DE ANZA HARBOR RESORT

LONG-TERM RENTAL AGREEMENT

THIS RENTAL AGREEMENT ("Agreement") between ASSOCIATED MOBILE ESTATES, doing business as DE ANZA HARBOR RESORT ("DE ANZA") and HOMEOWNER (as defined in the DEFINITION section below) shall be effective on the Effective Date (as defined in the DEFINITION section below) and shall remain in effect until November 23, 2003 unless terminated earlier as provided in this Agreement or by operation of law. This Agreement describes the unique relationship between DE ANZA, which owns a leasehold estate in the real property (wherein the Space that is the subject of this Agreement is situated) and fee title to the common area improvements at DE ANZA HARBOR RESORT (the "Community"), located on tidelands which have been dedicated by City ordinance to public park use and are held in trust by the City of San Diego (the "City") and the HOMEOWNER who owns a mobilehome located in the Community. This Agreement allows the HOMEOWNER to use the Space (as defined below in Article 1) for the placement of his mobilehome and allows HOMEOWNER the use of common area facilities at the Community, both subject to established rules and regulations. This Agreement shall be exempt from any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity which establishes a maximum amount that a landlord may charge a tenant for rent. The terms of this Agreement shall prevail over conflicting provisions of such an ordinance, rule, regulation or initiative measure limiting or restricting rents in mobilehome parks only during the term of this Agreement. If this Agreement is not in effect and no new Agreement in excess of twelve (12) months' duration is entered into, then the last rental rate charged for the Space under the previous agreement shall be the base rent for purposes of applicable provisions of law concerning rent regulations, if any.

This Agreement meets the criteria of Civil Code section 798.17 in that:

1. This Agreement is in excess of twelve (12) months' duration.

2. This Agreement is entered into between the management and a HOMEOWNER for the personal and actual residence of the HOMEOWNER.

3. The HOMEOWNER has thirty (30) days from the date this Agreement is offered to accept the Agreement by signing it.

4. The HOMEOWNER who signs this Agreement may void it by notifying DE ANZA in writing within seventy-two (72) hours of signing it.

5. - The HOMEOWNER may reject this Agreement and instead accept a rental agreement for a term of twelve (12) months or less from the Effective Date of this Agreement. If the HOMEOWNER wants a rental agreement for a term of twelve (12) months or less, including a month-to-month agreement, that agreement shall contain the same "rental charges", terms and conditions as this Agreement during the first twelve (12) months.

DEFINITIONS

1. HOMEOWNER(S): _____.

(Insert Names of HOMEOWNER(S)).

2. Phase 1 HOMEOWNER, Yes or No: _____.

3. Effective Date: October 1, 1988.

4. Space (as defined in paragraph 21.3 below): _____.

(Insert space number).

5. MASTER LEASE: The lease and amendments originally dated May 18, 1951 between the City of San Diego as lessor and M.F. Purdy and Lila Witcher as lessee, filed May 21, 1951 as Document No. 433606 in the Office of the City Clerk, San Diego, California.

6. Monthly Rental Payment: $ _____ per month, as of the Effective Date, or $ _____ per month, as of the date this Agreement is signed.

7. ANNIVERSARY DATE: _____.

RECITALS

1. DE ANZA intends to request the City to allow it to develop a resort hotel complex ("Resort"). DE ANZA would not enter into this Agreement but for HOMEOWNER agreeing to its provisions and agreeing to the development of the Resort. DE ANZA would suffer severe financial losses if the HOMEOWNER fails to abide by this Agreement and cooperate with, and support DE ANZA in, its efforts to gain the City's approval of development and construction of the Resort.

2. DE ANZA now leases the premises upon which the Community is located, under the terms of a MASTER LEASE. A copy of that lease as amended is available for inspection in DE ANZA'S office at the Community at all reasonable times.

3. This Agreement contains provisions which the parties agree constitute reasonable relocation costs arising from the Community's full or partial closure . If such full or partial closure is a "Change of Use" under section 798.10 of the Civil Code, DE ANZA will file with the City, pursuant to section 65863.7 of the Government Code, a report on the impact of the conversion upon the homeowners. The City will be asked to find that this Agreement's provisions adequately mitigate any adverse impact of the conversion on the ability of a displaced homeowner to find adequate housing in a mobilehome park. Certain benefits of this Agreement will be provided by DE ANZA only if the City makes such a finding and approves its development plans.

