

OPERATING AGREEMENT  
OF  
S T ASSOCIATES, LLC,  
a California Limited Liability Company

THIS OPERATING AGREEMENT OF S T ASSOCIATES, LLC, a California limited liability company ("Company"), is made as of January 1, 1996 ("Agreement"), among The Drogin Revocable Declaration of Trust, dated October 22, 1992 ("Drogin Trust"), James W. Welch ("Welch"), Richard K. Plumleigh, Jr. ("R. Plumleigh"), Mona R. Plumleigh ("M. Plumleigh") and Gay B. Odmark ("Odmark"). The Drogin Trust, Welch, R. Plumleigh, M. Plumleigh and Odmark sometimes hereinafter shall be referred to individually as a "Member" and collectively as the "Members." The Members agree as follows:

RECITALS

This Agreement is made in contemplation of the following facts and circumstances:

A. Immediately prior to the execution of this Agreement, the Members were each general partners of S T Associates, a California general partnership (the "Partnership"), which was organized on May 13, 1977 pursuant to that certain Agreement of General Partnership dated as of May 13, 1977, as amended from time to time.

B. By this Agreement, the Members intend to convert the Partnership into a Limited Liability Company under the laws of the State of California.

C. In furtherance of that objective, the Members have caused the Company to be organized and are transferring all of their interests in the Partnership ("Partnership Interests") to the Company in exchange for Membership Interests (as defined below), which will be issued to the Members in the same proportion as Partnership Interests.

D. Immediately upon the Company's receipt of each of the Member's Partnership Interests, each Member hereby votes and consents to terminate, wind-up and dissolve the Partnership and authorizes the Manager to take all actions, which the Manager deems reasonable and appropriate in order to do so. The Partnership's assets will be distributed to the Company, and the Company will assume the Partnership's liabilities and continue its business, all subject to the terms and conditions of this Agreement.

E. In connection with formation of the Company, the Members hereby set forth their respective rights and obligations as members thereof.

## AGREEMENT

The Members hereby agree to the provisions and conditions of this Agreement, as it may be amended from time to time.

1. DEFINITIONS. When used in this Agreement, the terms set forth in Exhibit A shall have the meanings set forth in Exhibit A (all terms used in this Agreement that are not defined in Exhibit A shall have the meanings set forth elsewhere in this Agreement).

### 2. FORMATION.

2.1 Organization. By this Agreement, the Members hereby organize the Company as a California limited liability company pursuant to the Act.

2.2 Effective Date. This Agreement shall be effective as of January 1, 1996, but subject to the filing and acceptance of the Articles with the Secretary of the State of California ("Effective Date").

2.3 Registered Agent and Office. The registered agent for the service of process and the registered office of the Company shall be as reflected in the Articles as originally filed in the Office of the Secretary of State of California. The Manager, from time to time, may alter the registered agent or office through appropriate filings with the Secretary of State. If the registered agent ceases to act as such or the registered office shall change for any reason, the Manager promptly shall designate a replacement registered agent by filing a Limited Liability Company Statement of Information (Form LLC-12) or other appropriate notice.

2.4 Scope of Agreement. The Members expressly intend that this Agreement shall govern the rights and responsibilities of the Members with respect to the Company, even if certain specific provisions of this Agreement are inconsistent with or different from the general provisions of the Act or any other rule or law, except to the extent (i) this Agreement expressly incorporates federal income tax rules by reference to Sections of the Code or Treasury Regulations, or (ii) any provision of this Agreement is expressly prohibited or ineffective under the Act or any law or rule. To the extent any provision of this Agreement is prohibited or ineffective under the Act, this Agreement shall be considered amended to the smallest degree possible in order to make the Agreement effective under the Act. If the Act subsequently is amended or interpreted in such a manner as to make valid any provision of this Agreement that formerly was invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

2.5 Conversion of General Partnership Interest. The Members now desire (a) to reflect the fact that the Members now desire to transfer the Partnership Interests to the Company, (b) to convert the General Partnership into a limited liability

corporation in a manner which will not result in a taxable event for federal income tax purposes pursuant to Revenue Ruling 95-37, (c) to form a limited liability corporation properly for purposes of California law, (d) to reflect the Members' respective contributions to the capital of the Company, and (e) to reflect the Members' respective Percentage Interests in the Company.

3. NAME; LOCATION; PURPOSE AND IDENTITY OF MEMBERS.

3.1 Name. The name of the Company shall be S T Associates, LLC, and all business of the Company shall be conducted under that name or under any other name determined by the Manager, to the extent permitted by applicable law.

3.2 Place of Business. The Company's principal place of business initially shall be located at 2207 Garnet Avenue (Suite J) San Diego, California 92169, and thereafter shall be located at such other place or places as may be determined by the Manager from time to time.

3.3 Purpose. The business and purpose of the Company shall be (i) to hold, operate and ultimately dispose of the Property; (ii) to do all things related or incidental to or in furtherance of such business; and (iii) to conduct any other business which lawfully may be conducted under the Act and which the Members determine to be appropriate. The Property consists of a senior citizens multiple residential project (situated on land owned by the City of San Diego) containing two hundred seventy-five rental apartment units ("Project") which the Company is currently operating.

3.4 Certificates/Filings. The Manager shall prepare, execute and file the Articles in the Office of the Secretary of the State of California. The Manager shall execute and file with the Office of the Secretary of State of the State of California any amendments to the Articles approved by the Members. The Manager is also authorized to execute, file and cause to be published with the proper authorities in the City and County of San Diego or the State of California, such other certificates or documents as are required by any fictitious business statement act or similar statute in effect. If there exists a conflict between this Agreement and the Articles, the Articles shall control. The Manager from time to time shall execute or cause to be executed all such certificates and other documents, and do or cause to be done all such filings, recordings, publishings and other acts, including without limitation a Statement of Registration (Form LLC-12), as are necessary to comply with the Act for the formation and operation of the Company in all jurisdictions in which the Company is authorized to conduct business.

4. TERM. The Members have been affiliated as partners of the Partnership. They shall continue their relationship as Members of the Company, the term of which shall commence as of the Effective Date and shall continue until July 31, 2032, unless

sooner dissolved pursuant to the provisions of Paragraph 16 of this Agreement.

5. MANAGEMENT.

5.1 Day By Day Management by Manager. The business, property and affairs of the Company shall be managed by the Manager. Except as expressly set forth in the Articles or this Agreement and in connection with the normal business activities of this Company, without the necessity of obtaining the consent of the Members, the Manager shall have full, complete and exclusive authority, power and discretion to manage and control the business, property and affairs of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business, property and affairs, including, without limitation, the power to exercise on behalf and in the name of the Company all of the powers described in Section 17003 of the Act. If Manager is not acting in the ordinary course of normal business activities of the Company, the Manager shall not take the acts specified in paragraphs 5.1.1-5.1.5 below without securing the affirmative vote or written consent of Welch:

5.1.1 Assign, transfer, convey, pledge, hypothecate or mortgage the Project;

5.1.2 Pledge the credit of the Company;

5.1.3 Make an assignment of the assets of the Company for the benefit of creditors;

5.1.4 Become a surety, guarantor or endorser for any person or firm to the extent it may obligate the Company; or

5.1.5 Borrow any money in the name of the Company or lend any money of the Company.

5.2 Withdrawal, Removal or Termination of Manager. The Manager shall cease to be a Manager, for all purposes, upon the withdrawal of the Manager or upon the removal of the Manager.

5.2.1 The Manager may withdraw or resign as Manager of the Company at any time upon sixty days written notice to each of the Members.

5.2.2 Section 17152(b) of the Act notwithstanding, the Members may remove a Manager only for cause and only upon their unanimous vote (excluding the vote of the Manager). For purposes of this Paragraph 5.2.2, the term "for cause" shall include only the following:

5.2.2.1 The Manager's engaging in any activity intentionally injurious to the Company or any other Member with respect to the Company Assets or the Company's business; or

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 apartment 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 City Manager, the financial capability and overall competence to successfully operate the assigned or subleased premises. The consent of the City Manager and/or City Council will not be unreasonably withheld. This lease and any interest herein shall not be assignable by operation of law without the written consent of the City Manager. Any or all of the following actions will be considered trafficking in the leasehold which is not a permitted activity under this contract and will be considered as contrary to the CITY'S best interests:
  - a. Assignment or subleasing by LESSEE for a consideration in excess of a reasonable return on the actual value of the LESSEE'S installed improvements and/or services rendered.
  - b. Subleasing of the primary function of the lease or subleasing of a major portion of the leasehold.
  - c. If CITY has been notified in writing of the existence of a trust deed or mortgage secured by the leasehold, CITY agrees to give the trustee or beneficiary notice of any sublease or assignment prior to CITY'S approval thereon.

## EXHIBIT A

### DEFINITIONS

1.1 Act. The Beverly-Killea Limited Liability Company Act as set forth in Section 17000 et seq. of the Corporations Code of California, as amended from time to time (or any corresponding provisions of succeeding law).

1.2 Articles. The Limited Liability Company Articles of Organization (Form LLC-1) filed with respect to the Company.

1.3 Bankruptcy. With respect to any Member, a general assignment for the benefit of such Member's creditors, the commencement or acquiescence in the commencement of proceedings under Title 11 of the United States Code or any other bankruptcy, insolvency or readjustment of debt or liquidation law or statute of the federal government or any state government, or the adjudication of such Member as bankrupt or insolvent under any law or statute or the application by such Member for any action which indicates its approval of, consent to or acquiescence in the appointment of a trustee or receiver with respect to such Member's estate or assets, or any portion thereof.

1.4 Capital Account. The capital account established and maintained for each Member in accordance with Paragraph 8.

1.5 Cash Available from Operations. The net cash received by the Company from the proceeds of Company operations (including, without limitation, net proceeds derived from the sale or refinancing of Company Assets) in excess of the current and foreseeable needs of the Company, as determined by the Manager in its sole and absolute discretion. Items to be deducted from the proceeds of Company operations in determining the Company's current and foreseeable needs and the amount of Cash Available from Operations may include, without limitation, (i) amounts necessary for the payment of all costs, expenses (including the compensation of Sunrise Management Company pursuant to Paragraph 5.7), obligations, liabilities, debt service payments, repairs, replacements and capital improvements; and (ii) such additional amounts as the Manager may determine to be necessary as a reserve for working capital, contingent costs, expenses and liabilities of the Company.

