



May 9, 2002

THE CITY OF SAN DIEGO

VIA CERTIFIED MAIL #Z 158 475 557

Tracy Silberman
Gaslamp Quarter Foundation
410 Island Avenue
San Diego, CA 92101

Dear Mrs. Silberman:

Subject: Renewal of the Flat Rate Lease Agreement – The City of San Diego/Gaslamp
Quarter Historical Foundation – City Clerk Document RR-280285

In accordance with your request dated February 21, 2002 and as delineated in Section 2.1., Commencement, of the above-referenced lease, the term of the lease will be renewed for an additional five year period. The commencement date of the renewal period is August 1, 2002 and the expiration date is July 31, 2007.

All terms and conditions of the lease will remain in effect during the renewal. Please indicate your agreement by signing in the space below and returning the duplicate original of this letter to Vladimir Balotsky of this office by May 31, 2002.

Sincerely,

Tim C. Rothans
Deputy Director

TCR/cdj

cc: Vladimir Balotsky, Property Agent
Park & Recreation Department
City Auditor
County Assessor

File: Leases – Gaslamp Quarter Historical Foundation
I:\WPO\2002\Balotsky\L-SILBERMAN.doc

ACKNOWLEDGED AND ACCEPTED

By:
Title Executive Director Date 5/8/02



Real Estate Assets

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

DUPLICATE

CITY OF SAN DIEGO

Flat Rate Lease

THE GASLAMP QUARTER FOUNDATION

DOCUMENT NO. RR-280285
FILED JUL 06 1992
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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CITY OF SAN DIEGO
FLAT RATE LEASE

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and THE GASLAMP QUARTER FOUNDATION, a California nonprofit corporation, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain parcel of land referred to as Lot F, Block 95, Horton's Addition Lockling, including said residence equipped with handicap ramps, outside stairwells and porch, located at 410 Island Avenue and known as the William Heath Davis House, situated in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said residence is hereinafter called the "premises" or "leased premises."
- 1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of Gaslamp Quarter Foundation offices and as a center for the development of educational, cultural, and historic interpretive programs, and for such other related community activities, provided LESSEE shall not exclude the general public or interfere with the public's right to the use and enjoyment of the premise and its facilities; however, reasonable restrictions and regulations may be made in order to carry on, promote and enhance center activities in an orderly and proper manner, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever. LESSEE shall obtain a park use permit from the Department of Park and Recreation at such time that either LESSEE, Gaslamp District Groups, and/or private individuals propose to use the courtyard and/or house for any function other than what the premises are leased for. A permanent wall space in a prominent location of the premises shall be made available to the Junior League of San Diego for display of its San Diego project.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.
- 1.3 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is

not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this Lease Agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of a nonprofit organization engaged in educational, recreational, cultural, and civic awareness, and related activities in a fiscally responsible manner.

- 1.7 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public as set forth in Section 9.3, Schedule of Days & Hours of Operation, hereof. The City Manager or his authorized representative shall be notified of any and all changes in this schedule. The temporary change in hours and a proper valid reason shall be reported at least twenty-four (24) hours prior to such changes. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.
- 1.8 Rates and Charges. All charges for merchandise and services or facilities on said premises shall be in accordance with the schedule set forth in Section 9.4, Schedule of Rates & Charges, hereof. Any changes that exceed a ten percent (10%) increase during any calendar year in said schedule on merchandise and services are subject to prior written approval by the City Manager or his authorized representative.
- 1.9 CITY Use. The premises shall be available to CITY for civic events, special programs, and staff meetings, free of charge, with a reasonable advanced reservation; except where LESSEE has scheduled events or programs. After every CITY use, the premises shall be left in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use.
- 1.10 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.11 Public Use. The general public shall not be wholly or permanently excluded from any portion of the premises, except that of the private offices of the Gaslamp Quarter Foundation. LESSEE may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public, and are designed to allow LESSEE to use the premises for the purposes specified herein. LESSEE agrees that all activities conducted on the premises will be as stated in Section 1.2, Uses, hereof.

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

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be ten (10) years commencing on the first day of the calendar month following execution by the City Manager. Provided, however, LESSEE shall be entitled to one 5-year renewal option upon the giving of 90 days advance written notice to CITY prior to the expiration hereof.

"Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.

- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.

- 2.3 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, which were incurred by LESSEE during LESSEE'S tenancy of the premises and except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

SECTION 3: RENT

- 3.1 Consideration. The consideration for the granting of this lease shall be the LESSEE'S continuous operation and maintenance of the leased premises at no cost to the CITY, except as provided in Section 9.6. In addition, commencing on the effective date of this lease, LESSEE on the anniversary date shall pay CITY the sum of \$600 per year, payable yearly in advance, throughout the term of this lease.

- 3.2 Delinquent Rent. If LESSEE fails to pay the rent when due, LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver of LESSEE default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this lease.

- 3.3 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times, so that CITY can determine LESSEE'S compliance with this lease. These records and accounts will be made available by LESSEE at the leased premises and will be complete and accurate showing all income and receipts from use of the premises. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease, or any interest therein, and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law, without the written consent of the City Manager.

4.3 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it 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 rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE 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 4.3a.(1), Default and Remedies, hereof, is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies. If the mortgagee or beneficiary shall be required to exercise its right to cure said default(s) through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

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

Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary 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 this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.4 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of or damages to LESSEE'S then remaining leasehold interest in

installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

5.1 Indemnity. LESSEE shall at all times assume the defense of, relieve, indemnify, protect, and save CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines, and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including but not limited to expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:

- a. any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by LESSEE, its employees, agents, sublessees, invitees or licensees;
- b. any operation, use, or occupation conducted on the premises;
- c. any act, omission, or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or
- d. any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:
 - (1) Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from

acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.

- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE 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. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE 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.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide

the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) 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 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, at CITY'S option, 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 CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) 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.

- 5.4 Flooding. The parties do hereby recognize and agree that flooding of the basement has occurred in the past. The CITY shall hereby retain the right, upon written notice to LESSEE from the City Manager, to delete the basement portion of the leasehold from this agreement should flooding occur. Notwithstanding anything to the contrary in this lease agreement, should flooding occur, the CITY, subject to the availability of budgeted funds, will repair the flooding damage in a manner satisfactory to the City Manager and in accordance with all health, safety and building codes, rules and regulations.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects in the premises.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done 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 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 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.

- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of those items listed in Section 9.6, Description of Maintenance and Repair Obligations, LESSEE'S Responsibilities, throughout the term. CITY agrees to assume full responsibility and cost for the operation and maintenance of those items listed in Section 9.6, Description of Maintenance and Repair Obligations, CITY'S Responsibilities, throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY.
- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the 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 or assume any expense for any improvements or alterations.
- 6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.6 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.7 Liens. LESSEE shall for the term of the lease together with all renewals and extensions save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.8 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.9 Signs. LESSEE agrees to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising at the premises in accordance with the restrictions imposed by the Gaslamp District Sign Ordinance now in effect or as revised.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property, free of all liens and claims except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or One-Hundred-Eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.

- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
 - d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
 - e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
 - f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease; then CITY shall have the first right to acquire or purchase said personal property.
- 6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.
- 6.12 Hazardous/Toxic Waste. LESSEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, or under or from the premises. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's Office as City Clerk Document 769704.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such

substances in accordance with all applicable rules and regulations of governmental authorities.

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

If LESSEE knows or has reasonable cause to believe, that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided however, if LESSEE knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of the CITY.

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

SECTION 7: GENERAL PROVISIONS

7.1 Notices

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

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

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

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

- 7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, County, State, and Federal Governments, at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

- 7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

- 7.4 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, age, or physical handicap in LESSEE'S use of the premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

- 7.5 Equal Opportunity. LESSEE shall comply with the CITY'S Equal Opportunity and Minority and Women Business Enterprise Contracting Programs, approved by the City Council, and filed with the City Clerk as Document RR-262633. LESSEE shall submit a Certificate of Compliance with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations herein-

after enacted. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this agreement.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court, arbitration and attorney's fees.
- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased 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 lease itself. Each of the parties in this lease 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 lease.

The failure or refusal of any party to read the lease 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 lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who within the twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the

contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

SECTION 7: SPECIAL PROVISIONS

- 7.12 Bylaws. Membership in LESSEE'S organization shall be open to anyone meeting the requirements of its rules and bylaws. All restrictions, rules, bylaws, and fees, if any, and changes thereto proposed by LESSEE'S organization shall, before being put into effect, be submitted to and receive the written approval of the City Manager. Bylaws shall be on file in the office of the Property Department prior to CITY execution of this lease.
- 7.13 Schedule of Prices. All prices of merchandise, equipment and services of LESSEE and its sublessees shall be comparable with prices of like merchandise, equipment and services offered in the San Diego area. All prices charged by LESSEE and its sublessees shall be approved in writing by City Manager; provided, however, that LESSEE and its sublessees shall not be required to sell any merchandise at a loss.
- 7.14 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.
- 7.15 Supersedure. It is mutually agreed that this lease, upon execution, supersedes and annuls that certain Right of Entry Permit dated July 1, 1984, which is hereafter void and of no effect except as to any rentals and fees which may have accrued or any rights and remedies accrued or granted to CITY under such agreement.
- 7.16 Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payment whatsoever upon termination of this lease.

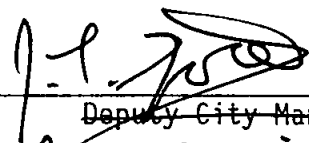
SECTION 8: SIGNATURES

8.1 Signature Page.

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

THE CITY OF SAN DIEGO

Date 7/8/92

By 
Deputy City Manager
Property Director

LESSEE:

GASLAMP QUARTER FOUNDATION

Date 7/16/92

By William L. Pope, Pres

By _____

APPROVED as to form and legality this 9 day of July, 1992

JOHN W. WITT, City Attorney

By 
Deputy City Attorney

NRS:jw-b(7)
4-8-92

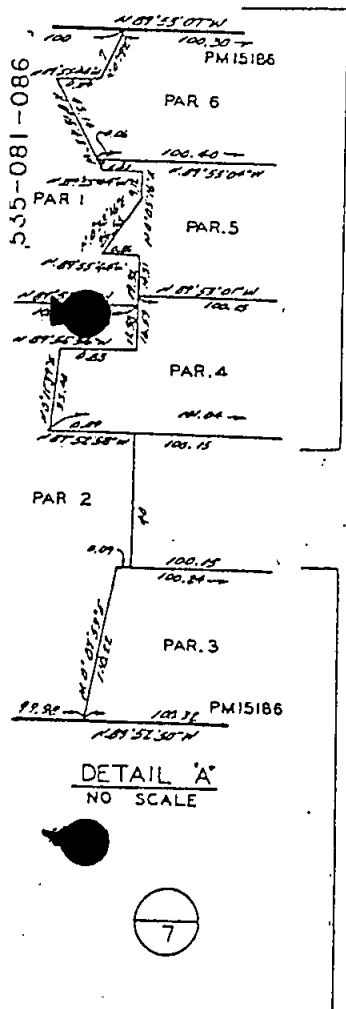
SECTION 9: EXHIBITS

9.1 Legal Description.

Lot F, Block 95, Horton's Addition Lockling, including said residence equipped with handicapped ramps, outside stairwells, and porch located at 410 Island Ave. and known as the William Heath Davis House, situated in the City of San Diego, County of San Diego, State of California.