4. DE ANZA intends to enter into an agreement(s) with the City, which shall allow DE ANZA to develop a hotel resort and related facilities ("Resort") in phases, which will require relocation of mobilehomes and HOMEOWNERS from one location to another within the boundaries of the Community.

5. HOMEOWNER now has a month-to-month tenancy or a one-year lease as a subtenant of DE ANZA. HOMEOWNER'S tenancy will terminate no later than November 23, 2003. HOMEOWNER hereby is given notice that DE ANZA intends to close the park on November 23, 2003. Subject to this Agreement, DE ANZA is giving up its right to close the park after giving one year's notice, and is instead giving in excess of fifteen (15) year's notice.

6. This Agreement provides circumstances under which DE ANZA may assist HOMEOWNER in his efforts to realize the value of his mobilehome and may assist HOMEOWNER with his relocation costs upon closure of the Community.

7. HOMEOWNER acknowledges that this Agreement is contingent upon execution by at least 340 of the 510 homeowners in the Community of rental agreements containing terms and provisions as specified in this Agreement.

8. HOMEOWNER acknowledges that the current use of the Community by DE ANZA and HOMEOWNER is inconsistent with the purposes of the trust for the lands upon which the Community is located as stated in the statutes of California 1945, Chapter 142. The California Legislature, however, passed Assembly Bill No. 447, Chapter 1008 in 1981 (also known as the "Kapiloff Bill") to allow DE ANZA to continue the present use of the land until November 23, 2003.

9. The land on which the Community is located has been dedicated by the City to park use and, under Section 55 of the City Charter DE ANZA'S existing MASTER LEASE could not be extended for use as a mobilehome park without the approval of two thirds of the electorate.

THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, HOMEOWNER and DE ANZA agree as follows:

Incorporation of Facts, Matters and Recitals

The parties to this Agreement acknowledge and agree that all the facts, matters and recitals set forth above are incorporated into and shall be part of the terms and conditions of this Agreement.

ARTICLE 1

Provisions of Rental Agreement

1.1 Offer of a One Year Lease. Under the Mobile Home Residency Law as amended from time to time (currently Civil Code section 798.18), HOMEOWNER has been offered a rental agreement for a term of twelve (12) months or less. HOMEOWNER has, however, elected the longer term of this Agreement. This Agreement does not contain any term or condition with respect to charges for rent, utilities, or incidental reasonable service charges that would be different during the first twelve (12) months of this Agreement from the corresponding term or condition that would be offered to the HOMEOWNER on a month-to-month or one year basis.

1.2 Term. The term of this Agreement commences on the Effective Date and terminates on November 23, 2003, unless terminated earlier pursuant to the terms of this Agreement or by operation of law.

1.3 HOMEOWNER Rights. This Agreement gives HOMEOWNER the right to exclusively occupy the Space, and to use common area facilities subject to Community Rules and Regulations.

1.4 Material Consideration As a material consideration for DE ANZA entering into this Agreement with HOMEOWNER, HOMEOWNER acknowledges and agrees that DE ANZA is hereby authorized and empowered to represent to the City and to the public at large that HOMEOWNER supports the development of the Resort by DE ANZA. Pursuant hereto, HOMEOWNER acknowledges and agrees that HOMEOWNER will authorize and direct the duly appointed representative(s) of all homeowners to take whatever actions might be deemed by DE ANZA reasonably necessary to convey such support and approval to the City of San Diego. Such actions by the representative(s) of HOMEOWNER might include, but not be limited to, appearing in front of and participating in public hearings held by the proper department(s) and/or agency(ies) of the City where the approval of the development of the Resort is discussed or is part of the hearing's agenda.

ARTICLE 2

Rent

2.1 Monthly Rental Payments. HOMEOWNER will pay DE ANZA in advance on the first day of each and every month, the Monthly Rental Payment as adjusted, without any deduction or offset. It is acknowledged and agreed by HOMEOWNER that DE ANZA may adjust the Monthly Rental Payment only once per year. The Monthly Rental Payment adjustments as set forth in this Agreement, will take place, each and every year, on the anniversary date of the last rent increase for HOMEOWNER (the "Annual Anniversary").

In the event HOMEOWNER'S commencement of tenancy in the mobilehome park begins at a time other than the first day of any given month, the first Monthly Rental Payment that HOMEOWNER will have to make to DE ANZA will be for an amount equal to the amount of the first full month of tenancy plus a pro-rata portion of the month in which HOMEOWNER commences his tenancy with DE ANZA. Said pro-rata portion of a month to be paid by HOMEOWNER shall be calculated based on a thirty (30) day month.

