

EXHIBIT A

LEASE AGREEMENT

THIS LEASE AGREEMENT (which is sometimes referred to herein as "lease" and sometimes as "agreement") is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY" and GENTRY & COLES, a general partnership, hereinafter called "LESSEE."

RECITALS

1. The CITY owns certain parcels of property which by Resolution No. 218060 adopted by the City Council on April 5, 1977, were specified as being available to developers who would agree to develop and maintain housing units which would be made available to low-income citizens during the term of the lease.

2. LESSEE as consideration for this lease has agreed to construct 253 apartment units on the property and has agreed to make twenty percent (20%) of these units available to the Housing Authority of the CITY or its successor, during the entire term of this lease, either pursuant to the United States Department of Housing and Urban Development (hereinafter called "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. Lessee agrees to facilitate the accommodation of handicapped persons at the request of the Housing Authority.

3. The parties hereto specifically agree that the purpose and intent of this lease and the development on the leased property is to allow for the development and operation of 253 units of housing of which twenty percent (20%) of the apartment units will be available to the Housing Authority of the CITY or its successor 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.

1. DEMISED PREMISES. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the CITY, County of San Diego, State of California, described and delineated on Exhibit 1 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 purposes of constructing and operating a multiple residential apartment project and a family housing project (Project) and for such other related or incidental purposes as may first be approved in writing by the CITY and for no other purpose.

DOCUMENT NO. 763729

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OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

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 and to rent all units other than two manager's units and other than the 20% low income units at the fair market value.

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 of 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. This agreement shall be effective immediately and shall extend for forty years computed from the first day of the calendar month following the date of issuance of a Certificate of Occupancy by CITY or July 1, 1979, whichever date or event first occurs.

B. SURRENDER OF PREMISES. At the expiration or earlier termination of the 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 free and clear of all liens and encumbrances.

III. CONSIDERATION.

A. The rent shall be paid by LESSEE to CITY at the office of the City Treasurer, City Operations Building, The Charles C. Dail Concourse, San Diego, California 92101, and shall be as follows:

1. Construction Period. Beginning upon the effective date of this agreement and ending on the date of issuance of a final certificate of occupancy for the Project by CITY or on July 1, 1979, whichever date or event first occurs, LESSEE shall pay a total of \$500.
2. RENT UP PERIOD. Upon the issuance of a Certificate of Occupancy for any portion of the project by CITY or on July 1, 1979, whichever occurs first and ending when eighty-five percent (85%) of those units ~~are~~ not reserved for the Housing Authority of the CITY are rented, or for a period not to exceed six (6) months, whichever event occurs first, LESSEE shall pay in arrears \$25.00 per month for each unit occupied during the prior month.
3. OPERATIONS PERIOD. Beginning when eighty-five (85%) of those units not reserved for the Housing Authority of the CITY are rented, or from the six (6) month maximum rent-up period, LESSEE shall pay in arrears, during the entire term of the

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Lease Agreement a minimum rent of \$6,333.33 per month or an amount equal to eight and thirty-seven one hundredths percent (8.37%) of the gross revenue received for the prior month, whichever is greater. Said payments shall be made on receipt of such income.