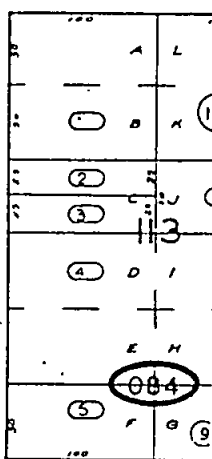
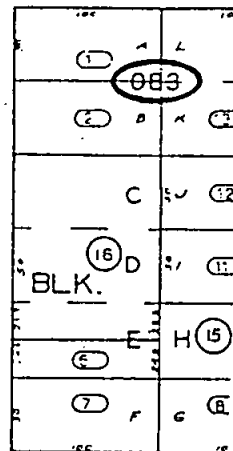
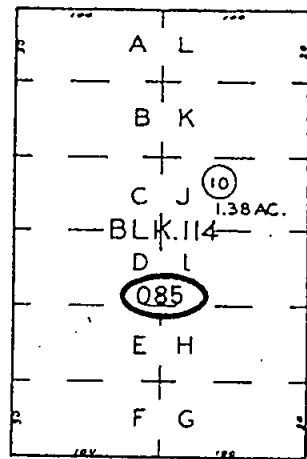
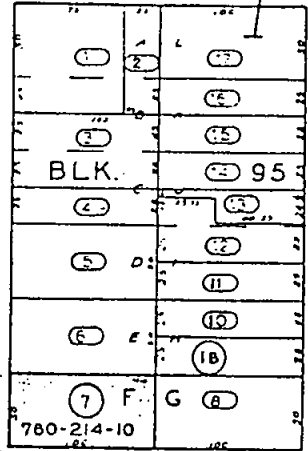
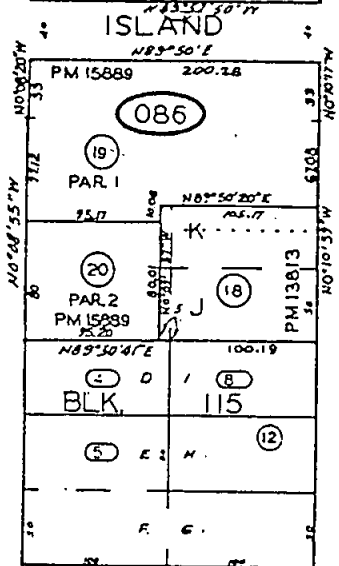
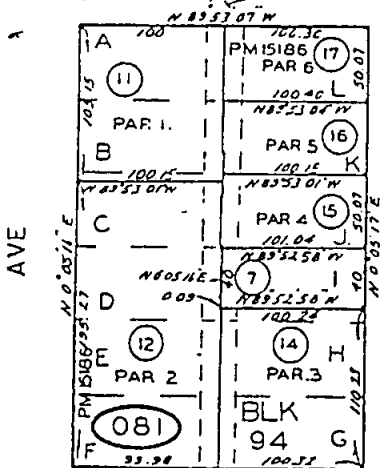
9.2 Parcel Map(s).

535-081-086



DETAIL 'A'
NO SCALE

MARKET
SEE DETAIL 'A'



34

9.3 Schedule of Days & Hours of Operation.

9.4 Schedule of Rates & Charges.

9.5 Description and Listing of City-owned Personal Property.

Large scale model of Gaslamp Quarter - model to be made available upon request by the following City representatives:

- a. Redevelopment Agency
- b. Centre City Development Corporation
- c. CITY

9.6 Description of Maintenance and Repair Obligations.

<u>System/Area</u>	<u>CITY'S Responsibilities</u>	<u>LESSEE Responsibilities</u>
Electrical Lighting & Power	All exterior wiring, conduit, breakers, light fixtures (as a complete item). All existing exterior lighting. Replace bulbs and tubes over 12 feet above floor.	Troubleshoot to identify problem as feasible. Replace interior lights, switch and outlet plates, outlets, fixture lenses and bulbs and tubes less than 12 feet above the floor.
Heating, Ventilation & Air Conditioning System	All existing interior equipment, controls, filters, water treatment, etc.	Check and observe daily. Identify and report problems to the CITY. Have equipment inspected not less than annually and report any problems to City.
Plumbing	All exterior pipes, valves, and plumbing fixtures, hot water heaters, etc., in the water service system. All waste and vent systems, roof drains, etc., including pipe replacement & the clearing of blockages.	Check and observe daily. Identify and report problems to the CITY. Clean leaves and other debris from roof and other slow drains. Maintain and repair any and all interior plumbing problems.

<u>System/Area</u>	<u>CITY'S Responsibilities</u>	<u>LESSEE Responsibilities</u>
Fire Suppression System	All maintenance of any permanently installed system for the protection of the building. Refilling tanks if discharge is beyond the control of LESSEE.	Check and observe daily. Report problems to CITY. Maintain all portable and/or temporary systems, fire extinguishers, hoses and nozzles, sensors and alarms, etc. Refill tanks if discharged by LESSEE or guests.
Alarms	None.	All sensors, alarms, wiring, etc., for security and fire alarm systems. Monthly security fee.
Security	Exterior building envelope, including exterior locks, emergency boarding up and repair of doors and windows.	All other security including lock installations and maintenance.
Floors/Floor Coverings	All permanent floors.	Temporary floor coverings. Repairing floor when temporary floor coverings and carpet is removed.
Windows/Glass	All exterior glass in permanent windows and doors.	All glass in temporary partitions, displays, etc. All tinting film on windows.

