

RENTAL AGREEMENT

THIS RENTAL AGREEMENT (Agreement) is made in duplicate by and between THE CITY OF SAN DIEGO (CITY), through its City Manager, and SAVE OUR HERITAGE ORGANIZATION, a non-profit California corporation, (TENANT), who hereby agrees to rent property owned by CITY, described as the Old Adobe Chapel (PREMISES), as delineated on the attached Exhibit "A", on the terms and conditions provided in this Agreement.

In consideration of the mutual covenants contained in this Agreement, and other valuable consideration received, the CITY and TENANT agree as follows:

RECITALS

- A. A previous provider has terminated its lease; a Lessee/provider needs to be in place to continue providing service to the public immediately. This agreement enables continuation of services pending a request for proposal selection process.
- B. TENANT is entering into this three (3) year Rental Agreement with the understanding that during the three (3) year term the CITY will be either pursuing approval from a City Council Committee to enter into exclusive negotiations with a long term potential TENANT or process a Request for Proposal as part of a search for a suitable long term potential TENANT.
- C. Even though TENANT is offering to operate the Old Adobe Chapel on short notice during this interim three (3) year term, CITY is under no obligation to give any special consideration to TENANT at the time a long term TENANT is selected.

AGREEMENT

1. Use. TENANT shall use the PREMISES solely for the purpose of operating an historical museum for the public as specifically set forth in this Agreement and in Exhibit C (Special Provisions) and for no other purpose whatsoever. Exhibit C, Special Provisions, is a part of and incorporated into this Agreement by this reference.
2. Term. The term of this rental agreement shall commence upon signing of the Agreement by TENANT, CITY and approval by the City Attorney and shall terminate on September 30, 2007 unless terminated earlier by either party with ninety (90) days advance notice to the other party.
3. Default. TENANT will be in default of this Agreement if any of the following occurs:

- a. TENANT fails to make any payment required under this Agreement when due;
 - b. TENANT defaults in the performance of any covenant or condition required by this Agreement, other than those requiring payment to CITY, to be performed by TENANT and fails to cure said default within thirty (30) days following written notice thereof from CITY; or if such default, other than those requiring payment to CITY, cannot be cured within thirty (30) days, and TENANT fails to commence to cure the default within said thirty (30) day period and diligently pursue such cure to completion;
 - c. TENANT abandons the PREMISES;
 - d. TENANT makes any misrepresentation or material omission to CITY in connection with this Agreement;
 - e. TENANT voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
 - f. TENANT is adjudicated a bankrupt; or,
 - g. TENANT makes a general assignment for the benefit of creditors.
4. Remedies for Default. If TENANT defaults, CITY may, at its option, give TENANT a written Three (3) Day Notice to Pay or Quit, or CITY may terminate the Agreement and all rights of TENANT to the PREMISES or to possession thereof, and CITY may enter and take possession of the PREMISES (provided, however, in the event that any default described in Section 6 Defaults, hereof, cannot be cured within thirty (30) days after notice to TENANT, CITY will not terminate this Agreement pursuant to the default if TENANT immediately notifies CITY of TENANT'S intent to cure and immediately commences to cure the default and diligently pursues such cure to completion), and may recover from TENANT the sum of all unpaid rents and any other amounts necessary to compensate CITY for all the detriment proximately caused by TENANT'S failure to perform TENANT'S obligations under the Agreement.
5. Indemnity. TENANT agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to TENANT'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the permit area or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, the TENANT'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

6. Insurance/Property Damage. TENANT shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:
- a. Public Liability and property damage insurance in the amount of not less than TWO MILLION DOLLARS (\$2,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or TENANT or by authorized representatives of CITY or TENANT on or in connection with the use or operation of the PREMISES.
 - b. Conditions. All insurance policies will name "the City of San Diego, its elected officials, officers, representatives, agents and employees" as additional insureds by separate endorsement. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the Agreement. A copy of the insurance policy will remain on file with CITY during the entire term of the Agreement. At least thirty (30) days prior to the expiration of each policy, TENANT shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Agreement.
 - c. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving TENANT sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the PREMISES. TENANT also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.
 - d. Accident Reports. TENANT shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the PREMISES. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information, and the report shall be provided to the CITY within ten (10) days of any accident or incident.
7. Utility Bills. The City agrees to pay all water, sewer, gas, and electric utility bills.
8. Assignment/Alterations. TENANT shall not let or sublet the whole or any portion of the PREMISES, nor assign this tenancy to a third party, nor make or suffer any alterations to be made in or on said PREMISES, without first obtaining the written