1.6 Certificate of Cancellation. A Certificate of Cancellation (Form LLC-4) filed for the Company pursuant to Paragraph 17.3.

1.7 Certificate of Dissolution. A Certificate of Dissolution (Form LLC-3) filed for the Company pursuant to Paragraph 17.3.

1.8 Code. The Internal Revenue Code of 1986, as amended, or corresponding provisions of succeeding revenue laws.

1.9 Company Assets. The Property and all other tangible and intangible assets of the Company.

1.10 Dissociation Event. The occurrence to a Member of any of the following:

1.10.1 The Member withdraws from the Company with the consent of the Manager, or with regard to the withdrawal of the Drogin Trust, with the consent of Welch;

1.10.2 The Member attempts to transfer its Membership Interest in violation of the provisions of this Agreement;

1.10.3 The Bankruptcy of such Member;

1.10.4 In the case of a Member who is a natural person, such Member's death or the entry of an order by a court adjudicating such Member incompetent to manage his or her person or estate;

1.10.5 In the case of a Member that is a trust or is a Member by such Member's capacity as trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

1.10.6 In the case of a Member that is a limited liability company or a partnership, the dissolution and commencement of winding up of such limited liability company or partnership;

1.10.7 In the case of a Member that is a corporation, the filing of a certificate of such corporation's dissolution or the equivalent, or the revocation of its charter or articles of incorporation, and the lapse of ninety (90) days after notice to the corporation of a revocation of its charter or articles without a reinstatement of its charter or articles during said ninety (90) days; or

1.10.8 In the case of a Member that is an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

1.11 Exercise Notice. Notice of a Member to purchase another Member's Membership Interest delivered pursuant to Paragraph 14.3.

1.12 Liquidator. The Manager, or if none, a Member selected by the remaining Members who shall be authorized to take the actions specified in Paragraph 17.

1.13 Loss. The Company's loss for income tax purposes, determined in accordance with Exhibit A.

1.14 Manager. Stephen B. Drogin (the settlor and trustee of the Drogin Trust) and any other Person appointed or elected as the manager of the Company in accordance with Paragraph 5.

1.15 Member. The Drogin Trust, Welch, R. Plumleigh, M. Plumleigh and Odmark or any other Person admitted as a Member of the Company pursuant to Paragraph 13.1.

1.16 Membership Interest. With respect to each Member, such Member's entire right, title and interest in and to the Company and the Company Assets, including any voting and other rights associated with such Member's ownership interest in the Company.

1.17 Percentage Interest. For each Member, the respective percentage ownership interest with respect to the Company set forth in Paragraph 10.1.

1.18 Person. An individual, partnership, limited partnership, corporation, limited liability company, trust, estate, association, or other entity, whether domestic or foreign.

1.19 Profit. The Company's profit for income tax purposes, determined in accordance with pages 4 through 8 of this Exhibit A.

1.20 Property. That certain improved real property in San Diego, California and more particularly described in Parcel 1 of Parcel Map No. 6077, filed in the Office of the County Recorder of San Diego County, California, on June 22, 1977.

1.21 Transfer. The sale, transfer, hypothecation, encumbrance or other conveyance of a Membership Interest, or any legal or beneficial right or interest therein, whether voluntarily, by operation of law, by gift or otherwise, or, if the context so requires, the act of selling, transferring, hypothecating, encumbering or otherwise conveying a Membership Interest, or any legal or beneficial right or interest therein, whether voluntarily, by operation of law, by gift, bequest or otherwise.

1.22 Transferee. A Person to which a Membership Interest is Transferred pursuant to this Agreement.

1.23 Treasury Regulations. The federal regulations promulgated under the Code by the Department of the Treasury, including corresponding provisions of succeeding law.

## EXHIBIT B

### ALLOCATION OF PROFIT, LOSS AND OTHER ITEMS AMONG THE MEMBERS OF S T ASSOCIATES, LLC

1. Definitions. As used in the Agreement and this Exhibit B, the following terms shall have the following meaning:

1.1 "Company Minimum Gain" shall mean, with respect to any Company fiscal year, the "partnership minimum gain" computed strictly in accordance with the principles of Section 1.704-2(d) of the Treasury Regulations. Subject to the preceding sentence, "Company Minimum Gain" means the amount determined as follows: (i) first, compute, with respect to each Nonrecourse Liability, the amount of taxable income or gain that would be realized by the Company if the Company disposed of (in a taxable transaction) the Company property subject to the Nonrecourse Liability in full satisfaction of that Nonrecourse Liability (and for no other consideration), and (ii) add together the amounts so computed for all Nonrecourse Liabilities of the Company. This sum is the "Company Minimum Gain."

1.2 "Economic Risk of Loss" shall have the meaning provided by Section 1.704-2(i) and 1.752-2 of the Treasury Regulations.

1.3 "Nonrecourse Liabilities" shall mean liabilities of the Company treated as "nonrecourse liabilities" under Section 1.752-1(a)(2) of the Treasury Regulations. Subject to the preceding sentence, "Nonrecourse Liabilities" means liabilities of the Company (or a portion thereof) for which no Member bears the Economic Risk of Loss.

1.4 "Profit" and "Loss" of the Company shall be the Company's net profit and net loss for federal income tax purposes, subject to the following adjustments:

1.4.1 Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profit or Loss shall be added to such taxable income or loss;

1.4.2 Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(v)(i) shall be subtracted from such taxable income or loss; and

1.4.3 Gain or loss resulting from any disposition of property contributed to the Company by any Member with respect

to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the fair-market value of such property at the time of contribution (i.e., the initial value credited to the contributing Member's Capital Account) notwithstanding that the fair-market value of such property at the time of contribution differs from its adjusted tax basis.

1.4.4 If the "book" value of any Company asset is adjusted pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(f), the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profit or Loss.

1.4.5 Any depreciation, amortization or other cost recovery deductions attributable to Company assets and taken into account in computing such taxable income or loss shall be computed with reference to the "book" value of such assets rather than with reference to their tax basis.

## 2. Tax Allocations.

2.1 Allocation of the Profit and Loss of the Company.  
Company Profit and Loss shall be allocated among the Members in the order of priority set forth below:

### 2.1.1 Qualified Income Offset.

2.1.1.1 Any Member who unexpectedly receives an adjustment, allocation or distribution described in subparagraphs (4), (5) or (6) of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations, which adjustment, allocation or distribution creates or increases a deficit balance in that Member's Capital Account in excess of such Member's share of Company Minimum Gain, shall be allocated items of "book" income and gain in an amount and manner sufficient to eliminate or to reduce, as quickly as possible, the excess deficit balance in that Member's Capital Account so created or increased.

2.1.1.2 Allocations under this Paragraph 2.1.1 shall comprise a pro rata portion of each item of Company income (including gross income) and gain for the year. For purposes of this Paragraph 2.1.1, Capital Accounts shall be adjusted hypothetically as provided for in Sections 1.704-1(b)(2)(ii)(d) and 1.704-1(b)(4)(iv)(e) of the Treasury Regulations. The Members intend that the provision set forth in this Paragraph 2.1.1 shall constitute a "qualified income offset" as described in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations. Such section of the Treasury Regulations shall control in the case of any conflict between that section of the Treasury Regulations and this Paragraph 2.1.1.

2.1.2 Minimum Gain Chargeback.

2.1.2.1 If there is a net decrease in the Company Minimum Gain during a Company taxable year, each Member shall be allocated items of income and gain in accordance with Section 1.704-2(f) of the Treasury Regulations and its requirements for a "minimum gain chargeback."

2.1.2.2 Subject to Paragraph 2.1.2.1 above, the Company shall allocate to each Member income and gain for that taxable year (and, if necessary, subsequent taxable years) in proportion to, and to the extent of, an amount equal to the Member's share of the net decrease in Company Minimum Gain determined in accordance with Section 1.704-2(g)(2) of the Treasury Regulations.

2.1.3 Allocation of Loss. Except as otherwise specifically provided in the Agreement, including without limitation, the provisions of Paragraphs 2.1.1 [entitled "Qualified Income Offset"] and 2.1.2 [entitled "Minimum Gain Chargeback"], all Loss (including all expense items separately stated on Company's tax return) shall be allocated to the Members as follows:

2.1.3.1 First, the Company shall allocate Loss to the Members in the same amounts and in the reverse order of allocation as Profit previously was allocated pursuant to Paragraphs 2.1.4.2 and 2.1.4.3 below, less the amount, if any, of Loss previously allocated pursuant to this Paragraph 2.1.3.1, until the aggregate Loss allocated pursuant to this Paragraph 2.1.3.1 for such Company taxable year and all previous Company taxable years is equal to the aggregate Profit allocated to the Members during all previous Company years pursuant to Paragraphs 2.1.4.2 and 2.1.4.3 below.

2.1.3.2 Second, the Company shall allocate Loss among the Members according to their respective Percentage Interests.

2.1.4 Allocation of Profit. Except as otherwise provided in this Agreement, Profit shall be allocated among the Members as follows:

2.1.4.1 First, the Company shall allocate Profit to the Members in the same amounts as Loss previously was allocated pursuant to Paragraph 2.1.3.2 above, less the amount, if any, of Profit previously allocated pursuant to this Paragraph 2.1.4.1 and Paragraphs 2.1.1 and 2.1.2 above, until the aggregate Profit allocated pursuant to this Paragraph 2.1.4.1 for such Company taxable year and all previously Company taxable years is equal to the aggregate Loss allocated to the Members during all previous Company years pursuant to Paragraph 2.1.3.2 above.

2.1.4.2 Second, if any Member has a deficit balance in its Capital Account, the Company shall allocate Profit to each Member in the proportion that such Member's deficit balance Capital Account bears to the aggregate deficit Capital Account balances of all Members, until no Member has a deficit Capital Account balance.