<u>System/Area</u>	<u>CITY'S Responsibilities</u>	<u>LESSEE Responsibilities</u>
Doors, Walls, Ceilings, Roof and Metal Shades	All exterior items except loose screws and bolts.	Any additions or modifications to existing equipment, structures or systems, displays and temporary installations, window coverings (film, shades, blinds, drapes).
Custodial and Vegetation Maintenance	Clean and maintain exterior grounds of trash and landscape surrounding the building, including replacing vegetation where necessary.	All interior custodial including providing paper products, soap, light bulbs and tubes.
Vandalism	All CITY-owned items and permanent structures, including windows.	All nonpermanent structure, collection and equipment.
Paint	All exterior painting, which surfaces shall be repainted every 7 to 10 years.	All interior painting, wallpaper, stucco and/or wood patch, etc.
Pest Control	None.	All.

(R-92-2050)

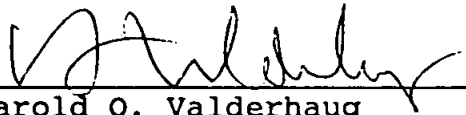
RESOLUTION NUMBER R- 280285

ADOPTED ON JUL 06 1992

BE IT RESOLVED, by the Council of The City of San Diego,
that the City Manager be and he is hereby authorized and
empowered to execute, for and on behalf of said City, a lease
agreement with the Gaslamp Quarter Foundation, for the William
Heath Davis house at 401 Island Avenue, under the terms and
conditions set forth in the lease agreement on file in the office
of the City Clerk as Document No. RR- 280285.

APPROVED: JOHN W. WITT, City Attorney

By



Harold O. Valderhaug
Deputy City Attorney

HOV:lc
06/16/92
Or.Dept:Prop.
R-92-2050
Form=r.auagr

Passed and adopted by the Council of The City of San Diego on JUL 06 1992 by the following vote:

YEAS: Wolfsheimer, Roberts, Hartley, Stevens, Behr, Stallings, McCarty,
Filner, Mayor O'Connor.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

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

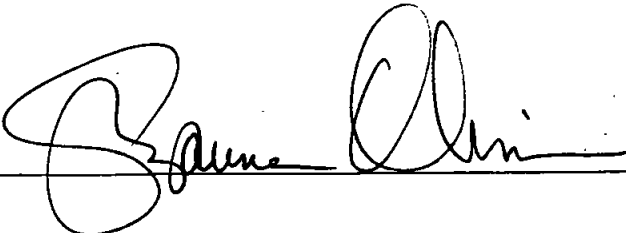
(SEAL)

By: SUZANNE OLIVA, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION
NO. R- 280285, passed and adopted by the Council of The City of San Diego, California
on JUL 06 1992.

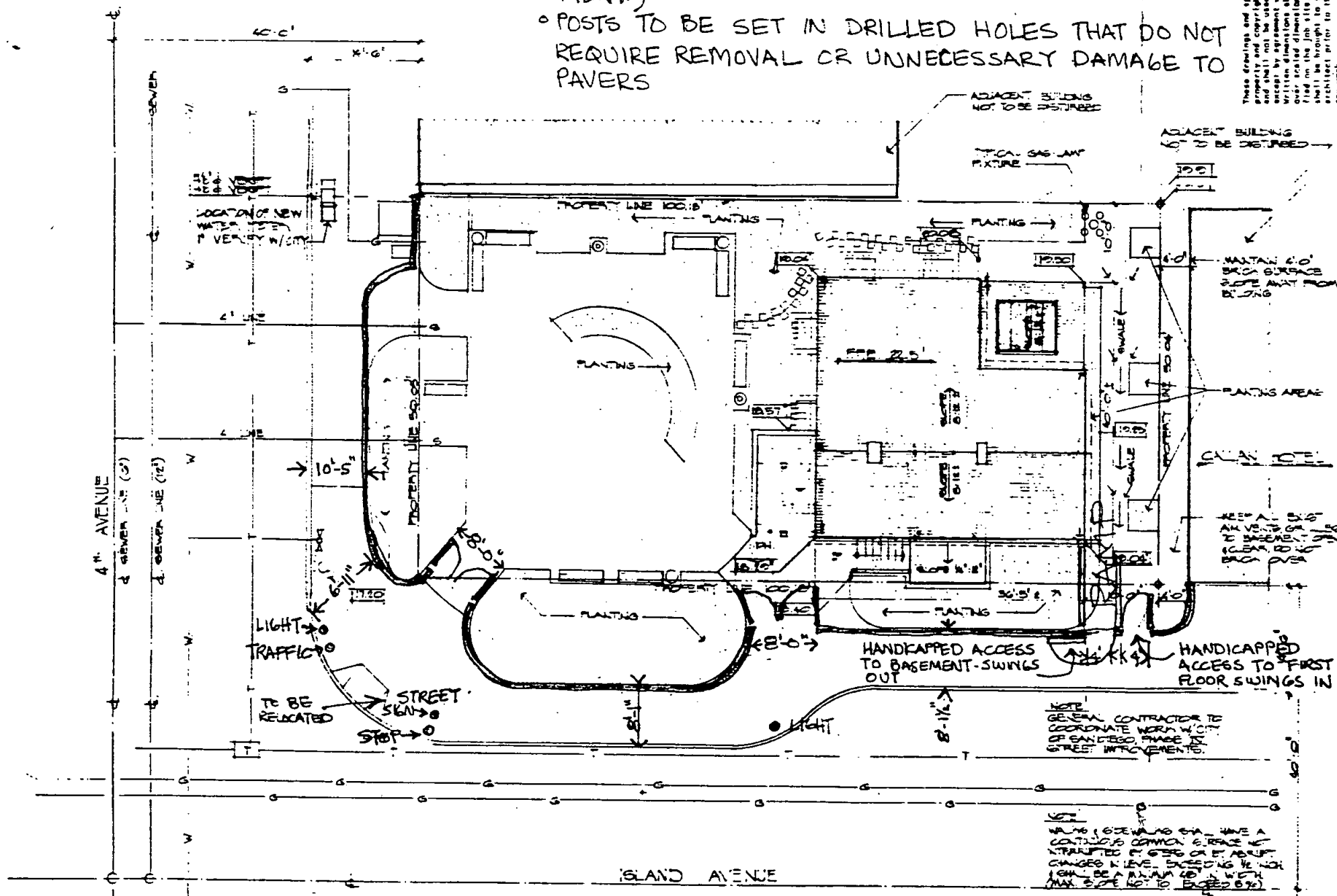
CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy

- POSTS TO BE SET IN DRILLED HOLES THAT DO NOT REQUIRE REMOVAL OR UNNECESSARY DAMAGE TO PAVERS

These drawings and specifications are the property and copyright of the architect and shall not be used on any other work except by agreement with the architect. Written dimensions shall take precedence over scaled dimensions and shall be verified on the job site. Any discrepancy shall be brought to the notice of the architect prior to the commencement of the work.