consent of CITY. In the event of a breach of this condition, CITY shall have the power to immediately declare this Agreement terminated and will be entitled to immediate possession of the PREMISES.

9. TENANT'S Notice of Vacation. Upon vacating PREMISES, TENANT agrees to leave said PREMISES in the condition existing on the day TENANT took possession of the PREMISES. TENANT shall reimburse CITY for any damage done to said PREMISES, caused by TENANT'S occupation or tenancy, exclusive of ordinary wear and tear.
10. Maintenance of PREMISES. TENANT shall be solely responsible for performing janitorial services within the chapel in such a manner as to keep the chapel in a decent, safe, healthy and sanitary condition at all times during the entire term of this Rental Agreement to the satisfaction of the City Manager or designee. City shall perform basic building maintenance on permanent features, including but not being limited to exterior and interior walls, ceilings, roofs, floors, external structures, electrical circuits, plumbing, and such fixtures as heating equipment to the extent that provision has been made therefor in the schedules upon which the annual City appropriation for maintenance of public buildings is based. Pursuant to paragraph 3 in the attached Exhibit C, TENANT shall maintain the landscaping, walkways and other amenities on the grounds.
11. CITY Notice of Vacation. TENANT shall vacate said PREMISES within ninety (90) days after receipt of Notice from CITY. If TENANT fails to timely vacate, TENANT agrees that CITY, or its authorized agents, may enter upon said PREMISES and remove all TENANT personal property, and in this event TENANT waives any and all claims of damages against CITY, its agent or employees. Nothing herein shall be deemed a waiver of any rights of CITY to demand and obtain possession of the PREMISES in accordance with law if TENANT violates any of the terms or conditions of this Agreement. Failure to vacate in a timely manner could also result in loss of potential relocation benefits.
12. Nondiscrimination. TENANT agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in TENANT'S use of the permit area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
13. Signs. No signs shall be displayed on the PREMISES without the prior written consent of the CITY.

14. Legal Proceedings. Should it become necessary for CITY to commence legal proceedings to recover possession, or enforce any other provision of this Agreement, the prevailing party will be entitled to an award of legal costs, including a reasonable sum as attorney's fees. The parties agree that the law of the State of California will govern all disputes under this Agreement. Venue of any action involving this Agreement shall be in the County of San Diego or the Southern District Court of California. 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 Agreement.
15. Possessory Interest. TENANT acknowledges that the interest conveyed by this Rental Agreement may be subject to possessory interest tax and agrees that any such tax shall be the liability of and be paid by TENANT before becoming delinquent.
16. Nuisance. TENANT shall not create any nuisance or allow any other persons to create a nuisance on the PREMISES or any part thereof. If in the opinion of the City Manager or his Designee, either of these conditions occur, the City Manager or his Designee shall have the right to immediately terminate this tenancy.
17. Amendments. The terms of this Agreement may be amended or by written agreement signed by both TENANT and CITY.
18. Entry and Inspection. CITY shall always have the right to enter the PREMISES for purpose of viewing and ascertaining the condition of the PREMISES, or to inspect the operations conducted thereon. In the event the CITY discovers that the PREMISES are not in decent, safe, and sanitary condition, TENANT agrees to have all necessary maintenance work done at its expense within ten (10) days after such entry or inspection by the CITY.
19. Entire Understanding. The Agreement contains the entire understanding of the parties. TENANT, by signing this Agreement, agrees that there is no other written or oral understanding between the parties with respect to the PREMISES. Each party has relied on its own examination of the PREMISES, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself. Each of the parties in this Agreement agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement.