2.1.4.3 Thereafter, the Company shall allocate all remaining Profit to the Members pro rata in accordance with their respective Percentage Interests.

2.1.5 [OMITTED]

2.1.6 Allocation of Certain Tax Items. Subject to Section 754 of the Code and Section 1.704-1(b)(4)(i) of the Treasury Regulations, allocations of tax items for federal and state income tax purposes shall be allocated to the Members in the same manner as the book items corresponding to such tax items are allocated pursuant to Paragraphs 2.1.1 through 2.1.5 above. As stated in Treasury Regulations Section 1.704-1(b)(4)(i), when any property of the Company is reflected in the Capital Accounts of the Members and on the books of the Company at a book value that differs from the adjusted tax basis of such property, then certain book items with respect to such property will differ from certain tax items with respect to that property. Since the Capital Accounts of the Members are required to be adjusted solely for allocation of the book items, the Member's shares of the corresponding tax items are not independently reflected by adjustments to the Capital Accounts. These tax items will be shared among the Members in a manner that takes account of the variation between the adjusted tax basis of the applicable property and its book value in the same manner as variations between the adjusted tax basis and fair-market value of property contributed to the Company are taken into account in determining the Member's share of tax items under Code Section 704(c). In making allocations of tax items of the Company, the Company shall comply with the foregoing principles enunciated in Treasury Regulations Section 1.704-1(b)(4)(i).

2.2 Code Section 704(c) Allocation. If at any time a Member contributes property to the Company, then Profit and Loss with respect to such contributed property shall be allocated (solely for income tax purposes and not for the purpose of the Company's Books of Account) between the Members in accordance with Section 704(c) of the Code so as to take into account any variation to the Company between the adjusted basis of such contributed property for federal income tax purposes and the fair-market value of such contributed property at the time of the contribution. If at any time the Manager revalues the book value of Company property on the Company's Books to more accurately reflect the fair-market value of such property, then income, gain, loss or deduction with respect to such revalued property shall be allocated (solely for income tax purposes and not for the purpose of the Company's books of account)

between the Members in accordance with the principles of Section 704(c) of the Code so as to take into account any variation to the Company between the adjusted basis of such revalued property for federal income tax purposes and the book value of such revalued property.

2.3 Tax Allocation Not Described in this Exhibit. Any Company income, gain, loss or deduction for federal and state income tax purposes (if and to the extent not included within the allocations of Profit or Loss as provided herein) shall be allocated in the same manner as Profit and Loss is allocated pursuant to Paragraphs 2.1.3 and 2.1.4 above.

2.4 Allocation Between Assignor and Assignee. The portion of the income, gain, losses, credits and deductions of the Company for any fiscal year of the Company during which a Membership Interest or Economic Interest is assigned by a Member (or by an assignee or successor in interest to a Member), that is allocable with respect to such Membership Interest or Economic Interest shall be apportioned between the assignor and the assignee of the Membership Interest or Economic Interest on the basis of the interim closing of the books method provided by the applicable Treasury Regulations under Section 706 of the Code.

2.5 Express Consent to Allocations. The allocations which are to be made pursuant to this Agreement, including allocations of distributions, are expressly consented to by each Member as a condition of becoming a Member.

5.2.2.2 The Manager's committing any fraud against the Company; or

5.2.2.3 The Manager's conviction of any felony involving moral turpitude resulting in the imprisonment of the Manager or any of its principals or officers.

5.3 Election of New Manager. If the Manager ceases to be the Manager upon the occurrence of any of the events specified in Paragraph 5.2, the Members shall elect a new Manager, who must be a Member of the Company. If necessary, Welch shall serve as Manager temporarily until such new Manager is elected.

5.4 Performance of Duties; Liability of Manager. The Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, reckless or intentional misconduct, or a knowing violation of law by the Manager.

5.5 Indemnification. The Company shall indemnify, defend by legal counsel of the Manager's choice and hold harmless the Manager and its officers, directors, shareholders, employees, agents, affiliates, successors and assigns from and against any and all claims, demands or liabilities arising out of or in connection with any acts performed or omitted to be performed by them in connection with the Company's business, unless the loss, liability or damage was caused by the gross negligence, fraud or criminal act of the indemnified Person.

5.6 Insurance. The Company shall have the power to purchase and maintain insurance on behalf of the Manager and any Person who is or was an agent of the Company against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of Paragraph 5.5 or under applicable law.

5.7 Property Manager. Sunrise Management Company shall act and operate as the property manager for the Project and shall receive for such services monthly compensation in an amount equal to 5% of the total gross receipts received by the Company during each such month. As part of such management services, Manager shall cause Sunrise Management Company to provide office space and reasonable telephone and other utility services in connection with such office space, day to day bookkeeping services (exclusive of the services of the certified public accountant employed by the Company to make annual accountings of Company's books and records and complete reports reflecting such accountings and the informational tax return of Manager and of the cost of all computer services), and general supervisory and management services (exclusive of the services of resident managers at the Project).

Each of the Members acknowledge that the Drogin Trust is the sole shareholder of Sunrise Management Company and that any conflict of interest which may exist is waived.

5.8 Death of Current Manager. Notwithstanding anything to the contrary in this Agreement, if the current Manager, Stephen B. Drogin, dies prior to Welch, and Welch is a Member at such time, Welch shall be appointed Manager.

6. MEMBERS.

6.1 Certain Decisions. Any provision of this Agreement to the contrary notwithstanding, the following actions shall require the unanimous consent of the Members:

6.1.1 Commencing procedures to dissolve and wind up the Company, except as expressly provided in this Agreement;

6.1.2 Merging the Company pursuant to Section 17551 of the Act;

6.1.3 Amending the Articles or this Agreement;

6.1.4 Admitting any additional Member;

6.1.5 Changing the nature of the Company's business; and

6.1.6 Undertaking any act which would make it impossible to carry on the ordinary business affairs and operations of the Company.

6.2 Limitations on Members. Except as provided specifically in this Agreement, no Member shall have the right or power: (i) Section 17252(a) or any other provision of the Act notwithstanding, to withdraw or reduce its capital, except as a result of the dissolution of the Company or as otherwise required by law; (ii) to bring an action for partition against the Company; or (iii) to demand or receive property other than cash in return for its capital contributions to the Company. Other than upon dissolution of the Company as provided by this Agreement, there has been no time agreed upon when the contributions of the Members must be returned, and no Member shall have the right to require that the Company return any contributions to the capital of the Company.

6.3 Liability of Members. Except as expressly provided in this Agreement, no Member shall be responsible as such for the debts or liabilities of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability for debts or liabilities of the Company on the Manager or any Member.

6.4 No Management and Control. No Member (except one who is then the Manager) shall have the power, right or authority to and shall not take part in the control, conduct, management or operation of the Company and shall have no power, right or authority to act for or bind the Company, including during the winding up period following dissolution of the Company. No Member shall have the right to approve any matters other than those described in Sections 17103(b) and 17103(c) of the Act and those expressly set forth in this Agreement, and any other action may be taken by the Manager without the approval of the Members.

7. COMPETITION.

7.1 Competition. No provisions of this Agreement shall be construed to prevent Manager or any Member (or any principal or affiliate of Manager or any Member) from engaging in any other business including, without limitation, any business competitive with Company.

7.2 Investment or Management Opportunities. None of the Members (or any principal or affiliate of any Member) shall be obligated to present to the Company or the Members any particular investment or opportunity which is similar to the purpose of the Company, even if the opportunity is of a character which, if presented to the Company, could be taken by the Company, and each Member (or any principal or affiliate of any Member) shall have the right to take for its own account or to recommend to others any investment opportunity which is similar to the purpose of the Company.

8. CAPITAL ACCOUNTS. The Members acknowledge and agree that for income tax purposes, the Company shall be governed by subchapter K of the Code; accordingly, a separate capital account shall be established and maintained for each Member ("Capital Account") strictly in accordance with the rules set forth in Section 1.704-1(b)(2)(iv) of the Treasury Regulations. If and to the extent required by the Treasury Regulations promulgated under Section 704 of the Code, upon (i) distribution of assets (other than money) of the Company to a Member, or (ii) the liquidation of a Member's interest in the Company, to reflect unrealized gain or loss, the Capital Accounts for the Members shall be adjusted for the hypothetical "net book gain" or "net book loss" (as defined in the Treasury Regulations promulgated under Code Section 704) that would have been realized by the Company if the Company Assets had been sold for their fair-market values in a cash sale. Capital Accounts also shall be adjusted upon the constructive termination of the Company as provided under Section 708 of the Code as required by Section 1.704-1(b)(2)(iv)(1) of the Treasury Regulations.

9. CAPITALIZATION.

9.1 Capital Contributions. Effective as of January 1, 1996, each Member shall contribute to the Company such Member's entire Partnership Interest to the capital of the Company. No Member shall be required to make any other subsequent contribution to the capital of the Company.

9.2 No Withdrawals. Section 17252(c) or any other provision of the Act notwithstanding, no Member shall have the right to withdraw any capital contribution or to make additional contributions to the capital of the Company without the prior written consent of the Manager.

9.3 No Interest. No interest shall be payable with respect to any Member's contribution to the capital of the Company.

9.4 Sources of Additional Capital Investment. If the Manager determines that the Company has cash needs in excess of available funds (for any expenditures or reserves in excess of Cash Available from Operations and Proceeds Available from Sale or Financing Transactions) the Company may borrow funds from financial institutions or other sources of capital on such terms and conditions as the Manager and Welch deems advisable.

10. PERCENTAGE INTERESTS; INCOME TAX ALLOCATIONS.

10.1 Percentage Interests. Section 17250 or any other provision of the Act notwithstanding, each Member's respective Percentage Interest shall be as follows:

| <u>MEMBER</u> | <u>PERCENTAGE INTEREST</u> |
|---------------|----------------------------|
| Drogin Trust  | 50%                        |
| Welch         | 20%                        |
| R. Plumleigh  | 5%                         |
| M. Plumleigh  | 5%                         |
| Cdmark        | 20%                        |
| Total:        | <u>100%</u>                |

Section 17250 or any other provision of the Act to the contrary notwithstanding, the Members' respective Percentage Interests shall not be adjusted to reflect any distributions from the Company pursuant to Paragraph 11.