PLOT PLAN

GCAP:

GENERAL NOTES:

- ① CONTRACTOR SHALL VERIFY ALL STREET IMPROVEMENTS AS PER CITY OF SAN DIEGO, PHASE II DRAWINGS.
- ② VERIFY ALL LANDSCAPING FEATURES WITH THE LANDSCAPE DRAWINGS.
- ③ ALL UTILITY LINE WORK: UPS, ELECTRICAL, WATER, GAS & SEWER TO BE AS PER SAN DIEGO GAS & ELECTRIC CO. STANDARDS & SPECIFICATIONS, PACIFIC TELEPHONE CO. FOR PHONE SERVICE. CONTRACTOR TO VERIFY LOCATION OF & MANNER OF INSTALLATIONS.
- ④ PROVIDE COMPLETE PLUMBING SYSTEM IN COMPLIANCE WITH EXISTING ORDINANCES. INSTALL ELECTRICAL WORK AS PER LATEST EDITION OF N.E.C. & I.B.C. & A.P.S.D.
- ⑤ F.A.U. HEATING — HEATING CONTRACTOR TO SUBMIT UNCONNECTED GAS FIRED HEATING & VENTILATING EQUIPMENT PRIOR TO & "ANCHORING" PRIOR TO INSTALLATION PER & SPECIFICATIONS.

PROJECT INFORMATION

LEGAL DESCRIPTION:

LOT F, BLOCK 95 OF HORTON'S
ADDITION SAN DIEGO COUNTY
ASSESSORS MAP BOOK 535 PAGE 2.

TAX ASSESSOR'S INCE. NO.

595.002.07

HISTORIC GITE NUMBER

ZONING:
CITY OF SAN DIEGO, GAS
LAW HISTORIC DISTRICT

OCCUPANT GROUP:

LOWER LEVEL - A-B
ALL OTHER LEVELS - B-2



A horizontal scale bar with markings at 0, 6, 12, 18, and 20. The word "SCALE" is written below the 0 mark, and "FEET" is written below the 20 mark.

[illegible]

Davids House/Vest Pocket Park

Gaslamp Quarter Historic District
410 Island Street
San Diego, California 92101

Marcasack • AIA and Associates

"Brick"
926 Avenue
Nativity, California 92050
(714) 300

DRAWN
B.A.B.
CHECKED
T.L. POLEY
DATE
DEC 17, 1962
SCALE
1/8" = 1'-0"
JOB NO.
01982
SHEET

A-1

9- 28

② ALL REQUIRED PERMITS MUST BE OBTAINED FROM THE FIRE PREVENTION BUREAU BEFORE THE BUILDING IS OCCUPIED.

② 3E 1000 PSF. DESIGN SOIL BEARING VALUE FOR UNCLASSIFIED NATURAL SOIL.

RESOLUTION NUMBER R- 255628

Adopted on JAN 11 1982

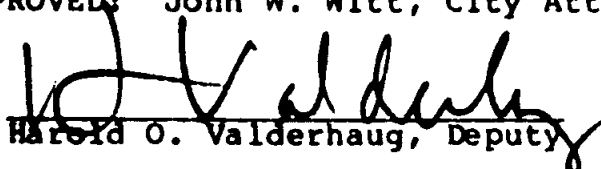
BE IT RESOLVED, by the Council of The City of San Diego as follows:

That the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, an agreement with MARC TARASUCK, AIA & ASSOCIATES, to prepare plans and specifications for the development of a vest pocket park in the Gaslamp Quarter Historic District, under the terms and conditions set forth in the agreement on file in the office of the City Clerk as Document No. RR- 255628.

BE IT FURTHER RESOLVED, that the expenditure of not to exceed \$10,750 for said services representing a basic fee of not to exceed \$8,250, plus not to exceed \$2,000 as reimbursable expenses for soil tests, and not to exceed \$500 for miscellaneous additional expenses, is hereby authorized.

APPROVED: John W. Witt, City Attorney

By


Harold O. Valderhaug, Deputy

HOV:ps
12/24/81
Or. Dept: Prop.
Aud. Cert. 82489

CERTIFICATION OF UNALLOTTED BALANCE

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount \$ _____

Fund _____

Purpose _____

Auditor and Comptroller of
The City of San Diego, Calif.

Date _____, 19 _____

By _____

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said moneys now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to exceed \$ 10,750.00

Dated December 24, 19 81

[Signature]

Auditor and Comptroller of
The City of San Diego, Calif.

BY *[Signature]*

FUND/ DEPT.	ORG. NO.	ACCOUNT	JOB ORDER	BENEFITING DEPARTMENT
<u>30244</u>	<u>105</u>	<u>4117</u>	<u>201075</u>	

PURPOSE Agreement - Gaslamp Quarter Vest Pocket Park

VENDOR Marc Tarasuck AIA & Associates

* USE FUND NO. ONLY WHEN USING GEN. LEDGER & REV. ACCTS., OTHERWISE USE DEPT. NO.