4. GROSS REVENUE DEFINED. "Gross Revenue" of LESSEE means the gross income received by LESSEE from all operations conducted on the premises.
- B. FINANCIAL RECORDS. LESSEE shall keep full and accurate books of account, records, cash receipts, and other pertinent data showing its gross revenues. Such books of account, records, cash receipts, and other pertinent data shall be kept for a period of three (3) years after the end of the calendar year to which such items are relevant. LESSEE shall furnish to CITY, annually, a copy of an audit conducted by CPA. CITY shall be entitled during the term and within three (3) years after expiration or termination of this lease to inspect and examine LESSEE's books of account, records, cash receipts, and other pertinent data, so CITY can ascertain LESSEE's gross revenues. LESSEE shall cooperate fully with CITY in making the inspection. CITY shall also be entitled at CITY's expense, once during each calendar year and once after expiration or termination of this lease, to an independent audit of LESSEE's books of account, records, cash receipts, and other pertinent data to determine LESSEE's gross revenues, by a certified public accountant to be designated by CITY. The audit shall be limited to the determination of gross revenues and shall be conducted during usual business hours at the Project. If the audit shows that there is a deficiency in the payment of any percentage rent, the deficiency shall become immediately due and payable together with ten percent (10%) interest from the date that it accrued.
- C. DELINQUENT RENT. In the event LESSEE fails to pay the applicable rents when due, then LESSEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to five percent (5%) of said delinquent rent; provided, however, in the event said delinquent rent is still unpaid after fifteen days of becoming delinquent, then LESSEE shall pay CITY, instead of said five percent (5%), a sum of money equal to ten percent (10%) of said delinquent rent. It is the intent of this provision that CITY shall be compensated by such additional sums for loss resulting from rental delinquency including costs to CITY of servicing the delinquent account. The City Manager, at his option, may for good cause waive any such delinquency compensation required herein, upon written application of LESSEE.
- D. INSPECTION OF RECORDS. Whenever 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.

- E. DEVELOPMENT AS ADDITIONAL CONSIDERATION. LESSEE agrees as additional consideration to develop the leased premises in accordance with the City-approved Conditional Use Permit (CUP) and Master Plan described in Section IV, B 7, Development of this agreement.

IV. 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.
2. Right to Assign and Sublet. LESSEE shall have the absolute right to rent individual units in the Project, and in so doing shall comply with the provisions of B. 14. below. 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 the City Manager, the financial capability and overall competence to successfully operate the assigned or subleased premises. LESSEE agrees to notify the City Manager prior to entering into any negotiation to assign this lease or any interest therein. 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.

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.

Approval of any assignment or sublease shall be 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.

Notwithstanding any of the above provision, 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 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 or transferred in lieu of foreclosure, the CITY will accept the mortgagee or beneficiary thereof, if reputable, qualified and financially responsible, such as a State or Federal regulated financial institution, 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 mortgage 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 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. LESSEE acknowledges that his interest may be subject to a possessory interest tax that the County may impose on such interest, and agrees that such tax payment shall not reduce any rent due the CITY hereunder and agrees that any such tax shall be the liability of and be paid by the LESSEE before becoming delinquent.

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. Development. LESSEE agrees to develop the leased premises in accordance with the CUP and the Master Plan, as approved by the CITY and filed in the Office of the City Clerk, as Document No. \_\_\_\_\_. To the extent applicable to the proposed development, said CUP or Master Plan will show the design, materials of construction and elevations 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.
8. 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 whatsoever, 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.

9. 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 \$1,000,000 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. 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, for 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

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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 90% 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 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 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, at its 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.

10. Indemnification. 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.
11. Legal Proceedings. Should it become necessary for either CITY or LESSEE 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.
12. 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.
13. 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, or physical handicap 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.

See 1970 Amendment

See 13. Amendment  
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Section 8 or Other Low Income Housing Program. LESSEE will make twenty percent (20%) of the rental units available to the City of San Diego Housing Authority for persons designated in Section 8 of Title II of the Housing and Community Development Act of 1974 - Public Law No. 93-383 or other persons designated by the CITY subject to LESSEE's approval of tenant, which shall not be unreasonably withheld. In the event LESSEE withheld approval of a tenant, the CITY shall have an additional 10-day period to designate another Section 8 Certificate Holder for each non-approved or withheld acceptance of tenants supplied. LESSEE will notify the City of San Diego Housing Authority of the date the units will initially be available for rent. The Housing Authority will then designate those "Section 8 Certificate Holders" who will occupy, as tenants, twenty percent (20%) of the units, which shall be distributed throughout the Project. LESSEE shall thereafter by the tenth day of each month during the term furnish to CITY a list of vacant apartment units which are anticipated as of the end of the month in which the list is given, and CITY will have ten business days after its receipt of each such list to designate "Section 8 Certificate Holders" or other persons designated by the CITY subject to owners approval of tenant, to occupy as tenants the vacant apartment units available to the Housing Authority in the Project. In the event the Section 8 Program is superseded or replaced by another similar program or in the event other low income Rent Subsidy program(s) come into existence during the term of this lease, sponsored either by the United States Government, or State of California or a local agency, lessee shall make the apartment units available to participants in any such program and shall give the CITY or its Housing Authority 10 business days as specified above to provide qualified tenants under such program(s). Except for complying with the foregoing provisions of this paragraph 14, LESSEE shall have the right to rent apartment units to anyone.