10.2 Allocation of Profit and Loss. All allocations of Profit and Loss, and other items of income, gain, credit and deduction of the Company shall be made in accordance with the provisions and conditions of Exhibit B.

10.3 Accounting Decisions. All decisions as to accounting and tax matters shall be made by the Manager.

10.4 Tax Matters. The Company's tax and fiscal year shall be the calendar year, unless the Manager shall elect a different fiscal year at any time. The accountants shall be instructed to prepare and file all required income tax returns for the Company. The Manager shall be the "tax matters partner" for purposes of Section 6231(a)(7) of the Code. The Manager shall be the "notice partner" within the meaning of Section 6223 of the Code. Upon request of any Member, the Manager, in its sole and absolute discretion, may make the election for the Company under Section 754 of the Code to adjust the basis of the Company's assets as described in Sections 734 and 743 of the Code.

10.5 Obligations of Members to Report Allocations. The Members are aware of the income tax consequences of the allocations made by this Agreement and hereby agree to be bound by the provisions herein when reporting their shares of Company income and loss for income tax purposes.

11. CASH DISTRIBUTIONS. Distributions of Cash Available from Operations shall be made to the Members at such time or times as the Manager determines that the Company has adequate Cash Available from Operations. Distributions of Cash Available from Operations shall be distributed to the Members according to the following priorities (except upon termination of the Company, in which event, available funds shall be utilized or distributed according to the priorities set forth in Paragraph 17 below):

11.1 First, to the Manager for current operating expenses he has incurred on behalf of the Company for which it has not been reimbursed (the Manager may incur certain costs and expenses on behalf of the Company for, among other things, legal fees and costs incurred in preparation of this Agreement and the formation of the Company);

11.2 Thereafter, to the Members pro rata in accordance with their respective Percentage Interests.

12. BOOKS AND RECORDS; ACCOUNTS.

12.1 Records. The Manager, at the Company's expense, shall maintain for and on behalf of the Company, at its principal office in San Diego, California, the books and records required by Section 17058 of the Act. Upon the request of a Member, for purposes reasonably related to such Member's Membership Interest, the Manager promptly shall deliver to such Member, at the expense of the Company, copies of the information required to be maintained by Paragraph 12.1.

12.2 Reimbursable Expenses. Expenses of the Company shall be billed to and paid by the Manager. The Manager shall receive from the Company reimbursement for all actual out-of-pocket expenses incurred by the Manager in furthering the Company's business, including, but not limited to, amounts expended for the

maintenance of Company books and records and any funds advanced to organize the Company or for the Company's benefit.

12.3 Bank Accounts. The Manager may open accounts at banks or other financial institutions as the Manager determines are appropriate. Only the Manager shall be an authorized signatory upon each such bank account. The amounts to be deposited and maintained in each account shall be determined by the Manager.

12.4 Annual Audit. If deemed necessary or appropriate by the Manager, the financial books and records of the Company shall be audited annually by an independent firm of certified public accountants selected by the Manager.

13. TRANSFER OF MEMBERSHIP INTERESTS. No Member shall Transfer all or any portion of its Membership Interest without the prior written consent of the Manager and Welch. Any purported Transfer in violation of this Agreement shall be void and ineffectual and shall not operate to Transfer any right, title or interest in or to the purported transferee. Each Member agrees that such Member shall remain liable for damages and shall be subject to appropriate injunctive relief for any Transfer made or attempted to be made in violation of the restrictions in this Agreement. Upon the Transfer of any Membership Interest pursuant to this Agreement, the Capital Account of the selling Member that is attributable to the sold or transferring Membership Interest shall carry over to and shall be assumed by the Transferee. Notwithstanding the foregoing, the following transfers shall not require the consent of the Manager or Welch: (i) the transfer by the trustee of the Drogin Trust of its Membership Interest to the beneficiaries of the Drogin Trust upon the death of Stephen B. Drogin, and (ii) the transfer of Welch's Membership Interest by succession or testamentary disposition to Welch's spouse or children upon the death of Welch.

#### 14. DISSOCIATION OF A MEMBER.

14.1 Dissociation. A Member shall cease to be a Member of the Company upon the occurrence of a Dissociation Event to such Member. Section 17252(a) or any other provision of the Act to the contrary notwithstanding, no Member shall withdraw from the Company prior to expiration of the term of the Company, except as specifically permitted by this Agreement. A Member who suffers a Dissociation Event shall no longer be entitled to vote or participate in the management or control of the Company or to demand information except as specifically required by this Agreement. Section 17252(c) or any other provision of the Act to the contrary notwithstanding, no Member shall be entitled to receive any cash or assets from the Company upon the occurrence of a Dissociating Event, except as provided in this Paragraph 14. Notwithstanding anything to the contrary in this Agreement, the death of Welch or the termination of the Drogin Trust due to the death of Stephen B. Drogin shall not constitute a Dissociation

Event as to those members for the purposes of this Paragraph 14.1 only.

14.2 Effect of Dissociation Event. Except as provided in Paragraph 16 below, if any Member suffers a Dissociation Event, the Company shall not be dissolved. Rather, the personal representative, executor, trustee, administrator, guardian, conservator or other successor-in-interest (collectively, "Representative") of such Member who suffers such Dissociation Event must comply with the requirements of Paragraph 14.3 below.

14.3 Right of Purchase. Except as provided in Paragraph 16 (Events of Dissolution), if any Member other than the Drogin Trust or Welch suffers a Dissociation Event, the Drogin Trust and Welch shall have the right to purchase such Member's Membership Interest in the Company upon the provisions and conditions specified in Paragraph 15 below. If both the Drogin Trust and Welch wish to exercise their rights to purchase under this Paragraph 14.3, each such party shall have the right to purchase a portion of the selling Member's Membership Interest equal to the proportion which each of such party's Percentage Interest in the Company bears to the aggregate Percentage Interest of the Drogin Trust and Welch at that time. To exercise its right to purchase the Membership Interest of a Member suffering a Dissociation Event as provided hereunder, the Member must deliver an Exercise Notice to the Manager and the Member or Representative of the Member suffering a Dissociation Event.

## 15. PRICE, TERMS AND CONDITIONS OF PURCHASE.

15.1 Purchase Price. The purchase price ("Purchase Price") for the Membership Interest of any Member selling under the provisions of Paragraph 14.3 herein ("Paragraph 15 Selling Member") shall be the fair-market value of the Paragraph 15 Selling Member's Membership Interest which, Section 17252(c) or any other provision of the Act to the contrary notwithstanding, shall be determined strictly in accordance with this Paragraph 15. The Purchase Price for the Paragraph 15 Selling Member's Membership Interest shall be based on the Property Value (as defined below) and determined pursuant to the formula set forth in Paragraph 15.2.4 below as of the date of delivery of an Exercise Notice by the Member(s) (singularly or collectively, "Purchasing Member") purchasing the Paragraph 15 Selling Member's Membership Interest.

15.2 Method of Determining Purchase Price. The Purchase Price shall be determined as follows:

15.2.1 The Property Value shall refer to the fair-market value of the Property ("Property Value").

15.2.2 Within thirty days after the date the Purchasing Member delivers an Exercise Notice to the Paragraph 15 Selling Member (or its Representative), the Purchasing Member and Paragraph 15 Selling Member shall meet and in good faith seek to

agree upon the Property Value as of the date of delivery of the Exercise Notice. If, during the thirty days following the date the Purchasing Member and Paragraph 15 Selling Member first meet in an effort to establish the Property Value ("Negotiating Period"), they agree upon such Property Value, their determination shall be entered into the formula to determine the Purchase Price as set forth in Paragraph 15.2.4 below.

15.2.3 If the Purchasing Member and the Paragraph 15 Selling Member are unable to establish the Property Value during the Negotiating Period, the Property Value shall be determined by the award agreed to by a single MAI Appraiser ("Appraiser") jointly selected by the Purchasing Member and Paragraph 15 Selling Member. If they cannot in good faith agree to a single Appraiser, the Property Value shall be determined by a majority of three Appraisers, one selected by the Purchasing Member, one selected by the Paragraph 15 Selling Member (or its Representative), and one selected by the two previously selected Appraisers. After expiration of the Negotiating Period, each of the purchasing and selling parties shall give notice of its selection of an Appraiser to the other party. If either party to such purchase fails or refuses to select an Appraiser within fifteen (15) days after receipt of written notice of the other party's selection of an Appraiser, the Property Value shall be determined by the single Appraiser selected. The Appraiser (or Appraisers) shall determine the Property Value as soon as possible. If a majority of the three Appraisers are unable to agree upon the Property Value within forty-five (45) days after the appointment of the first Appraiser, the Property Value shall be an amount equal to the average of the three values determined by the Appraisers, excluding any appraisal which is ten percent (10%) greater than or ten percent (10%) less than the middle appraisal. The Property Value shall be entered into the formula to determine the Purchase Price as set forth in Paragraph 15.2.4 below.

15.2.4 The Manager, as soon as possible after being advised of the Property Value, shall determine the Purchase Price pursuant to the following formula:

$$(\text{Property Value} - \text{Existing Debt secured by Property}) \times (75\%) \times (\text{Percentage Interest of Selling Member})$$

\*As of the date of delivery of the Exercise Notice.

To illustrate, if a member with a 10% Percentage Interest suffers a Disassociation Event and if the Property Value is determined to be \$3,000,000 and the debt secured by the Property as of the date of delivery of the Exercise Notice is \$2,200,000, then the Purchase Price shall equal \$60,000  $(\$3,000,000 - \$2,200,000 \times 75\% \times 10\%)$ .

As soon as the Manager has determined the Purchase Price, the Manager shall deliver written notice of the Purchase Price to both the Paragraph 15 Selling Member and the Purchasing Member ("Purchase Price Notice"). Any provision in this Agreement to the

contrary notwithstanding, the Purchasing Member shall have three (3) business days after the delivery of the Purchase Price Notice to elect not to proceed with the purchase, whereupon its purchase option shall terminate.