82489

R- 255638 JAN 11 1982

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BYLAWS
OF
SAN DIEGO GASLAMP QUARTER FOUNDATION

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BYLAWS
OF
SAN DIEGO GASLAMP QUARTER FOUNDATION

ARTICLE I

NAME, PURPOSES AND OFFICES

Section 1. Name. The name of this corporation, which is a California nonprofit public benefit corporation, is "San Diego Gaslamp Quarter Foundation," hereinafter referred to as the "corporation."

Section 2. Purposes. The corporation shall have the purposes set forth in its Articles of Incorporation, which specifically shall include the instruction and education of the public and the promotion of an appreciation on behalf of the public concerning the historical, architectural and cultural contributions of the Gaslamp Quarter of the City of San Diego, through provision of services and activities consistent with its qualification as an exempt organization under Internal Revenue Code Section 501(c)(3), including but not limited to:

(i) The establishment of a museum covering the commercial, architectural and cultural history and accomplishments of the Gaslamp Quarter;

(ii) The establishment of art galleries, exhibits and other cultural and educational activities focusing upon the Gaslamp Quarter's contributions to the growth and development of the City of San Diego;

(iii) The sponsoring of seminars and lectures about the history and architecture of the old City of San Diego -- particularly the Gaslamp Quarter -- and other related topics;

(iv) The publication of historic guidebooks, informational periodicals and historical information brochures concerning the Gaslamp Quarter of the old City of San Diego;

(v) The restoration and preservation of public buildings having special historical, architectural or cultural significance;

(vi) The development of an historic slide and photograph library;

(vii) The establishment and maintenance of public parks and other public improvements to revitalize the Gaslamp Quarter -- such as benches, clocks, lampposts, etc. -- for public use; and

(viii) The establishment of a trolley system, using donated and/or historically restored trolley cars, offering fares at below cost.

Section 3. Principal Office. The principal office of the corporation hereby is fixed and located in the City of San Diego, County of San Diego, State of California. The Board of Directors ("Board") hereby is granted full power and authority to change said principal office from one location to another within the County of San Diego. Any such change of location may be noted in the Bylaws by the Secretary opposite this Section 3, or this Section 3 may be amended to state the new location.

Section 4. Other Offices. Branch or subordinate offices may, at any time, be established by the Board of Directors at any place or places where the corporation is qualified to do business.

ARTICLE II

MEMBERSHIP

Section 1. Members. The corporation shall have no members. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the Board of Directors. Except for the selection of Directors as set forth in Section 3 of Article III of these Bylaws, all rights which would otherwise vest in the members shall vest in the Directors.

Section 2. Associates. Nothing in this Article II shall be construed as limiting the right of the corporation to refer to persons associated with it as "members" even though such persons are not members, and no such reference shall constitute anyone a member, within the meaning of Section 5056 of the California Nonprofit Corporation Law. The corporation may confer by amendment of its Articles of Incorporation or of these Bylaws some or all of the rights of a member, as set forth in the California Nonprofit Corporation Law, upon any person or persons who do not have the right to vote for the election of Directors or on a disposition of substantially all of the as-

sets of the corporation or on a merger or a dissolution or on changes to the corporation's Articles of Incorporation or By-laws, but no such person shall be a member within the meaning of said Section 5056.

ARTICLE III

DIRECTORS

Section 1. Powers. Subject to the limitations of these Bylaws, of the Articles of Incorporation and of the California Nonprofit Corporation Law, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be controlled by, the Board of Directors. Without limiting the foregoing, the Directors shall have the following powers:

(a) To select and remove any and all officers, agents and employees of the corporation, prescribe such powers and duties for them as may not be inconsistent with the California Nonprofit Corporation Law, the Articles of Incorporation or these Bylaws, fix their compensation, and require from them security for faithful service;

(b) To conduct, manage and control the affairs and business of the corporation, and to make such rules and regulations therefor not inconsistent with law, the Articles of Incorporation or these Bylaws, as they may deem best;

(c) To adopt, make and use a corporate seal and to alter the form thereof from time to time as in their judgment they may deem best, provided such seal shall at all times comply with the provisions of law;

(d) To borrow money and incur indebtedness for the purposes of the corporation and to cause to be executed and delivered therefor in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor.

Section 2. Number and Qualifications of Directors. The authorized number of Directors of the corporation shall be nine (9) until changed by an amendment to this Section 2.

Section 3. Selection and Term of Office. The Directors of the corporation shall be designated as follows:

(a) Five of the Directors of the corporation shall be designated by the Gaslamp Quarter Association

("Association"), which shall designate its President, its Vice President, its Secretary, its Treasurer, and its Executive Director to fill said five positions. Each such Director shall serve for a term of one year and until a successor has been designated and qualified.

(b) The remaining four Directors of the corporation shall be designated by the Board of the Association, which shall select persons from the general community interested in the purposes of the corporation to fill said four positions. Such persons may (but need not) be Directors of the Association. For the initial term only, two of such four Directors shall serve for a term of one year and the other two Directors shall serve for a term of two years. Thereafter, each year the Board of the Association shall designate a number of Directors whose terms have expired for a full term of two years.

Section 4. Vacancies. A vacancy in the Board shall be filled in the same manner as the Director whose office is vacant was selected. A vacancy or vacancies in the Board of Directors shall be deemed to exist on the death, resignation or removal of any Director, whenever the authorized number of Directors is increased, or upon the expiration of the term of office of any Director. A successor Director shall serve for the unexpired term of his or her predecessor.

Section 5. Place of Meeting. All meetings of Directors shall be held at the principal office for the transaction of business of the corporation, or at any other place within or without the State of California which may be designated by the Board of Directors.

Section 6. Annual and Regular Meetings. The annual organizational meeting of the Board shall be held in June, and regular meetings of the Board shall be held at least quarterly, at such times as shall be determined by the Board of Directors.