15. Utility Costs. LESSEE agrees to order, obtain and pay for all utilities and service installation charges in connection therewith. LESSEE may provide for tenants to pay monthly utility fees. 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 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 Notice. 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. Tenant, Rental Increases. LESSEE agrees that the initial monthly rent to be charged by LESSEE for each apartment unit made available to the Housing Authority will be \$170 non-elevator/\$189 elevator for one bedroom units, \$200 non-elevator/\$221 elevator for two bedroom units, and \$255 for three bedroom family units. One year from the date of initial occupancy by "Section 8 Certificate Holders" LESSEE may raise the

monthly rent on those units made available to the Housing Authority or its successor will not exceed the then current maximum fair market rents allowed by HUD for Section 8 Certificate Holders or pursuant to any other available local, state or federally sponsored program in effect during the term of this lease. Anything to the contrary provided in this agreement notwithstanding LESSEE shall not be affected or concerned by, nor shall LESSEE's ability to adjust monthly rent for each apartment unit in the Project other than the Section 8 units be affected by any administrative ruling which has the effect of limiting rents or rental increases.

20. 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 interest 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 leased 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 or LESSEE, 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 the improvements placed upon that portion of the leased premises which are taken by the condemning agency, but reduced by a proportion which relates to the reversionary interests of CITY (being that period of time after the expiration of the term of this lease). 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.
21. Entry and Inspection. CITY reserves and shall always have the right upon the giving of reasonable advance written notice 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.

22. 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.
23. 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.
24. 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.
25. Ownership of Improvements. All improvements, except fixtures 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 those fixtures 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 fixtures 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 fixtures 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 fixture 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.
26. 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 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 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 cost 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 discretion 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 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 do 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.

27. 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.

28. 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 through 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.
29. 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 condition, 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.

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

DATED:  
8/2/78

By [Signature]  
City Manager

LESSEE

GENTRY & COLES

By [Signature]  
George W. Gentry

By [Signature]  
Robert J. Coles

APPROVED as to form and  
legality this 2 day of  
August, 1978.

JOHN W. WITT, City Attorney

[Signature]  
deputy

OPTION AGREEMENT

Approved by Council Resolution No. \_\_\_\_\_ dated \_\_\_\_\_.

THIS OPTION AGREEMENT executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called  
"CITY," and GENTRY & COLES, a general partnership, hereinafter called "OPTIONEE."

I. The CITY is the owner of a certain parcel of real property located in  
the County of San Diego, State of California, as more particularly described in the  
form of a Lease Agreement marked "EXHIBIT A" attached hereto and hereinafter referred  
to as the "premises."

II. OPTIONEE desires to obtain an option to lease from CITY said premises  
for the purposes of constructing and operating a 253 unit apartment housing project  
consisting of 129 one bedrooms, 60 two bedrooms and 64 three bedroom units, upon  
the terms and conditions set forth in the above-said form of Lease Agreement.  
OPTIONEE agrees to facilitate the accommodation of handicapped persons at the  
request of the Housing Authority.