DE ANZA intends to begin construction of Phase I of the Resort, pursuant to the diagram of Phase I which is attached hereto as Exhibit "A" and by this reference made a part hereof. In the event DE ANZA either (i) intends to proceed with the construction of Phase I, or (ii) DE ANZA completes the construction of Phase I, DE ANZA may, effective on the Annual Anniversary, upon sixty (60) days written notice to HOMEOWNER, adjust HOMEOWNER'S Monthly Rental Payment pursuant to the terms set forth in subparagraph 2.2 hereinbelow. If DE ANZA abandons its plans for the construction of Phase I for any reason whatsoever, DE ANZA may, effective on the Annual Anniversary, upon sixty (60) days written notice to HOMEOWNER, adjust HOMEOWNER'S Monthly Rental Payment pursuant to the terms set forth in subparagraph 2.3 hereinbelow.

2.2 Rent Adjustment Contingent Upon Phase 1.

In the event that DE ANZA either intends to proceed with or has actually completed construction of Phase I of the Resort, DE ANZA will have the right to and DE ANZA will adjust the Monthly Rental Payment of HOMEOWNER in the following manner:

(a) DE ANZA will adjust the Monthly Rental Payment in accordance with the annual change in the CPI as defined in paragraph 2.9; and

(b) DE ANZA may also require HOMEOWNER to pay for the sub-metering of water in accordance with paragraph 3.2. DE ANZA, however, may not require the payment of any other fee or government pass-through.

2.3 Rent Adjustment Upon Abandonment of Phase 1.

In the event that DE ANZA abandons its plans to complete construction of Phase I of the Resort, at any time, DE ANZA will have the right to and may at it's option adjust the Monthly Rental Payment as follows on the Annual Anniversary:

(a) If the CPI has increased by less than four percent (4%), DE ANZA may increase the Monthly Rental Payment on the Annual Anniversary by four percent (4%); or

(b) If the CPI has increased from four percent (4%) to ten percent (10%), DE ANZA may increase the Monthly Rental Payment by the CPI percentage; or

(c) If the CPI has increased by greater than ten percent (10%), DE ANZA may only increase the Monthly Rental Payment by ten percent (10%);

(d) In the event that DE ANZA decides to abandon plans for construction of Phase I of the Resort, in addition to the Monthly Rental Payment as adjusted, HOMEOWNER will pay, upon sixty (60) days written notice from DE ANZA, his pro-rata portion of the total sum(s) representative of any and all government assessments and charges. Increases in the government charges , if any, will be payable by HOMEOWNER to the extent those percentages exceed the relevant increases in the CPI. HOMEOWNER will pay his pro-rata portion as herein set forth on a monthly basis, with the total amount paid within twelve(12) months. Such government assessments and charges will include, but not be limited to, property taxes and possessory interest or use taxes.

(e) HOMEOWNER will also pay, over the remaining term of this Agreement, an additional sum which shall be equal to the sum of HOMEOWNER'S pro-rata portion of any and all costs and expenses of capital improvements or alterations required by any government agency, if any. Regular maintenance required by a governmental agency will not be considered a capital improvement. Government charges will not include specific charges for the proposed Resort or any and all benefits available to HOMEOWNER pursuant to section 19.7 and 19.8 hereof. Capital improvement costs and expenses shall include, but not be limited to the costs of financing.

2.4 No Increase Upon Sale. A sale of the mobilehome on the Space shall be effective only if this Agreement is assigned to and assumed by the new homeowner pursuant to Article 16; in which case, the new homeowner shall be subject to the obligations of and shall enjoy the benefits of this Agreement. The sale or transfer of a mobilehome on the Space shall not cause an increase in the rent.