The failure or refusal of any party to read the Agreement or other documents, inspect the PREMISES, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been

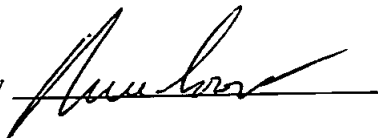
based on these actions. No modification, amendment, or alteration of this Agreement will be valid unless it is in writing and signed by all parties.

20. Supersedure. Upon execution, this Agreement supersedes any prior agreement, whether oral or written, between TENANT and CITY, or CITY'S predecessor in interest covering the PREMISES.
21. Right to Inspect Records. All TENANT'S books of account, records, and supporting documentation, will be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit all books of account, records, and supporting documentation relating to the leased premises.
22. Maintenance of Records. TENANT shall maintain complete and accurate records in a manner satisfactory to the City Manager from which City can determine the amounts of all income.
23. Notices.
 - a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to TENANT at the PREMISES or at such other address designated in writing by TENANT; and to CITY as follows:

City Manager
Attention Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155
 - b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

Executed by CITY, acting by and through its City Manager, and by TENANT as of the dates indicated below.

TENANT

By 

Date Oct 1, 2006 ^{11/2}

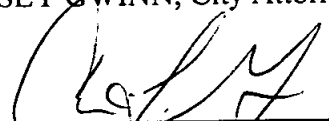
THE CITY OF SAN DIEGO

By 
Jack D. Farris
Deputy Director

Date 10-07, 2004

APPROVED as to form and legality this 21st day of October, 2004.

CASEY GWINN, City Attorney

By 
Deputy City Attorney

JAB/cdj

9/20/04

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EXHIBIT "A" - PREMISES

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SHT 1 OF 2

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CHANGES				
BLK	OLD	NEW	VR	CUT
511	3	48.49	83	2496
512	2	48.49	85	1878
513	3	48.49	85	1008
513	39	48.49	86	2638
513	25.34	36	87	2677
511	38.67	50	89	1008
511	19	COMPO	90	630
513	19.14	27.60	90	1024
511	2.17	COMPO	92	540
511	40	87.38	90	1780
511	17.61A (50-7)	51-53	92	1345
513	15	63	93	4703
511	44	83	93	4740

1* CONDO
OLD TOWN COURTYARD
ASSOCIATION
DOC98-370015
(SEE SHT 2)

MAP 5598 - PLUMMER SUB
MAP 3315 - CHANNEL VIEW HEIGHTS
MM 40 - OLD SAN DIEGO
ROS 554.9476.10277.10609.12316.16657

EXHIBIT C
SPECIAL PROVISIONS

Tenant and City agree that in the event there is any conflict between the following special provisions and any other provisions of this Rental Agreement, whether heretofore or hereinafter set forth, the following special provisions shall govern:

1. PUBLIC USE. The general public shall not be wholly or permanently excluded from these Premises or any portion thereof, other than areas for administration, maintenance or other areas as identified in an Operating Plan that has been approved in writing by the City Manager or his Designate. Tenant shall open the building on the Premises to the public in accordance with the schedule in the Operating Plan. It is understood that the purpose of the Rental Agreement for the Old Adobe Chapel and grounds is to preserve the historical aspects of the building and site while providing educational and recreational opportunities to the public as approved by the Director.
2. PUBLIC USE OF GROUNDS. The public shall not be excluded from the grounds of the Premises other than areas for administration, maintenance or for events as approved in the Operating Plan. Tenant shall only close the grounds on the Premises to the public in accordance with the schedule approved by the Director in the Operating Plan.
3. LANDSCAPING. Tenant shall maintain the landscaping, walkways, and other amenities on the grounds.
4. BUILDINGS. Tenant shall use the building for purposes compatible with the operation of a historic old Adobe chapel museum or other uses approved in the Operating Plan.
5. CITY USE. The premises shall be available to City for civic events and special programs, free of charge, except where Tenant has scheduled events or programs. After every City use, City shall leave the premises in the same condition found, and Tenant shall not be required to incur any additional costs by reason of City use.
6. FEES. Tenant shall have the right to charge reasonable fees for activities and admissions. Said fees will be subject to prior written approval of the Director. Such fees may include charges for admission to the building, sale of merchandise related to the museum, gift shop, concessions, special events or others as approved by the Director. No fee shall be charged for entrance to the grounds unless part of a special event approved by the Director. Fees and charges shall be established that will not preclude low and moderate-income persons from using the Premises. All funds collected by the Tenant from the operation of the Premises shall be accounted for and used for improvements, development, maintenance, and program operations on the premises. No fees will be charged to the groups that visit the Premises as part of the San Diego Schools Old Town Program.

