being put into effect, be submitted to and receive the written approval of the City Manager. Bylaws shall be on file in the office of the Real Estate Assets Department prior to CITY execution of this Agreement.
- 7.2 Corporate Authority. Each individual executing this Agreement on behalf of The Vietnamese Federation represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this Agreement is binding upon the corporation in accordance with its terms, and that The Vietnamese Federation is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify The Vietnamese Federation to do business in the state where the Premises are situated.
- 7.3 Standard of Employees. The Vietnamese Federation and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner.
- 7.4 Relocation Payments. The Vietnamese Federation understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this Agreement.
- ~~7.5 Option to Purchase. The Vietnamese Federation shall have an Option to Purchase the City's 25% interest in the Premises described in Exhibit "A" at any time during the term of this agreement, subject to the following conditions:~~
- ~~a. The Vietnamese Federation shall give a one hundred eighty (180) day notice to CITY of its intention to exercise it's Option to Purchase.~~
 - ~~b. The Vietnamese Federation agrees that in no event shall the purchase price be less than Three Hundred Sixteen Thousand Two Hundred Fifty Dollars (\$316,250).~~

- ~~c. The Vietnamese Federation shall open a ninety (90) day escrow with Stewart Title Company or other such title company approved by CITY. The Vietnamese Federation shall deposit twenty percent (20%) of the total purchase price at the opening of escrow with the balance all due and payable at the close of escrow.~~
- d. The Vietnamese Federation shall pay all title policy costs, escrow fees, and closing costs.
- e. The Option to Purchase is exclusive to the Vietnamese Federation herein and cannot be assigned or transferred to any third parties.
- f. This Agreement will terminate at the close of escrow upon the Vietnamese Federation exercising its Option to Purchase.

7.5 Option to Purchase. The Vietnamese Federation shall have an Option to Purchase the City's 25% interest in the Premises described in Exhibit "A" at any time during the term of this agreement, subject to the following conditions:

- a. The Vietnamese Federation shall give a one hundred eighty (180) day notice to CITY of its intention to exercise it's Option to Purchase.
- b. The Vietnamese Federation agrees that in no event shall the purchase price be less than Three Hundred Sixteen Thousand Two Hundred Fifty Dollars (\$316,250).
- c. The Vietnamese Federation shall open a ninety (90) day escrow with Stewart Title Company or other such title company approved by CITY. The Vietnamese Federation shall deposit twenty percent (20%) of the total purchase price at the opening of escrow with the balance all due and payable at the close of escrow.
- d. The Vietnamese Federation shall pay all title policy costs, escrow fees, and closing costs.
- e. The Option to Purchase is exclusive to the Vietnamese Federation herein and cannot be assigned or transferred to any third parties.
- f. This Agreement will terminate at the close of escrow upon the Vietnamese Federation exercising it's Option to Purchase.
- g. However, if the Vietnamese Federation does exercise the Option to Purchase for Three Hundred Sixteen Thousand Two Hundred Fifty Dollars (\$316,250), the Vietnamese Federation will continue to operate the community center for an additional ten (10) years beyond the close of escrow and such conditions shall be placed in the deed.

DD
12/9/96

SECTION 8: SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement is executed by CITY, acting by and through its City Manager, and by Vietnamese Federation, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date 2/12/97

By Robert J. Collins

THE VIETNAMESE FEDERATION OF
SAN DIEGO, a California Corporation

Date NOV 7, 1996

By [Signature]

Date _____

By _____

APPROVED as to form and legality this 19 day of November, 1996.

JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

RGR/dcj
9/20/96

I:\WPO\1996\REDON\FEDERATI.WPD

SECTION 9: EXHIBITS

9.1 Legal Description.

AN UNDIVIDED 25% INTEREST IN AND TO THAT CERTAIN REAL PROPERTY SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOT 1 OF VISTA VIEW UNIT NO. 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 5373, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, APRIL 20, 1964.

PARCEL 2:

THAT PORTION OF PARCEL "A" OF VISTA VIEW UNIT NO. 1, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 5373, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, APRIL 20, 1964, SAID PORTION HEREBY CONVEYED DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL "A"; THENCE ALONG THE FOLLOWING NUMBERED COURSES:

- 1) ALONG THE SOUTHERLY LINE OF SAID PARCEL "A" SOUTH, 89°04'34" EAST, 22.31 FEET;
- 2) PARALLEL TO THE WESTERLY LINE OF SAID PARCEL "A" NORTH, 10°29'23" EAST, 81.13 FEET TO THE NORTHERLY LINE OF SAID PARCEL "A";
- 3) ALONG SAID NORTHERLY LINE NORTH, 89°04'34" WEST, 22.31 FEET TO THE NORTHWEST CORNER OF SAID PARCEL "A";
- 4) ALONG THE WESTERLY LINE OF SAID PARCEL "A" SOUTH, 10°29'23" WEST, 81.13 FEET TO THE POINT OF BEGINNING.