2.5 Decrease In Rent. The City Charter prohibits reducing rent except for gifts in aid or support of the poor, but if the City decreases the percentage on which DE ANZA'S rent under the MASTER LEASE is based, then DE ANZA will decrease HOMEOWNER'S Monthly Rental Payment in an amount that will be determined pursuant to the following calculation: the reduced Monthly Rental Payment that HOMEOWNER will have to pay to DE ANZA will be equal to the Monthly Rental Payment that DE ANZA was receiving from the HOMEOWNER multiplied by a fraction the numerator of which will be the "net rent percentage" that DE ANZA was receiving (the "net rent percentage" that DE ANZA was receiving is eighty percent[80%] since the city of San Diego receives twenty percent[20%]) divided by the "new net rent percentage" that DE ANZA will receive from HOMEOWNER (the "new net rent percentage" that DE ANZA will receive from HOMEOWNER will be determined by subtracting the new percentage of the rent that the city receives from one hundred percent[100%]). The above calculation is set forth in the following formula:

$$\text{MONTHLY RENTAL PAYMENT} \times \frac{\text{OLD DE ANZA NET RENT \%}}{\text{NEW DE ANZA NET RENT \%}}$$

2.6 Retroactive Rental Adjustment. If DE ANZA notifies HOMEOWNER that it does not intend to commence development of Phase 1 of the Resort and imposes one or more annual adjustments of the Monthly Rental Payment pursuant to Section 2.3 of this Article, and then later changes its position and determines to commence Phase 1, the adjusted rent collected pursuant to Section 2.3 may be greater than the collected rent would have been had the adjustment been made pursuant to Section 2.2. In that event, DE ANZA will recompute the amount of any annual adjustments to the Monthly Rental Payments made under Section 2.3 as if they had been made under Section 2.2. Any amount overpaid by HOMEOWNER shall be credited to HOMEOWNER'S account and shall be credited against the immediately ensuing Monthly Rental Payment(s) to be made by HOMEOWNER.

2.7 Financial Hardship. If HOMEOWNER is "financially in need," DE ANZA will either partially or fully waive its right to an increase in the Monthly Rental Payment pursuant to Section 2.2 or 2.3. "Financially in need" as used herein shall be determined based upon an objective set of standards which DE ANZA shall distribute after consulting with a representative group of homeowners to be selected by DE ANZA, and after approval by City Manager.

2.8 Late Charges. If any Monthly Rental Payment or other payment is not received by DE ANZA by the tenth day of the month in which it is due, the payment will be increased by twenty dollars ($20.00) or by five percent (5%) of the overdue amount, whichever is greater; the same amount will be charged for checks returned by the bank for any reason. Acceptance of such late charge by DE ANZA shall not constitute a waiver of HOMEOWNER'S default with respect to such overdue payment nor prevent DE ANZA from exercising any of the other rights and remedies granted in this Agreement or under state law. DE ANZA shall not be obligated in any event to accept a late payment.

2.9 CPI Defined. The term "CPI" refers to the United States Department of Labor Consumer Price Index, U.S. City Average - All Urban Consumers, 1967 = 100, or the successor index then in effect. As it relates to the adjustment of HOMEOWNER'S Monthly Rental Payment to take place on an annual basis, the increase or decrease in the Monthly Rental Payment of HOMEOWNER will be determined by the increase or decrease in the CPI for the first twelve (12) months of the period commencing sixteen (16) months immediately preceding the last anniversary of the Effective Date of this Agreement. All references in this Agreement to the term CPI, will be based upon the increase or decrease of the CPI as described above. In the event the CPI is no longer published, DE ANZA may, at its option, use any other index which reflects the CPI as of the Effective Date of this Agreement.

2.10 Pro-rata Defined. For purposes of this Agreement, "pro-rata portion" shall mean a sum equal to the sum determined by dividing the total costs or expenses in question (government assessments and charges and/or capital improvement costs and expenses) by the total number of mobilehome spaces in the Community.

ARTICLE 3

Rent Adjustments

3.1 Additional Rent. As of the Effective Date, as additional rent, HOMEOWNER will pay (i) gas, (ii) electricity, (iii) water and sewer(if applicable), (iv) storage charges(if applicable), (v) pro-rata governmental charges and assessments(if applicable), (vi) pro-rata government required capital improvements(if applicable), (vii) late charges(if applicable), and (viii) financial assistance provided to HOMEOWNER as described in this Agreement(if applicable). All of these charges shall be separately stated for each billing period by DE ANZA along with the opening and closing readings for the HOMEOWNER'S meters. DE ANZA shall conspicuously post the prevailing residential utilities rate schedule published by the utility. As of the Effective Date, water, sewer and trash are included in the Monthly Rental Payment. These additional rent items will not be subject to, nor will they apply to annual calculations of the increase in the Monthly Rental Payment as described in Article 2.