7. BY-LAWS. Membership in Permittee's organization shall be open to anyone meeting the requirements of its rules and by-laws and California State Corporation codes, especially sections 5310 through 5342. Tenant will not discriminate against a member or potential member because of age, race, color, religion, physical handicap, ancestry, sex or national origin. A current copy of by-laws shall be on file in the Department of Parks and Recreation office.
8. POLITICAL ACTIVITIES. The premises shall be used exclusively for the purposes specified herein. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that Tenant shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
9. ANNUAL OPERATING PLAN. Within six months of signing this Rental Agreement, Tenant shall submit for review and written approval by the Director or designated representative an Annual Operating Plan (Plan). At a minimum, the Plan shall address:
 - a. Interpretive theme. The Interpretive theme(s) shall be stated in the Operating Plan. If an Interpretive Plan is prepared, it shall be included in the Operating Plan.
 - b. Building use and maintenance. The plan shall describe the use(s) for the building and include a building maintenance schedule that addresses preservation of the structures and general upkeep for health and safety of the public. Any proposed changes to be made to building uses shall be described.
 - c. Furnishings. The plan shall include a schematic room plan and inventory of items in each room.
 - d. Curation/Archive. The Plan shall include a current inventory of items within the museum, a housekeeping and curation plan for the items, a mechanism for acknowledging and accessioning donations.
 - e. Marketing. The marketing plan will include a strategy to advertise the Old Adobe Chapel as an historical site including brochures, pamphlets, special events, news releases and a website that provides information on the Old Adobe Chapel, the Tenant's organization and the City of San Diego. In addition, Tenant shall provide onsite information regarding the Old Adobe Chapel, Tenant's organization, City of San Diego and other information regarding Old Town, at a location and manner approved by the Director.
 - f. Programs and Activities. The Operating Plan shall include the days and hours of operation, the types and frequencies of programs and special events, and a fee schedule for programs and special events. Tenant may be open for short periods

earlier or later than the designated hours. Staff is required to be on the Premises when the buildings are open to the public.

- g. Management/Staffing. The Plan shall include a listing of paid positions, job descriptions and qualifications, and recruitment and hiring methods for the positions. This information shall be included for unpaid positions that are anticipated to become paid positions within the year. Recruitment shall be handled to maximize outreach to qualified candidates. Training for management and staff shall be addressed and shall be at museum standards and directed toward customer service.
- h. Landscaping. The Plan shall include any proposed changes to be made to the landscaping, walkways, and site amenities.
- i. Security. The Plan shall describe the methods used to secure the grounds, buildings, and furnishings.
- j. Financial Statement. The Plan shall include a year-end financial statement. Tenant's financial records and all other State of California and City required records shall be available for inspection and audit by any authorized representative of the City at all reasonable times.
- k. By-Laws. A copy of the by-laws and a list of Board Officers and Members, including name, address, and telephone number shall be included in the Operating Plan. Upon any change in the make up of the Officers or Members of the Board, the Tenant shall within fourteen days provide an updated list to the Director.

Changes to the Operating Plan may be made other than annually, by submitting an updated Operating Plan for written approval by the Director.

Tenant, effective the commencement date of this Rental Agreement shall make the Old Adobe Chapel Museum open and available to the public at the currently scheduled operating hours of 10:00 a.m. to 4:00 p.m., Thursday through Tuesday September through June and daily 10:00 a.m. to 4:00 p.m. July and August. The Museum may be open beyond the currently scheduled hours.