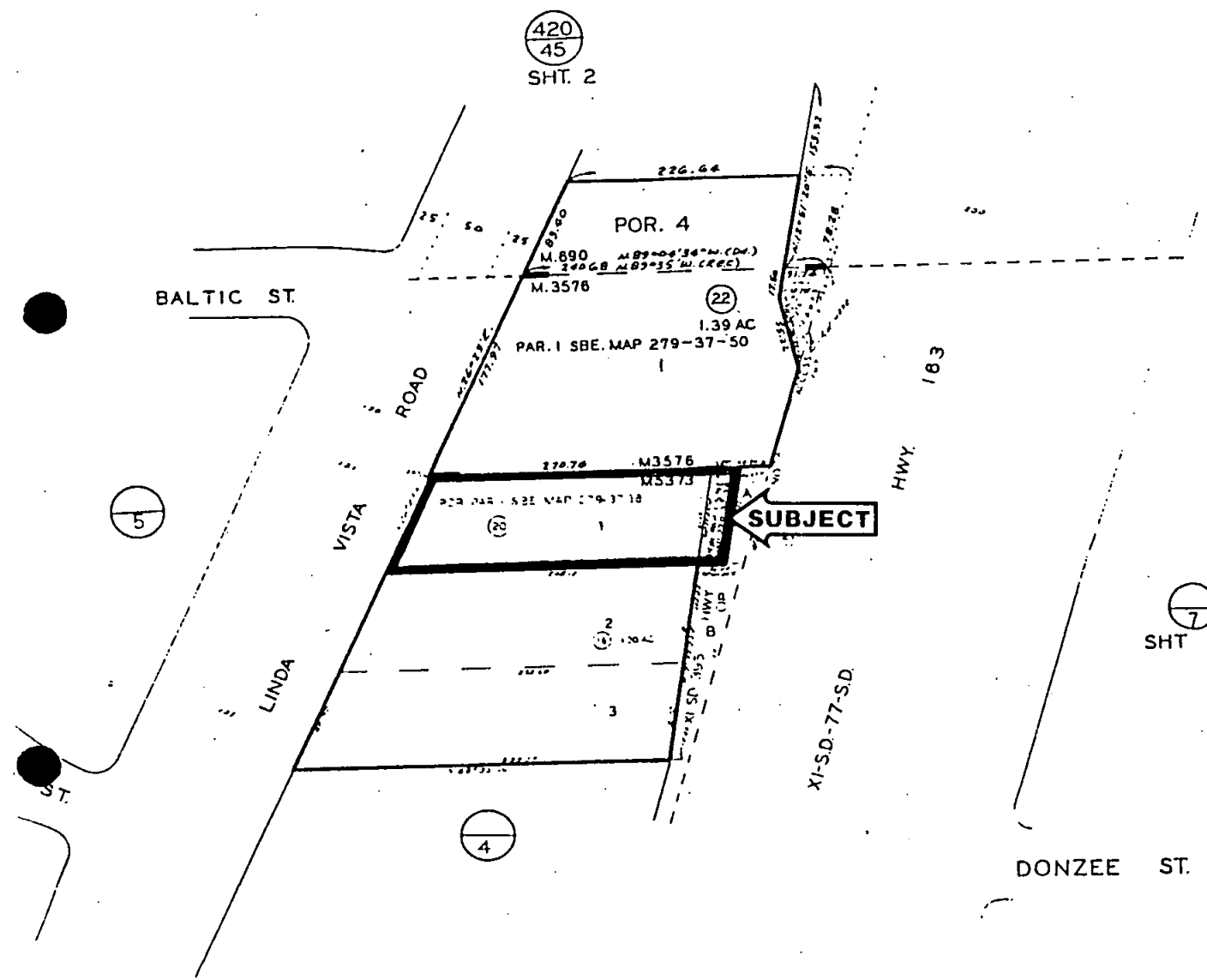
9.2 Exhibit B Community Services.

The following list describes all of the permitted uses under the terms of this Agreement:

- Community Cultural Events
- Resettlement Services
- Youth Tutorial
- Document Translation
- Public Safety Seminars
- Youth Diversion Activities
- Youth Athletic Activities
- Vietnamese Language Instruction
- Martial Arts Training
- Boy Scouts
- Medical Referral Services
- Youth Cultural Festivals
- Small Business Seminars
- Employment Counseling
- Job Training and Placement
- Child Care Referral Service
- Refugee Orientation
- Senior Citizen Activities

9.3 Exhibit C - Parcel Map(s).

92275 ⊕

[illegible]

MAP 5373 - VISTA VIEW UNIT NO. 1
MAP 3576 - LINDA VISTA HEIGHTS
MAP 690 - PUEBLO LANDS SUB OF E 1/2 LOT 1215

9.4 Exhibit E - Corporate Name.

The Vietnamese Federation of San Diego
CORPORATE NAME

I, Tien Bui, certify that I am the
president of the corporation named in the attached
Agreement; that Dien Do, who signed this Agreement on behalf
of the corporation, was then president of said corporation; that
said Agreement was duly signed for and on behalf of said corporation by authority
of its governing body, pursuant to a resolution duly adopted by its Board of
Directors on 10 - 15 -, 1996, and is within the scope of its
corporate powers; and that set out below are the names of the officers and
directors of said corporation.