3.2 Sub-metered Water. If DE ANZA sub-meters water to the Community, DE ANZA will reduce the Monthly Rental Payment by a pro-rata portion of the average monthly cost of water and sewer to the Community, less an estimate for common areas, averaged over a period of five (5) years prior to such sub-metering. Thereafter, as additional rent, HOMEOWNER shall pay DE ANZA his actual cost of water and sewer use plus an administrative fee to cover costs. DE ANZA will not profit from this sub-metering. All costs of installation of HOMEOWNER'S water meter in the Space will be borne by HOMEOWNER and HOMEOWNER may elect to (i) personally pay such costs upon installation, or (ii) execute a note to borrow funds from DE ANZA to pay such costs with repayment to be fully amortized over five (5) years, with interest at 1% over DE ANZA'S Cost of Funds, "DE ANZA'S Cost of Funds" shall mean the permanent or variable loan constant of DE ANZA'S unsecured borrowing, if any, or if not, it shall be at the rate of Citibank prime interest in effect at the time plus two percent (2%). DE ANZA will make available evidence of its cost of funds, when applicable.

3.3 One-Time Retroactive Rent Adjustment. If HOMEOWNER had an increase in his Monthly Rental Payment at any time after December 31, 1987, and prior to the Effective Date, DE ANZA will, (i) make the initial Monthly Rental Payment of this Agreement equal to the amount it would have been if this Agreement were in effect as of their last Annual Anniversary(the last annual percentage increase in the rent, excluding the increase attributable to the City's increase, will be readjusted to three and nine-tenths percent (3.9%), and (ii) DE ANZA will calculate the amount paid in excess of what would have been paid under (i) above, and credit that amount to HOMEOWNER'S next Monthly Rental Payment. Increases in rent due to market increases upon resale that took place during the above-described period, will be retroactively adjusted as follows: (i) the first day of the month following the sale will become the new Annual Anniversary date, and (ii) the Monthly Rental Payment will be equal to the rent in effect prior to the sale, plus three and nine-tenths percent (3.9%).

ARTICLE 4

Maintenance of Land and Premises

All plants, shrubs and trees planted on the Space as well as all structures, including fences, embedded in the ground, blacktop or concrete, become the Community's property. HOMEOWNER, however, shall maintain them in good repair and attractive condition. DE ANZA may charge HOMEOWNER a reasonable fee to maintain the land or improvements upon which HOMEOWNER'S mobilehome is situated if HOMEOWNER fails to maintain such land or improvements in accordance with Community Rules and Regulations after written notification to HOMEOWNER and the failure of HOMEOWNER to comply within fourteen (14) days (under the Mobile Home Residency Law, as amended from time to time, currently Civil Code section 798.15). The written notice shall state the specific condition to be corrected and an estimate of the charges to be imposed by DE ANZA, if not corrected.

ARTICLE 5

Termination

DE ANZA may terminate this Agreement and HOMEOWNER'S tenancy for any reasons allowed by the Mobile Home Residency Law, as amended from time to time, currently Civil Code section 798.56.

ARTICLE 6

Condemnation

Condemnation of the Space or a substantial portion of the Community shall be grounds for the unilateral termination by DE ANZA of this Agreement and HOMEOWNER'S tenancy (under the Mobile Home Residency Law, as amended from time to time, currently Civil Code section 798.56(e)). In such event, DE ANZA shall notify HOMEOWNER in writing as required by law. No award for any partial or entire condemnation of the Community shall be apportioned, and HOMEOWNER hereby renounces any interest in any award resulting from a condemnation of all or a part of the real property, improvements and business at the Community. DE ANZA renounces any interest in any relocation award or personal property compensation, if any, made to HOMEOWNER in connection with the condemnation or forced relocation of HOMEOWNER'S mobilehome and its appurtenances by a government body, unless HOMEOWNER makes a claim against DE ANZA for a relocation award or property compensation in connection with the displacement. It is, however, specifically acknowledged and agreed by HOMEOWNER that nothing in this clause should be interpreted to imply that DE ANZA is representing or guaranteeing to HOMEOWNER that in the event of a condemnation, such as herein described, HOMEOWNER would receive a relocation award or personal property compensation, of any kind.

ARTICLE 7

Abandonment

If HOMEOWNER abandons his mobilehome, such abandonment will be a breach of this Agreement and DE ANZA shall have the rights and remedies set forth in this Agreement and in the Mobile Home Residency Law, as amended from time to time, currently Civil Code section 798.61.