15.3 Closing. The closing for the purchase and sale of the Paragraph 15 Selling Member's Membership Interest shall occur at the Company's principal place of business at 10:00 a.m. on the tenth (10) day after delivery of the Purchase Price Notice, unless such day is a weekend or national holiday, in which event, the closing will occur on the next business day. At the closing, the Paragraph 15 Selling Member shall deliver to the Purchasing Member (in form and substance acceptable to the Purchasing Member) a duly executed assignment of Membership Interest (with certificate(s) evidencing such Membership Interest, if any). Upon request of the Purchasing Member concurrently therewith or at any time and from time to time thereafter, the Paragraph 15 Selling Member also shall execute and deliver such other documents and instruments as the Purchasing Member determines are necessary or desirable to consummate the closing and to transfer ownership, title and control of the Paragraph 15 Selling Member's Membership Interest and the Company Assets to the Purchasing Member and otherwise to allow the Purchasing Member to use, sell, rent, own, operate or dispose of the Paragraph 15 Selling Member's Membership Interest or interest in the Company Assets. At the closing, the Purchasing Member shall deliver to the Paragraph 15 Selling Member certified or cashier's checks in payment of the Purchase Price. In addition, the closing shall include a settlement of all debts (if any) between the Purchasing Member and Paragraph 15 Selling Member and the Paragraph 15 Selling Member and the Company. Any debts owed by the Paragraph 15 Selling Member to the Company or the Purchasing Member shall be due and payable concurrently with the closing, and the Purchasing Member shall be entitled to deduct debts owed to it from the Paragraph 15 Selling Member from the Purchase Price. The Purchasing Member, in all events, shall indemnify and hold the Paragraph 15 Selling Member harmless from and against any and all obligations to the Company arising after the event giving rise to the right to purchase.

## 16. TIME OF DISSOLUTION.

16.1 Events of Dissolution: The Company shall be dissolved and its affairs wound up upon the first to occur of the following:

16.1.1 Expiration of the term of the Company, unless the business of the Company is continued with the consent of the Members;

16.1.2 The unanimous written consent of all the Members; or

16.1.3 The entry of a decree of judicial dissolution pursuant to Section 17351 of the Act.

16.2 Effect of Event of Dissolution: Upon the occurrence of an event described in Paragraphs 16.1.1 through 16.1.4, the Company shall cease carrying on its business and affairs, except insofar as necessary for winding up the Company, but its legal existence shall continue until all its business and affairs are wound up and the Certificate of Dissolution are executed and filed with the Office of the Secretary of State of California.

17. PROCEDURE UPON DISSOLUTION.

17.1 Priority of Distribution of Funds: Upon dissolution and winding up the Company, the Liquidator shall take the following actions in the order indicated:

17.1.1 First, the Liquidator shall sell, liquidate and reduce to cash the Company Assets, or if the Liquidator so determines, sufficient assets with which to discharge and pay in full the debts and obligations of the Company within a reasonable period of time;

17.1.2 Second, the Liquidator shall pay in full all loans, advances, debts and obligations of the Company to creditors, including Members who are creditors, to the extent permitted by law;

17.1.3 Third, the Liquidator shall distribute all remaining cash or assets to the Members by the end of the Company fiscal year, or within ninety (90) days after liquidation, all remaining cash or assets in kind, pro rata in accordance with their respective positive Capital Account balances, as determined after taking into account all Capital Account adjustments for that Company fiscal year (other than those made necessary due to transactions required by this Paragraph 17.1.3); and

17.1.4 Finally, the Liquidator shall take all such other and further action as may be necessary or appropriate to dissolve and wind up the business affairs of the Company.

17.2 Distributions in Kind. The Liquidator may elect to distribute assets in kind rather than the proceeds from the liquidation of such assets, and such assets need not be distributed proportionately.

17.3 Winding Up and Certificate of Dissolution. The dissolution of the Company shall be completed when all debts, liabilities and other obligations of the Company have been paid and discharged, or reasonably adequate provision therefor has been made, and all remaining property and assets of the Company have been distributed to the Members (or their Transferees). Upon completion of the winding up of the Company's business and affairs, the Manager shall execute and deliver to the Secretary of State of California a Certificate of Dissolution and a Certificate of Cancellation for filing.

18. COMPLIANCE WITH SECURITIES LAWS.

18.1 Legend. THE SECURITIES (MEMBERSHIP INTERESTS) EVIDENCED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE LAWS OF ANY STATE.

18.2 Representation and Warranty. Each Member hereby represents, warrants, covenants and acknowledges to the Company that such Member has read, understands and agrees to be bound by the provisions of this Agreement, and has been given the opportunity to seek and obtain the advice of independent legal counsel of its choice regarding all legal issues.

19. RIGHTS OF CREDITORS. This Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members and their Transferees. This Agreement is expressly not intended to be for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or Person shall have any rights under this Agreement or any agreement between the Company and any Member with respect to any capital contributions or otherwise.

20. GENERAL PROVISIONS.

20.1 Notice. Any notice sent shall be sufficient if sent by United States mail, postage prepaid, (i) to any Member at the address shown next to such Member's signature on the signature page of this Agreement, or to such other address as such party shall give, in writing, or (ii) to the Manager at the Manager's principal place of business.

20.2 No Partnership Intended For Non-Tax Purposes. The Members have formed the Company under the Act, and they expressly do not intend hereby to form a partnership under the California Uniform Partnership Act, the California Revised Limited Partnership Act or any other law or statute. The Members do not intend to be partners one to another or partners as to any other third party. To the extent any Member by word or action represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason of such wrongful representation.

20.3 Further Acts. Each Member shall execute such documents or accomplish such acts as reasonably may be necessary to give effect to the intentions expressed in this Agreement.

20.4 Binding on Transferees. Subject to the restrictions on Transfer contained herein, this Agreement is binding upon and inures to the benefit of each Member's Transferees.

20.5 Captions. The captions in this Agreement are solely for the convenience of the Members and shall not be construed as being part of this Agreement.

20.6 Governing Law. All questions with respect to the construction of this Agreement and the rights and liabilities of the Members shall be governed by the laws of the State of California. Any legal proceedings which may be required to enforce, interpret or construe this Agreement shall be instituted in San Diego County, California.

20.7 Time of the Essence. With regard to the performance by the Members of their obligations under this Agreement, time is expressly made of the essence.

20.8 Exhibits. Each exhibit referred in this Agreement is attached hereto and incorporated herein by this reference.

20.9 Counterparts. This Agreement may be executed in counterparts and as executed shall constitute one agreement, binding on all parties, even though all parties do not sign the original or the same counterpart.

20.10 Amendments. Except as specifically provided herein, this Agreement may be amended only by a written statement upon the affirmative vote of the Members.

20.11 No Waiver. No waiver of any provision herein shall constitute a general waiver for future purposes.

20.12 Severability. If any provision or provisions of this Agreement are determined to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision or the rest of the Agreement.

20.13 Interpretation. This Agreement has been negotiated at arm's length and between parties sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.

**MEMBERS:**

THE DROGIN REVOCABLE DECLARATION  
OF TRUST, dated October 22, 1992

By: Stephen B. Drogin Trustee  
Stephen B. Drogin, Trustee

**ADDRESS:**

5410 Pacifica Drive  
La Jolla, California 92037

James W. Welch  
James W. Welch

**ADDRESS:**

100 Lindsay Circle  
Post Office Box 3178  
Ketchum, Idaho 83340

[SIGNATURES CONTINUED ON NEXT PAGE]

  
Richard K. Plumleigh, Jr.

ADDRESS:

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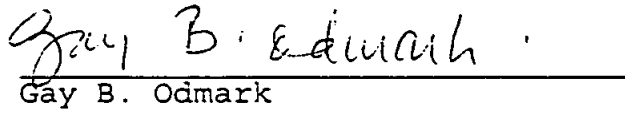
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Mona R. Plumleigh

ADDRESS:

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Gay B. Odmark

ADDRESS:

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RECEIVED

PROPERTY DEPARTMENT

DOCUMENT NO. 759788

JUN 28 '77

FILED JUN 27 1977

OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

Property Dept.

LEASE AGREEMENT

THIS LEASE AGREEMENT (which is sometimes referred to herein as "lease" and sometimes as "agreement") is executed as of June 23, 1977, by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY" and S T ASSOCIATES, a general partnership, hereinafter called "LESSEE".

I. DEMISED PREMISES. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described and delineated on Exhibit I 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 senior citizens multiple residential apartment 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.
- B. OBLIGATION TO DILIGENTLY USE. LESSEE covenants to use said premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof.
- C. RELATED COUNCIL ACTIONS. By the granting of this lease, the City Council of The City of San Diego is not obligating itself with regard to any other discretionary action relating to development or operation of said premises. Such discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals which are required.

II. TERM OF AGREEMENT.

- A. COMMENCEMENT AND TERMINATION. The term of this

agreement shall be fifty-five years commencing on the first day of the calendar month following the date of execution hereof by CITY.

- B. SURRENDER OF PREMISES. At the expiration or earlier termination of this lease, LESSEE shall execute, acknowledge and deliver to CITY, within five days after written demand by CITY, a valid and recordable quit claim deed covering all of the leasehold premises free and clear of all liens and encumbrances.

III. CONSIDERATION.

- A. MINIMUM RENT. The minimum rent during the entire term of this Lease Agreement is payable to the Office of the City Treasurer monthly in advance beginning thirty days after the issuance of a final certificate of occupancy for the Project by CITY, or 180 days after the effective date hereof whichever first occurs. The minimum rent shall be \$2,166.67 per month during the entire term of this Lease Agreement. Until LESSEE is required to pay monthly rent as provided hereinabove, LESSEE shall pay to CITY monthly in arrears (within fifteen days after the last day of each month), a sum equal to \$7.88 multiplied by the number of occupied apartment units in the Project for the entire month for which payment is to be made; the parties anticipate that such occupancy will be permitted by temporary certificates of occupancy which LESSEE will obtain as each building in the Project is completed.