Section 7. Special Meetings. Special meetings of the Board of Directors shall be held whenever called by the President, by any Vice-President, by the Secretary or by any two (2) members of the Board of Directors.

Section 8. Notice of Special Meetings. Notice of the time and place of each special meeting of the Board of Directors shall be given to each Director at least 48 hours before the date of the meeting if delivered personally or by telephone or telegraph, and at least four (4) days before the date of the meeting if given by first-class mail, charges prepaid, addressed to the Director at the address as it is shown upon the

records of the corporation, or if it is not so shown on such records, or is not readily ascertainable, at the place in which the meetings of the Directors are regularly held. Whenever any Director has been absent from any special meeting of the Board of Directors, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such special meeting was given to such Director as required by the California Nonprofit Corporation Law and these Bylaws.

Section 9. Adjournment. A majority of the Directors, whether or not a quorum is present, may adjourn any Directors' meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time and place shall be given prior to the time of the adjourned meeting to Directors who were not present at the time of adjournment of the meeting.

Section 10. Quorum. A majority of the authorized number of Directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinbefore provided. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be the act of the Board of Directors; provided, that approval of expenditures by the corporation in excess of \$_____ shall be by the affirmative vote of two-thirds of those Directors present at a meeting duly held at which a quorum is present. The Directors present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of Directors to leave less than a quorum, provided that any action taken (other than adjournment) is approved by a majority of the required quorum for such a meeting.

Section 11. Waiver of Notice. The transactions of the Board of Directors at any meeting, however called and noticed and wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if either before or after the meeting each of the Directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 12. Action without Meeting. Any action required or permitted to be taken by the Board of Directors under the provisions of the California Nonprofit Corporation Law or as provided for in the Articles of Incorporation or these Bylaws, may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to such

action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such Directors.

Section 13. Removal. Any of the Directors may be removed, with or without cause, by a vote of a majority of the Board of Directors, but only with the written consent of the entity which designated such Director pursuant to Section 3 of this Article III, that is, the Association or its Board, as the case may be.

Section 14. Resignation. Any Director may resign at any time by giving written notice of such resignation to the Board of Directors, unless there would be no Director left in charge of corporate affairs upon resignation by said Director, in which case said Director must first give notice to the Attorney General for the State of California of the intended resignation. Such resignation shall take effect at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 15. Nonliability of Directors. Subject to compliance with the provisions of Sections 17, 18 and 19 of this Article III, no Director shall be personally liable for the debts, liabilities or other obligations of the corporation.

Section 16. Indemnity for Litigation. The corporation shall have and hereby agrees to exercise the power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was a Director, officer, employee or other agent of the corporation, to the full extent allowed under the provisions of Section 5238 of the California Nonprofit Corporation Law relating to the power of a corporation to indemnify any such person. The amount of such indemnity shall be so much as the Board of Directors determines and finds to be reasonable, or, if required by said Section 5238, the amount of such indemnity shall be so much as the court determines and finds to be reasonable.

Section 17. Interested Persons. Pursuant to Section 5227 of the California Nonprofit Corporation Law, no more than forty-nine percent (49%) of the Directors serving on the Board may be "interested persons." For the purposes of this section, "interested person" means either (i) any person currently being compensated by the corporation for services rendered to it within the previous twelve (12) months whether as a full-time or part-time employee, independent contractor, or otherwise,

excluding any reasonable compensation paid to a Director as Director; or (ii) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law or father-in-law of any such person.

Section 18. Standard of Conduct. Pursuant to Section 5231 of the California Nonprofit Corporation Law, a Director shall perform the duties of a Director, including duties as a member of any committee of the Board upon which the Director may serve, in good faith, in a manner such Director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(a) One or more officers or employees of the corporation whom the Director believes to be reliable and competent in the matters presented;

(b) Counsel, independent accountants or other persons as to matters which the Director believes to be within such person's professional or expert competence; or

(c) A committee of the Board upon which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence.

Provided, that in any such case, the Director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

Section 19. Self-Dealing Transactions. Pursuant to Section 5233 of the California Nonprofit Corporation Law, the corporation shall not be a party to a transaction in which one or more of its Directors has a material financial interest ("Interested Director") unless:

(a) The Attorney General, or the court in an action in which the Attorney General is an indispensable party, has approved the transaction before or after it was consummated; or

(b) Prior to entering into the transaction, after full disclosure to the Board of all material facts as to the proposed transaction and the Interested Director's interest

and investigation and report to the Board as to alternative arrangements for the proposed transaction, if any, the Board in good faith and by a vote of a majority of the Directors then in office (without including the vote of the Interested Director):

(1) Resolves and finds that (1) the transaction is in the corporation's best interest and for the corporation's own benefit, (2) the transaction is fair and reasonable as to the corporation and (3) after reasonable investigation under the circumstances as to alternatives, the corporation could not have obtained a more advantageous arrangement with reasonable efforts under the circumstances; and

(2) Approves the entire transaction.

In the event it is not reasonably practicable to obtain approval of the Board prior to entering into such transaction, the corporation may enter into such transaction if, prior to entering into said transaction, a committee or person authorized by the Board approves the transaction in a manner consistent with the procedure set forth in this section and the Board, after determining in good faith that the corporation entered into the transaction for its own benefit and that the transaction was fair and reasonable as to the corporation at the time it was entered into, ratifies the transaction at its next meeting by a vote of the majority of the Directors then in office, without counting the vote of the Interested Director.

ARTICLE IV

OFFICERS

Section 1. Officers. The officers of the corporation shall be a President, a Vice-President, a Secretary and a Treasurer. The corporation may also have, at the discretion of the Board of Directors, one or more additional vice-presidents, one or more assistant secretaries, one or more assistant treasurers and such other officers and honorary officers as may be desired by the Board of Directors. One person may hold two or more offices, except that neither the Secretary nor the Treasurer may concurrently serve as President.