III. In consideration for granting this option, OPTIONEE agrees to reserve  
for the Housing Authority of the City of San Diego, its successor, or any other  
local, state or federal designated authority serving in the same capacity, twenty  
percent (20%) of all units constructed on this site at the following initial monthly  
rental rates, within the fair market's rental rates determined by H.U.D. for  
existing Section 8 housing assistance payments or subsequent programs available  
through local, state or federal rent subsidy programs.

| <u>Total Units</u> | <u>Regular Rentals</u> | <u>Section 8 Rentals</u>                        |
|--------------------|------------------------|-------------------------------------------------|
| 129 One Bedrooms   | 103 at \$275           | 26 at \$170 non-elevator/\$189 elevator elderly |
| 60 Two Bedrooms    | 48 at \$325            | 12 at \$200 non-elevator/\$221 elevator elderly |
| 64 Three Bedrooms  | 51 at \$425            | 13 at \$255                                     |

253

COVENANTS

A. CITY hereby grants to OPTIONEE an option for the period of six months  
from the date of execution of this Option Agreement by CITY, which date is hereinabove

set forth, to lease from CITY the above-said premises on the terms and conditions set forth in the form of a Lease Agreement attached hereto and marked "EXHIBIT A".

B. - OPTIONEE, after execution of this option, shall take steps to determine that said parcel of real property is a lawful parcel and legal building site for the Project.

C. During the term of this Option Agreement, or any extension thereof, CITY will not grant to any other party any right or option to lease said premises.

D. The consideration for this Option Agreement is \$500.00 which shall be paid to the CITY in full upon execution hereof.

E. This option may be exercised by OPTIONEE at any time prior to expiration of six months from the date of execution hereof upon OPTIONEE first having performed all of the terms and conditions of this Option Agreement as herein set forth.

F. 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 whomsoever, nor for personal injuries to, or deaths of them, 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. OPTIONEE agrees to indemnify and save free and harmless CITY and its authorized agents, officers and employees against any of the foregoing liabilities any costs and expenses incurred by CITY on account of any claim or claims therefor. Provided, however, this provision shall not apply to any injury, death or property damage caused by CITY, its officers, employees or authorized agents.

#### TERMS AND CONDITIONS

1. CITY hereby grants OPTIONEE the right to enter upon said premises for the purpose of site evaluation, engineering studies, soil testing, planning and design, provided however that copies of all reports shall be furnished to the City Property Department. OPTIONEE shall have no vested or possessory interest in said premises and CITY retains the right to use and enjoy its possession thereof. Within the six month term of this option, OPTIONEE shall:

- a. Comply with the procedures of the City of San Diego Environmental Quality Department with respect to the Project.
- b. Submit to CITY an application for a Conditional Use Permit (CUP) for the Project. Said application to the extent applicable shall include a plot plan and sketch showing in concept, the location, schematic elevations of all improvements, schedule of construction, general exterior design, uses of all improvements including buildings, parking areas, and appurtenant structures. The application shall include provisions for thirteen (13) apartment units for handicapped persons, which thirteen units shall be located at ground level. Upon the granting of said CUP, it shall be filed in the Office of the City Clerk. Approval of said CUP by the CITY 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 nor any right of the CITY to exercise necessary discretionary judgment or its police powers. OPTIONEE shall secure compliance with all such laws, codes, ordinances and regulations at its sole expense.
- c. Submit to CITY construction plans and specifications approved by the City Manager for the development of said premises. All plans and specifications shall be in accordance with the CUP, and a Master Plan, containing such information in addition to that contained in the CUP as the City Manager may reasonably require.
- d. Submit evidence satisfactory to the City Manager of ability to finance the cost of construction of improvements as proposed in said CUP, including assurance of disbursement of funds for 100% of the cost of said construction, or completion bonds if so requested.

2. OPTIONEE shall exercise this option by giving CITY written notice of its election to do so, accompanied by a written Lease Agreement for the premises

1-11-78  
4:20

in the form of said "EXHIBIT A" executed by OPTIONEE in quadruplicate. 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 its election to exercise this option. 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.

3: 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 2 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" with the legal description to be that existing after the accomplishment by OPTIONEE of OPTIONEE's obligations pursuant to Covenant B above.

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.

DATE \_\_\_\_\_

THE CITY OF SAN DIEGO

By \_\_\_\_\_

OPTIONEE

GENTRY & COLES

By George H. Gentry

By Robert A. Coles

APPROVED as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_\_.