B. PERCENTAGE RENT

1. Percentage Rent Rate. In addition to the minimum rent required by Section III.A., LESSEE shall pay to CITY percentage rent in a sum equal to the amount by which 6.82% of LESSEE'S gross revenues (as defined in Section III.B.2.) from the Project during each month of the term exceeds \$2,166.67. Percentage rent shall be computed and paid each month as follows: on or before thirty days following the close of each month (after the commencement of the term), LESSEE shall

pay to CITY the amount by which the sum computed as being 6.82% of LESSEE'S gross revenues during the prior month exceeds \$2,166.67, and LESSEE shall within such time period furnish to CITY a statement of LESSEE'S gross revenues for such month.

2. Gross Revenues Defined. "Gross revenues" of LESSEE means the gross income received by LESSEE as a result of LESSEE'S subtenants renting apartment units within the Project, and other amounts realized by LESSEE from laundry equipment receipts, vending machines, and furniture rental (if any).
3. Statement of Gross Revenues. Each statement furnished by LESSEE to CITY pursuant to Section III.B.1. above shall be signed and certified to be correct by LESSEE or its authorized representative. LESSEE shall keep at the Project or at an office located within the City of San Diego 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 two (2) years after the end of the calendar year to which such items are relevant. CITY shall be entitled during the term and within two (2) 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. CITY shall keep any information gained from such statements, inspection, or audit confidential and shall not disclose it other than to carry out the purposes of this lease.

- 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 of San Diego.
- 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 apartment 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 City Manager, the financial capability and overall competence to successfully operate the assigned or subleased premises. The consent of the City Manager and/or City Council will not be unreasonably withheld. This lease and any interest herein shall not be assignable by operation of law without the written consent of the City Manager. Any or all of the following actions will be considered trafficking in the leasehold which is not a permitted activity under this contract and will be considered as contrary to the CITY'S best interests:
  - a. Assignment or subleasing by LESSEE for a consideration in excess of a reasonable return on the actual value of the LESSEE'S installed improvements and/or services rendered.
  - b. Subleasing of the primary function of the lease or subleasing of a major portion of the leasehold.
  - c. If CITY has been notified in writing of the existence of a trust deed or mortgage secured by the leasehold, CITY agrees to give the trustee or beneficiary notice of any sublease or assignment prior to CITY'S approval thereon.

d. Approval of any assignment 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.

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 mortgagee or beneficiary desires to assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY, CITY hereby agrees that upon the filing of an application for consent to such assignment, CITY will give its consent thereto.

B. LESSEE COVENANTS

4. Affirmative Action. LESSEE agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, LESSEE agrees to abide by the Affirmative Action Program for Lessees as it now exists or is hereafter amended. A copy of the program, effective as of the date of this agreement, is on file in the Office of the City Clerk as Document No. 746205 and by

this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by the CITY for its Affirmative Action Program each year.

5. Compliance with Law. LESSEE agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the said premises, or the operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the premises, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees assessed or levied upon the LESSEE or the leased premises including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by LESSEE or by reason of the business or other activities of LESSEE upon or in connection with the leased premises. The judgment of any court of competent jurisdiction, or the admission of LESSEE or any sublessee or permittee in any action or proceeding against them, or any of them, whether CITY be a party thereto or not, that LESSEE, sublessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.
6. Construction/Alterations. LESSEE agrees not to construct or install any buildings or structures on said premises or otherwise improve or alter said premises in any manner except in accordance with plans and specifica-

tions 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. 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 whomsoever,

nor for personal injuries to, or deaths of any persons, whether alleged to have been caused by or resulting from any acts or omission of LESSEE or its sublessees in or about the leased premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. LESSEE agrees to indemnify and save free and harmless CITY and its authorized agents, officers, and employees against any of the foregoing alleged liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor.

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 \$1,000,000.00 COMBINED SINGLE LIMIT LIABILITY. LESSEE agrees to submit a policy of said insurance to the CITY on or before the effective date of this agreement indicating full coverage of the contractual liability

imposed by this agreement and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least thirty days prior written notice thereof to CITY. LESSEE agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the LESSEE may be held responsible for the payment of damages to persons or property resulting from LESSEE'S activities, the activities of its sublessees or the activities of any person or persons for which LESSEE is otherwise responsible.

LESSEE also agrees to procure and maintain during the entire term of this lease, a policy of fire, extended coverage and vandalism insurance on all permanent property of an insurable nature located upon the leased premises. Said policy shall name the CITY as an additional insured and shall be written by an insurance company satisfactory to CITY licensed to transact business in the State of California and shall be in an amount sufficient to cover at least 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 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, physical handicap or medical condition in LESSEE'S use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.
14. Section 8. The Project is intended to provide rental apartment units for persons designated in Section 8 of Title II of the Housing and Community Development Act of 1974--Public Law No. 93-383, or any other similar program of the federal, state or local government intended to provide direct rental subsidies for low-income senior citizens. No apartment unit shall be initially offered for rent without the City of San Diego Housing Authority first having had ten days within which to designate "Section 8 Certificate Holders" as tenants in 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 five business days after its receipt of each such list to designate "Section 8 Certificate Holders" to occupy as tenants the vacant apartment units in the Project. Except for complying with the foregoing provisions of this paragraph 14, LESSEE shall have the right to rent apartment units to anyone fifty-five years of age or older, and LESSEE

will use its best efforts to give first priority in renting apartment units to persons whose income levels meet the intent of the policies of the federal government as contained in the above-referenced Section 8 of Title II of the Housing and Community Development Act of 1974 - Public Law No. 93-383, or any other similar local, state or federal rent subsidy program.

15. Utility Costs. LESSEE agrees to order, obtain and pay or have tenants in the Project pay for all utilities and service and installation charges in connection therewith. All utilities installed by LESSEE shall be installed underground.
16. Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage, or LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the

minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

C. RESTRICTIVE CONDITIONS

17. Administration and Notices. Control and administration of this lease is under the jurisdiction of the City Manager of CITY as to CITY'S interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by law to be given or served upon CITY may be given or served by registered letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention Property Director, City Administration Building, 202 "C" Street, San Diego, California 92101. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE, Mortgagee, Trustee or Beneficiary may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to said LESSEE at the leased premises or at such other address designated in writing by LESSEE, Mortgagee, Trustee or Beneficiary or may be personally served upon them or any person hereafter authorized by them to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served upon personal service or forty-eight hours after mailing in the manner required herein.
18. City Approval and Consent. The approval or consent of the CITY, wherever required in this agreement, shall mean the approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
19. Tenant, Rental Increases. LESSEE agrees that the monthly rent to be charged by LESSEE for each apartment unit in the Project shall not exceed, commencing on the date on which

LESSEE is required to pay monthly rental of \$2,166.67, \$160.00 plus \$.67 per month for every month between October 1, 1976 and the date on which LESSEE is required to commence payment of monthly rental of \$2,166.67 per month. Thereafter, LESSEE may, but not more frequently than once a year, raise the monthly rent for all apartment units in the Project to the extent that LESSEE estimates that the actual costs of operating the Project will increase during the forthcoming year so as to justify the rental increases as being necessary to pay such operating cost increases. For purposes of such computations, the actual costs of operating the Project means professional management (not to exceed 5% of gross revenues), lost gross revenues from vacancies in excess of 5% of gross scheduled rents, possessory interest and other taxes and impositions, insurance, minimum and percentage rent payable to CITY pursuant to III. above, on-site management, water, gas, electricity, trash removal, landscaping maintenance and supplies, repairs, replacements, maintenance, and supplies, and reasonable reserves for replacement. At such time as LESSEE has made cost estimates and computed proposed monthly rent increases as contemplated above, LESSEE shall furnish a copy thereof to the City Manager with reasonable data supporting such cost estimates. The City Manager shall have thirty days after receipt of such data within which to object to any cost estimate set forth therein, and failure of the City Manager to object in writing to LESSEE within such thirty-day period shall constitute approval by the CITY of the cost estimate and of the rental increases proposed by LESSEE. If the City Manager does object in writing to LESSEE during such thirty-day period to the reasonableness of LESSEE'S cost estimate and proposed rental increases, the matter so disputed shall be submitted to a certified public accountant as selected by the City Manager in San Diego, California, who is not an employee of CITY, and the decision of such certified public accountant as to the matter disputed

(and any adjustment to the proposed rent increases that such certified public accountant may deem reasonable) shall be binding upon the CITY and LESSEE for the forthcoming year, insofar as rental increases for that year are concerned. 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 be affected by, any law, ordinance, administrative ruling or other action or enactment which has the effect of limiting rents or rental increases, or in any other manner directly or indirectly attempts or purports to control rents or rent 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 interests of CITY and LESSEE (or Beneficiary or Mortgagee if there is a Trust Deed or Mortgagee then in effect), in the award and the effect of the taking upon this lease agreement shall be as follows:

- a. In the event of such taking of only a part of the leased premises, leaving the remainder of said premises in such location and in such form, shape and size as to be used effectively and practicably in the opinion of CITY for the conduct thereon of the operations permitted hereunder, this lease shall terminate and end as to the portion of the leased premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the leased premises not so taken and from and after such date the contract rent, or in the event there is a minimum rent specified herein, then the minimum rental required by this lease to be paid by LESSEE to CITY shall be reduced in the proportion to which

the value of the leased premises so taken bears to the total value of the leased premises so taken bears to the total value of the demised premises; provided, however, CITY shall have the right, with the consent of LESSEE, to substitute like adjacent property and maintain the rent schedule without diminution.