Section 2. Election. The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article IV, shall be chosen annually by the Board of Directors, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

Section 3. Subordinate Officers. The Board of Directors may appoint such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

Section 4. Removal and Resignation. Any officer may be removed either with or without cause by a majority of the Directors at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conferred by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary of the corporation.

Section 5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause, shall be filled in the manner prescribed in these Bylaws for regular appointments to such office.

Section 6. President. The President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. He shall preside at all meetings of the Board of Directors. He shall be ex officio a member of all the standing committees, if any, and shall have the general powers and duties of management usually vested in the office of President of a corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

Section 7. Vice-President. The Vice President, in the absence or disability of the President, shall perform all the duties of the President, and when so acting shall have the powers of, and be subject to all the restrictions upon, the President. The Vice-President shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board of Directors or these Bylaws.

Section 8. Secretary. The Secretary shall keep or cause to be kept a book of minutes at the principal office, or such other place as the Board of Directors may order, of all meetings of Directors, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present and the proceedings thereof. The Secretary shall keep the seal of the corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

Section 9. Treasurer. The Treasurer shall, either in person or through assistants, receive, receipt for and keep all moneys, stocks, bonds, notes and other credits belonging to or coming to the corporation. The Treasurer shall have the power to endorse all drafts and checks, shall keep regular, true and full accounts of all receipts and disbursements and shall make detailed reports of the same to the Board of Directors and the President whenever called for. The Treasurer shall perform such other duties in connection with the administration of the financial affairs of the corporation as the Board of Directors or the President shall assign to him. All moneys of the corporation shall be kept in such bank or banks or other depository or depositories as the Board of Directors from time to time may direct or approve of. The Treasurer shall give such bond, with such security, as the Board of Directors from time to time may require. The Board of Directors may appoint an Assistant Treasurer with all or any of the powers and duties of the Treasurer.

ARTICLE V

MISCELLANEOUS

Section 1. Committees. The Board may appoint an Executive Committee and any other committees, for such tenure and such purposes as the Board may from time to time determine. The Executive Committee and any other committee having the authority of the Board shall be comprised of at least two (2) Directors, and may be delegated any of the powers and authority of the Board in the management of the business and affairs of the corporation, except the following:

(a) The approval of any action for which the California Nonprofit Corporation Law requires the approval of the members of a corporation.

(b) The filling of vacancies on the Board or in any committee which has the authority of the Board.

(c) The fixing of compensation of the Directors for serving on the Board or on any committee.

(d) The amendment or repeal of Bylaws or the adoption of new Bylaws.

(e) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable.

(f) The appointment of committees of the Board or the members thereof.

(g) The expenditure of corporate funds to support a nominee for Director after there are more people nominated for Director than can be elected.

(h) The approval of any self-dealing transaction except as permitted in Section 19 of Article III of these Bylaws.

Section 2. Checks, Drafts, Etc. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the corporation, shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by resolution of the Board of Directors.

Section 3. Execution of Contracts. The Board of Directors may authorize any officer or officers or agent or agents to enter into any contract or execute any contract or any instrument in the name of and on behalf of the corporation and may determine the manner of such execution. Such authority may be general or confined to specific instances, and, unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount. Provided, that any such contract or instrument between the corporation and any third person, when signed by the President or any Vice-President and the Secretary or the Treasurer of the corporation, shall be valid and binding upon the corporation in the absence of actual knowledge on the part of said third person that the signing officers had no authority to execute the same.

Section 4. The Fiscal Year. The fiscal year of the corporation shall begin on the first day of April and end on the last day of March each year, unless otherwise provided by the Board of Directors.

Section 5. Amendment of Bylaws. New Bylaws may be adopted or these Bylaws may be amended or repealed by either (i) a vote of a majority of the Directors at any meeting of the Board of Directors, or (ii) action of the Board of Directors by written consent.

1020422

ENDORSED
FILED

In the office of the Secretary of State
of the State of California

MAR 11 1981

MARCH FONG EU, Secretary of State

Leslie Glenn
Deputy

ARTICLES OF INCORPORATION

OF

SAN DIEGO GASLAMP QUARTER FOUNDATION

I

NAME

The name of this corporation shall be SAN DIEGO
GASLAMP QUARTER FOUNDATION.

II

PURPOSES

This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public purposes. The specific purpose of this corporation is to perform the charitable and educational functions of the Gaslamp Quarter Association, including the instruction and education of the public concerning the historical, architectural and cultural contributions of the Gaslamp Quarter of the City of San Diego and the promotion of public appreciation for these contributions through the restoration and preservation of public buildings and surrounding public improvements having special historical, architectural or cultural significance.

III

AGENT FOR SERVICE OF PROCESS

The name and address in the State of California of the corporation's initial agent for service of process is Nancy P. Johnston, ~~Executive Director of Gaslamp Quarter Association~~, 652 Fifth Avenue, San Diego, California 92101.

IV

DEDICATION OF PROPERTY

A. The property of this corporation is irrevocably dedicated to charitable and educational purposes meeting the requirements of Section 214 of the California Revenue and Taxation Code, and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member of this corporation or to the benefit of any private person.

B. Upon the winding up or dissolution of this corporation, after payment, or adequate provision is made for payment, of all debts and liabilities of this corporation, its remaining assets shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable and educational purposes meeting the requirements of Section 214 of the California Revenue and Taxation Code and which has established and maintained its tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

V

EXEMPT ACTIVITIES

A. This corporation is organized and operated exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. Notwithstanding any other provisions of these Articles, this corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code or (ii) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

B. No substantial part of the activities of this corporation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation, and this corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

Dated: February 24, 1981.

Nancy E. Holland
Nancy E. Holland, Incorporator

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

Nancy E. Holland
Nancy E. Holland