JOHN W. WITT, City Attorney

By \_\_\_\_\_  
Deputy

# RESOLUTION No. 220347

(R-78-1345)

Adopted on FEB 22 1978

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

That the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, an option agreement, for a term of six months, with GENTRY and COLES, a general partnership, which option will allow said partnership to arrange appropriate financing and to finalize proposed plans for the development of a 253 apartment-unit housing project on City-owned property in the area of Midway Drive and West Point Loma Boulevard, under the terms and conditions set forth in that form of option agreement on file in the office of the City Clerk as Document No. 763728.

BE IT FURTHER RESOLVED, that, upon fulfillment of the covenants, terms and conditions contained in the above-described option agreement by Gentry and Coles, the City Manager is hereby authorized and empowered to execute a lease agreement, for a 40-year term, with GENTRY and COLES, a general partnership, which lease agreement will provide for the construction of a 253 apartment-unit housing project, 20 percent of which units shall be made available for the City's Low-Income Housing Program, on City-owned property at Midway Drive and West Point Loma Boulevard, which has an appraised value of

\$950,000, under the terms and conditions set forth in that  
form of lease agreement on file in the office of the City  
Clerk as Document No. 763729.

APPROVED: JOHN W. WITT, City Attorney

By   
Harold O. Valderhaug, Deputy

HOV:dm  
1-19-78  
Or.Dept.:HACS

Passed and adopted by the Council of The City of San Diego  
on February 22, 1978, by the following vote:

YEAS: Mitchell, O'Connor, Lowery, Gade, Stirling, Haro, Wilson.

NAYS: Schnaubelt.

ABSENT: Williams.

AUTHENTICATED BY:

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

(SEAL)

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

By Gary R. Page, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,  
true and correct copy of RESOLUTION NO. 220347  
passed and adopted by the Council of The City of San Diego,  
California, on February 22, 1978.

(SEAL)

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

By *Gary R. Page*, Deputy.

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is executed by the undersigned with reference to that certain Lease Agreement between Stonewood Garden Apartments, a California General Partnership, as Lessee, and the City of San Diego, as Lessor, as such Lease Agreement was originally filed with the City Clerk as Document No. 76-3729 and as subsequently amended, all with respect to that certain apartment project known as Stonewood Garden Apartments ("the Project").

Lessor and Lessee desire to facilitate the rental of the designated Section 8 Units within the project and to do so have reached the following understanding:

1. The San Diego City Housing Commission shall at all times keep the Project on a vacancy list given to prospective Section 8 Tenants. At all times, the Project shall be a referral source for such tenants. In the event a qualified Section 8 tenant visits the Project expressing an interest in a certain specified type of unit which is then unavailable, Lessee shall maintain a waiting list with such tenant's name and, in the future, if such a unit is available, shall attempt to notify such tenant to advise them of the availability of such a unit.

2. Lessee shall advise the City Housing Commission on the first day of each month and thereafter update such notice on the tenth day of each month, of any vacant apartment units which are anticipated as of the end of the month.

3. Lessee and the City agree that it is extremely difficult to maintain a bedroom mix as specified in Paragraph 3 of the First

Amendment to Lease but agree that the number of bedrooms to be available for Section 8 Units should total 89 bedrooms and that the parties shall be flexible in determining the appropriate mix of bedrooms in the project for Section 8 Tenants.

4. Lessee shall use its best efforts to work with the Housing Commission in order to publicize and advertise the availability of Section 8 Units from time to time in order to maximize the exposure of the project to those potential Section 8 Tenants.

This Memorandum of Understanding is not intended to be an amendment to the Lease Agreement but merely to memorialize the understanding of the practical considerations and actions to be taken in order to lease units in the project to Section 8 Tenants.

SAN DIEGO CITY HOUSING COMMISSION

By: \_\_\_\_\_

STONEWOOD GARDEN APARTMENTS  
A California General Partnership

By: Robert J. Con