- b. In the event of the taking of only a part of the leased premises, leaving the remainder of said premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, in the opinion of CITY 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 personal property as hereinafter defined, which have been installed by LESSEE in accordance with the provisions of this agreement, shall at the option of CITY become the property of CITY upon expiration or sooner termination of this agreement. LESSEE shall have the right to remove from the demised premises only that personal property hereinafter defined, at any time prior to the expiration or earlier termination of this agreement, provided that such removal would not, in the opinion of CITY, restrict the operation of the demised premises to the

extent that the rent paid to CITY is reduced as a direct result therefrom. LESSEE'S removal of any such personal property shall be at LESSEE'S own expense and shall be conditioned upon LESSEE'S repairing any damage to the remaining improvements and upon LESSEE leaving the demised premises in good order and condition. In the event LESSEE does not so remove said personal property prior to the expiration of this agreement, CITY may remove, sell or destroy the same at the expense of LESSEE, and if the proceeds of the sale are not adequate, LESSEE shall promptly pay to CITY its reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to CITY'S property resulting from such removal, sale or destruction. At the option of CITY, any personal property not removed by LESSEE may be deemed abandoned and may be removed and sold by CITY and all income received by CITY therefrom shall be the property of CITY exclusively.

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.

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

that such default or defaults may be expeditiously corrected:

- (1) CITY may correct or cause to be corrected said default or defaults and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY of a statement of all or part of said costs.
- (2) CITY may correct or cause to be corrected said default or defaults and may pay the costs thereof (including costs incurred by CITY in enforcing this provision) from the proceeds of any insurance fund held by CITY and LESSEE or by CITY and mortgagee or beneficiary or CITY may use said funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct said default or defaults or to pay the costs of such correction performed by or at the direction of CITY.
- (3) CITY may terminate this lease as to the rights of LESSEE herein by assuming liability for any trust deed or mortgage. LESSEE will assume and agrees to pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related notes by CITY. CITY may, as an alternative, substitute for said terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary.

Should said default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in said leasehold whose qualifications have been approved by CITY for assignment of the leasehold interest shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease and this lease shall not terminate if such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself and commence performance within said thirty-day period after service upon it of said written notice by CITY of the default. In the event of the election by the mortgagee or beneficiary to so substitute itself to LESSEE'S estate hereunder, the CITY expressly consents to said substitution and authorizes said mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the original LESSEE hereunder, subject to cure of the default if possible by mortgagee or beneficiary, and LESSEE expressly agrees to assign all its interest in and to its leasehold estate in that event.

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

- (1) Acts by CITY of maintenance, or preservation, or efforts to relet the property.

(2) The appointment of a receiver upon initiative of CITY to protect the CITY'S interest under the lease.

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

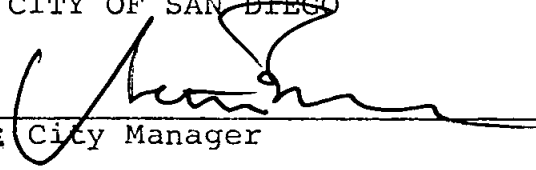
27. Reservation of City Rights. CITY hereby reserves all rights, title and interest in any and all gas, oil, minerals and water beneath said leased premises. CITY shall have the right to enter said leased premises for the purpose of making repairs to or developing municipal services. CITY hereby reserves 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 installa-

tions 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 though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns or sublessees of LESSEE.
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

By   
ASSISTANT TO THE City Manager

(Signatures Continued on Next Page)

LESSEE

S T ASSOCIATES

By

Ted P. Odmark

By

Stephen B. Drogin  
Stephen B. Drogin

APPROVED as to form and legality this 27<sup>th</sup> day of June,  
1977.

JOHN W. WITT, City Attorney

By

John W. Witt

\*

EXHIBIT I

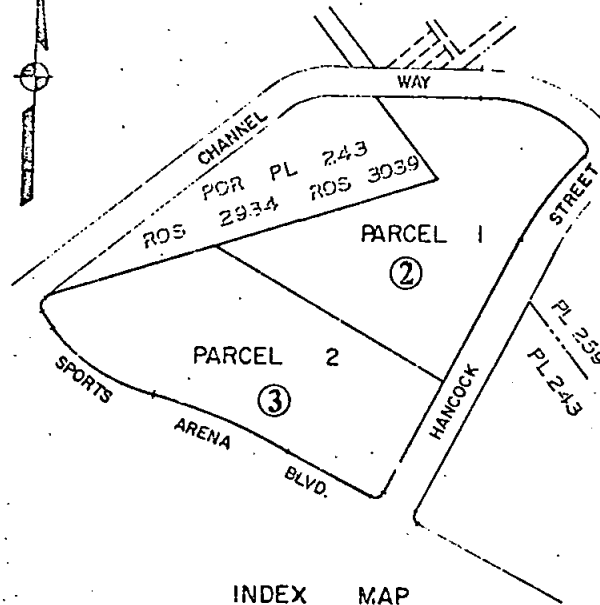
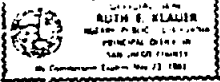
That portion of Parcel 1, in the City of San Diego, County of San Diego, according to Parcel Map No. 6077, filed in the Office of the County Recorder of San Diego, June 22, 1977.

STATE OF CALIFORNIA) SS. ON THIS 22<sup>ND</sup> DAY OF June, 1977,  
COUNTY OF SAN DIEGO) BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC  
IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED PETE WILSON, KNOWN  
TO ME TO BE THE MAYOR AND EDWARD NIELSEN, KNOWN TO ME TO BE THE CITY CLERK  
OF THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, THE MUNICIPAL CORPORATION  
THAT EXECUTED THE WITHIN INSTRUMENT, AND KNOWN TO ME TO BE THE PERSONS WHO  
EXECUTED THE SAME ON BEHALF OF SAID MUNICIPAL CORPORATION, AND ACKNOWLEDGED  
TO ME THAT SAID MUNICIPAL CORPORATION EXECUTED THE SAME.

IN WITNESS WHEREOF, I HAVE HEREIN SET MY HAND AND AFFIXED MY NOTARIAL  
SEAL, THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

MY COMMISSION EXPIRES MAY 23<sup>RD</sup> 1981

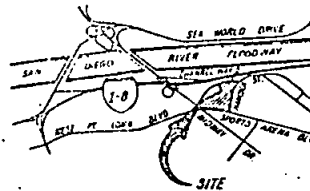
*Ruth E. Klawer*  
NOTARY PUBLIC IN AND FOR  
SAID COUNTY AND STATE



### INDEX MAP

SCALE: 1"=200'

- ② ----- INDICATES SHEET NUMBER  
----- INDICATES SHEET DIVISION



### VICINITY MAP

NO SCALE

### PARCEL MAP

IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING  
A DIVISION OF A PORTION OF LOT B OF P.L. 259/SCG 5620, AND PORTIONS OF  
PUEBLO LOTS 243 AND 259, ACCORDING TO MISCELLANEOUS MAP NO. 36, AND A  
PORTION OF LOT 49, BLOCK "D" OF PACIFIC VIEW SUBDIVISION, MAP NO. 1497,  
ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, TOGETHER  
WITH KNOXVILLE STREET, LAWAY STREET, AND AN UNNAMED STREET IN P.L. 243,  
ALL AS CLOSED AND VACATED TO PUBLIC USE.

### LEGEND

- ----- INDICATES FOUND A POINT AS NOTED HEREON
- ----- INDICATES FOUND A 2" IRON PIPE WITH DISC MARKED "CITY ENGINEER", NO RECORD
- ▲ ----- INDICATES FOUND A 3/4" IRON PIPE WITH DISC MARKED "CITY ENGINEER", NO RECORD
- ⊙ ----- INDICATES SET A 2"x24" IRON PIPE WITH DISC MARKED "R.C.E. 9416"
- ----- INDICATES SET A 3/4"x18" IRON PIPE WITH DISC MARKED "R.C.E. 9416"
- ----- INDICATES SET A LEAD AND DISC MARKED "R.C.E. 9416" IN CONCRETE AT AN 11.00 FOOT OFFSET MEASURED AT RIGHT ANGLES TO FRONT PROPERTY LINE ALONG AN EXTENSION OF THE PARCEL LINE.

TOTAL ACRES: 10.576 GROSS

NUMBER OF PARCELS: 2

BASIS OF BEARINGS: THE BASIS OF BEARINGS FOR THIS MAP IS THE CENTERLINE  
OF SPORTS ARENA BOULEVARD PER PARCEL MAP NO. 3129.  
I.E., N 77°56'32" W.

ASSESSOR'S BOOK 441, PAGE 590, PARCEL 03

TITLE REPORT BY FIRST AMERICAN TITLE INSURANCE COMPANY, ORDER NO. 742141-G

WE, OWNERS OF THE PROPERTY COVERED BY THIS MAP, HEREBY APPROVE SAID MAP.

THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION  
COMMUNITY CONCOURSE  
202 "C" STREET  
SAN DIEGO, CALIFORNIA 92101

BY: *Pete Wilson* BY: *Edward Nielsen*  
PETE WILSON, MAYOR EDWARD NIELSEN, CITY CLERK

THIS MAP CONFORMS WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND  
LOCAL ORDINANCE.

J. P. FOULER BY: *William B. Rick* DATED: *June 22, 1977*  
CITY ENGINEER

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A  
FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP  
ACT AT THE REQUEST OF THE CITY OF SAN DIEGO ON FEBRUARY 8, 1977. I  
HEREBY STATE THAT THE PARCEL MAP PROCEDURES OF THE LOCAL AGENCY HAVE BEEN  
COMPLIED WITH AND THAT THIS PARCEL MAP CONFORMS TO THE APPROVED TENTATIVE  
MAP AND THE CONDITIONS OF APPROVAL THEREOF WHICH WERE REQUIRED TO BE FILLED  
PRIOR TO THE FILING OF THE PARCEL MAP.

*William B. Rick*  
WILLIAM B. RICK, R.C.E. 9416

FILE NO. 77-245832

FILED THIS 22<sup>ND</sup> DAY OF June, 1977, AT 3:20 O'CLOCK P.M., IN  
BOOK OF PARCEL MAPS AT PAGE 6077, AT THE REQUEST OF WILLIAM B. RICK.