By [Signature]

CORPORATE SEAL

Name

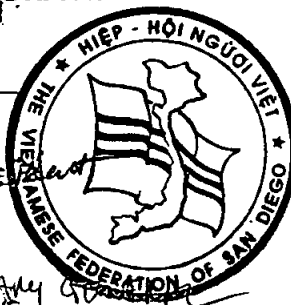
Sim P. Phien
1st Vice Title president

Name

NOYUA TRAN 2nd VICE PRESIDENT
Title

Name

Waukui TIAN BUI SECRETARY
Title



ORDINANCE NUMBER O- 18382 (NEW SERIES)

ADOPTED ON FEB 10 1997

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A FIFTY (50) YEAR PROPERTY USE AGREEMENT WITH THE VIETNAMESE FEDERATION OF SAN DIEGO; AUTHORIZING THE EXPENDITURE OF AN AMOUNT NOT TO EXCEED \$75,000 FROM CDBG FUND NO. 18532; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH CAROL K. STARK AND THE VIETNAMESE FOUNDATION OF SAN DIEGO TO EXTEND FOR TWO YEARS THE DUE AND PAYABLE DATE ON THE PRIVATE NOTE SECURED BY THE FIRST DEED OF TRUST AND WAIVE THE DUE ON SALE PROVISION.

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

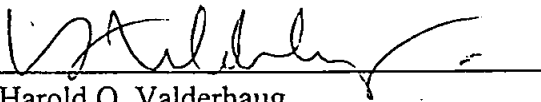
Section 1. That the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a fifty (50) year Property Use Agreement with the Vietnamese Federation of San Diego, under the terms and conditions set forth in that Property Use Agreement on file in the office of the City Clerk as Document No. OO- 18382 -1

Section 2. That the expenditure of an amount not to exceed \$75,000 from CDBG Fund No. 18532 toward the acquisition of property rights and related costs be and is hereby authorized.

Section 3. That the City Manager is hereby authorized to execute an Agreement with Carol K. Stark, and the Vietnamese Federation of San Diego, on file in the office of the City Clerk as Document No. OO- 18382 -2, to extend for two years the due and payable date on the Private Note held by Carol K. Stark, secured by the First Deed of Trust, and waive the Due on Sale provision.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Harold O. Valderhaug
Head Deputy City Attorney

HOV:cdk
01/03/97
Or.Dept:REA
O-97-70

Passed and adopted by the Council of The City of San Diego on
FEB 10 1997 by the following vote:

YEAS: MATHIS, WEAR, STEVENS, WARDEN, STALLINGS, MCCARTY,
VARGAS, MAYOR GOLDING.

NAYS: NONE.

NOT PRESENT: KEHOE.

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

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

(Seal)

By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O-18382 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on JAN 27 1997 and on FEB 10 1997.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

California

(Seal)

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

By: Peggy Rogers, Deputy

(O-97-70)

ORDINANCE NUMBER O-18382 (NEW SERIES)

ADOPTED ON FEBRUARY 10, 1997

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A FIFTY (50) YEAR PROPERTY USE AGREEMENT WITH THE VIETNAMESE FEDERATION OF SAN DIEGO; AUTHORIZING THE EXPENDITURE OF AN AMOUNT NOT TO EXCEED \$75,000 FROM CDBG FUND NO. 18532; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH CAROL K. STARK AND THE VIETNAMESE FOUNDATION OF SAN DIEGO TO EXTEND FOR TWO YEARS THE DUE AND PAYABLE DATE ON THE PRIVATE NOTE SECURED BY THE FIRST DEED OF TRUST AND WAIVE THE DUE ON SALE PROVISION.

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

Section 1. That the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, a fifty (50) year Property Use Agreement with the Vietnamese Federation of San Diego, under the terms and conditions set forth in that Property Use Agreement on file in the office of the City Clerk as Document No. OO-18382-1.

Section 2. That the expenditure of an amount not to exceed \$75,000 from CDBG Fund No. 18532 toward the acquisition of property rights and related costs be and is hereby authorized.

Section 3. That the City Manager is hereby authorized to execute an Agreement with Carol K. Stark, and the Vietnamese Federation of San Diego, on file in the office of the City Clerk as Document No. OO-18382-2, to extend for two years the due and payable date on the Private Note held by Carol K. Stark, secured by the First Deed of Trust and waive the Due on Sale provision.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By _____
Harold O. Valderhaug
Head Deputy City Attorney

HOV:cdk
01/03/97
Or.Dept:REA
O-97-70