HARLEY F. BLOOM BY: *William B. Rick*  
COUNTY RECORDER DEPUTY

FEE: NONE

PROJECT NO. 5976

T.M. NO. 77-245832  
W.O. NO. 7679

PARCEL MAP NO. 6077

**SHEET 2 OF 3 SHEETS**



SCALE:  1"=50'

INTERSTATE

MAP DRUCKER'S SUBDIVISION  
1534  
CHANNEL

CHANNEL

POR PL 243  
ROS 2934  
ROS 3039

243  
4  
PARCEL MAP BOUNDARY

PARCEL  
5005 ACRES

PARCEL 2  
SHEET

NO. 3

RICK ENGINEERING COMPANY  
3410 EMERY ROAD SAN DIEGO, CALIFORNIA 92110

NOTE: DIED REFERENCES AS FOLLOWS:

(1) FILE, PAGE NO. 137836. RECORDED  
JULY 30, 1969

(2) BOOK 6131, PAGE 129, O.R.  
RECORDED JUNE 7, 1956

EXISTING EASEMENT TO SAN DIEGO GAS &  
ELECTRIC COMPANY RECORDED OCTOBER 3,  
1958, BOOK 7284, PAGE 101, OR LIES ENTIRELY  
WITHIN EASEMENT TO SAN DIEGO GAS & ELECTRIC  
COMPANY RECORDED SEPTEMBER 4, 1970,  
F/P 157928, BOOK 1970, OR

...FOUND CITY CONTROL  
ADJUSTMENT (NO RECORD)  
N 77° 53' 37" W RPD...  
117° 26' 41" W PER DEED (1)  
...FOUND LEAD & DISC  
MARKED "GE" (NO RECORD)

PL 259

PL 243

HANCOCK STREET DEDICATED PER  
DEED RECORDED JULY 30, 1969 AS FILE/  
PAGE NO 137836, SERIES 10, BOOK 1969, Q.R

PROJECT NO. 5976

|          |       |
|----------|-------|
| T.A. NO. | 77-23 |
| WONO     | 79119 |

PARCEL MAP NO. 6077

**SHEET 3 OF 3 SHEETS**



NOTE: NEED REFERENCES AS FOLLOWS:

- ② BOOK 5514, PAGE 187, O.R.  
RECORDED JANUARY 31, 1955
- ③ BOOK 6131, PAGE 129, O.R.  
RECORDED JUNE 7, 1956

SCALE:  1" = 50'

PARCEL 1  
SHEET NO. 2

POR PL 243  
ROS 2934  
ROS 3039

PARCEL 2  
5.573 ACRES

PL 243

-- HANCOCK STREET DEDICATED  
 BY DEED RECORDED JULY 30  
 1969 AS FILE/PAGE NO. 137836.  
 SERIES 10, BOOK 1969, O.R

25' RESTRICTED GENERAL  
UTILITY EASEMENT TO CITY  
OF SAN DIEGO PER FILE/PAGE  
No. 103015, SERIES B, BOOK 1967,  
Q.R., REC. 7-25-G7.

EXISTING 15' EASTMENT TO SAN DIEGO GAS &  
ELECTRIC COMPANY RECORDED SEPTEMBER  
1, 1970 AS FILE PAGE NO. 157927, BOOK 1970  
D.R.

— PARCEL MAP BOUNDARY

(A. 90° 02' 45")  
PER DEED (1)  
A. 90° 03' 05"  
R. 20' L. 3143' }

...FOUND LEAD & DISC  
MARKED "CE" (NO RECORD)

~~N 2° 09' 53" E~~  
~~58.86'~~

FD. 2" IRON PIPE WITH  
CITY ENGINEERS DISC  
PER PARCEL MAP NO. 3129

ARENA

*BOULEVARD*

HTT 56°32'W BASIS OF BEARINGS 268.50  
278.59'

FD. 1" IRON PIPE WITH  
CITY ENGINEERS DISC  
PER MRP 6417 (P.M. 3129

P.M. 3129

RICK ENGINEERING COMPANY.  
2620 FRIARS ROAD SAN DIEGO, CALIFORNIA 92103

PROJECT NO. 5976

T.M. NO. 7, - 73

W.O. NO. 78119

Passed and adopted by the Council of The City of San Diego  
on January 5, 1977, by the following vote:

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

NAYS: None.

ABSENT: None.

AUTHENTICATED BY:

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

EDWARD NIELSEN.  
City Clerk of The City of San Diego, California.

(SEAL)

By KATHLEEN MARTINEZ, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,  
true and correct copy of RESOLUTION NO. 217463  
passed and adopted by the Council of The City of San Diego,  
California, on January 5, 1977.

EDWARD NIELSEN.  
City Clerk of The City of San Diego, California.

(SEAL)

By Kathleen Martinez, Deputy.

COPY

DOCUMENT NO. 758179

OPTION AGREEMENT FILED FEB 8 1977

OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

Approved by Council Resolution No. 217463 dated January 5, 1977

THIS OPTION AGREEMENT executed this 5<sup>th</sup> day of January, 1977 by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY", and S T ASSOCIATES, 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 Lease Agreement marked "EXHIBIT A", attached hereto and incorporated herein by this reference and hereinafter referred to as the "premises".

II. OPTIONEE desires to obtain an option to lease from CITY said premises for the purposes of constructing and operating a senior citizens multiple residential rental project (Project), containing 275 rental apartment units, upon the terms and conditions set forth in the above-said form of Lease Agreement.

#### COVENANTS

A. CITY hereby grants to OPTIONEE an option for the period of twelve months from the date of execution of this Option Agreement by CITY, which date is hereinabove first set forth, to lease from CITY the above-said premises on the

terms and conditions set forth in the form of Lease Agreement attached hereto and marked "EXHIBIT A". Optionee shall expeditiously after exercise of the option granted herein unconditionally constitute said parcel of real property as a lawful parcel and legal building site for the Project. 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.

B. The consideration for this Option Agreement is \$50.00 which has been paid to CITY in full.

C. This option may be exercised by OPTIONEE at any time prior to expiration of twelve 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.

D. CITY, its agents, officers and employees, shall not be liable, nor be held liable, for any claims, liabilities, penalties, fines or for any damage to the goods, properties, or effects of OPTIONEE or any of OPTIONEE'S representatives, agents, employees, guests, licensees, invitees, patrons or of any other person 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 twelve 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 and uses of all improvements including buildings, parking areas, appurtenant structures and financing plan; the application shall include provision for ten apartment units for handicapped persons, which ten 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. Obtain, if required, a coastal permit with respect to the Project; CITY shall cooperate with OPTIONEE in the obtaining thereof.

d. Submit to CITY construction plans and

specifications satisfactory to the City Manager for the development of said premises 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.

e. 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.

2. OPTIONEE shall exercise this option by giving CITY written notice of its election to do so, accompanied by a written Lease Agreement of the premises in the form of said "EXHIBIT A" executed by OPTIONEE in triplicate. CITY'S failure to execute the lease prior to the expiration of the term of this option shall not invalidate the Lease Agreement nor nullify OPTIONEE'S timely notice of 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.

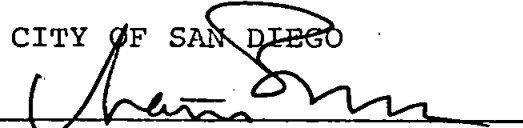
3. Upon the performance of the conditions herein

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 CITY of CITY'S obligations pursuant to the second sentence of Covenant A above.

IN WITNESS WHEREOF, this agreement is executed by CITY acting by and through its City Manager under and pursuant to Resolution No. 217463 authorizing such execution and by OPTIONEE.

THE CITY OF SAN DIEGO

By

  
ASSISTANT TO THE CITY MANAGER

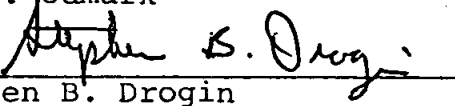
OPTIONEE

S T ASSOCIATES

By

  
Ted P. Odmark

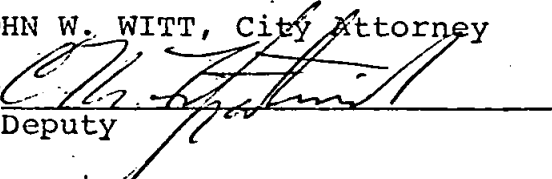
By

  
Stephen B. Drogin

APPROVED as to form and legality this 28<sup>th</sup> day of January, 1977.

JOHN W. WITT, City Attorney

By

  
Deputy

217463

RESOLUTION NO. \_\_\_\_\_

R. 77-943  
(Rev.)

JAN 5 1977

WHEREAS, by Resolution No. 214556, Council made certain city-owned sites available for the development of low-income senior citizen and handicapped housing; and

WHEREAS, in response to Council action S T Associates submitted a proposal to the City for the development of 275 units of low-income senior citizen and handicapped housing on the northerly half of the Sports Arena Boulevard and Hancock Street property; and

WHEREAS, S T Associates subsequently submitted an Option and Lease offer for the property in question pursuant to appropriate City policy; and

WHEREAS, the Public Services and Safety Committee reviewed said Option and Lease Agreements and approved both documents with certain recommendations; and

WHEREAS, all recommendations of the Public Services and Safety Committee were incorporated into said Option and Lease Agreements; and

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

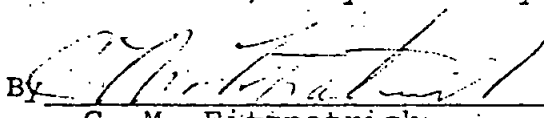
BE IT RESOLVED, by the Council of The City of San Diego, as follows:

That availability of the northerly half of the Sports Arena Boulevard and Hancock Street site for the development of low-income senior citizen and handicapped housing is hereby approved.

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, a one-year Option Agreement with S T ASSOCIATES, a general partnership, for portions of Pueblo Lot 243, located at Sports Arena Boulevard and Hancock Street, under the terms and conditions set forth in the form of agreement on file in the office of the City Clerk as Document No. 758172.

BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, a 55-year Lease with S T ASSOCIATES, under the terms and conditions set forth in the form of Lease Agreement on file in the office of the City Clerk as Document No. 758173.

APPROVED: JOHN W. WITT, City Attorney

By   
C. M. Fitzpatrick  
Senior Chief Deputy

CMF:vl:  
REV. 2/3/77