ARTICLE 8

Civil Code Provisions

This Agreement is subject to the Mobilehome Residency Law, as amended from time to time (currently Civil Code section 798, et. seq.). A copy of the Mobilehome Residency Law is attached and incorporated by this reference.

ARTICLE 9

Rules and Regulations

HOMEOWNER agrees to obey all current Rules and Regulations and all future Rules and Regulations adopted by DE ANZA. HOMEOWNER ACKNOWLEDGES RECEIPT OF A COPY OF THE RULES AND REGULATIONS PRIOR TO OR CONCURRENT WITH SIGNING THIS AGREEMENT, A COPY OF WHICH IS ATTACHED AND INCORPORATED HEREIN. HOMEOWNER ALSO ACKNOWLEDGES THAT HOMEOWNER UNDERSTANDS AND AGREES TO BE BOUND BY SAID RULES AND REGULATIONS. If however, any current or future Rule or Regulation is inconsistent with this Agreement, this Agreement controls.

ARTICLE 10

Damage of Mobilehome

If HOMEOWNER'S mobilehome or improvements are destroyed or damaged by fire or other cause as to be wholly or partially unfit for occupancy or use, HOMEOWNER shall continue to be bound by each and every term of this Agreement including, but not by way of limitation, the obligation to make all payments called for in this Agreement. HOMEOWNER shall make the mobilehome or other improvement(s) fit for occupancy or use or replace them within sixty (60) days of such destruction or damage. Should HOMEOWNER fail to do so, DE ANZA shall have all of the rights set forth in the Rules and Regulations of the Community and in applicable laws. If the mobilehome or other improvement are destroyed or irreparably damaged, then HOMEOWNER shall promptly remove them at his expense. If HOMEOWNER fails to remove it, DE ANZA may, with notice, remove it to a secured storage facility and charge HOMEOWNER for the cost of removal and storage, which sum shall be due and payable immediately.

ARTICLE 11

Successors to DE ANZA

HOMEOWNER agrees that DE ANZA may assign its rights and obligations under this Agreement. Upon such assignment, HOMEOWNER will release DE ANZA from all further obligation under this Agreement. HOMEOWNER subordinates his interests under this Agreement to DE ANZA'S successors and to lenders who may be granted a security interest in the Community or DE ANZA'S interest. Accordingly, HOMEOWNER, upon the request by DE ANZA, shall promptly execute any and all documents that might be required by DE ANZA or a lender for the purpose of accomplishing the subordination of HOMEOWNER'S interest, as described herein. In the event HOMEOWNER were to refuse to, or fail to comply on a timely basis with the request by DE ANZA or a lender as herein set forth, such refusal or untimely compliance, would be a breach of this Agreement.

ARTICLE 12

Waiver

DE ANZA'S waiver of any default of the HOMEOWNER or DE ANZA'S acceptance of payment with knowledge of any default of any term, covenant or condition of this Agreement shall not be a waiver by DE ANZA of any subsequent or further breach by HOMEOWNER of any term, covenant or condition of this Agreement. DE ANZA'S failure to take any action in respect to any default shall not be a waiver by DE ANZA of such default or any other or further default(s). DE ANZA reserves the right to pursue all of its remedies at any time, as it sees fit.

ARTICLE 13

Savings Clause

Each provision of this Agreement is separate and distinct and individually enforceable. In the event any provision is declared to be unlawful or unenforceable, the enforceability of all the other provisions shall not be affected.

ARTICLE 16

Assignment - HOMEOWNER Termination

HOMEOWNER may assign his rights and interest under this Agreement, but such assignment will be effective only to a purchaser of HOMEOWNER'S mobilehome. Any assignment shall be documented on a form of assignment approved by DE ANZA. DE ANZA has the right to approve of a purchaser of HOMEOWNER'S mobilehome as specified in the Rules and Regulations (and the Mobile Home Residency Law as amended from time to time, currently Civil Code Section 798.74). Any purchaser of HOMEOWNER'S mobilehome shall be required to assume all the duties, responsibilities and obligations of HOMEOWNER pursuant to this Agreement and to execute an Agreement identical to this Agreement. Once HOMEOWNER'S purchaser has executed an agreement identical to this Agreement, HOMEOWNER shall thereafter be released of his duties, responsibilities and obligations under this Agreement. Such a transfer shall not in and of itself cause an increase in the Monthly Rental Payment.

RELOCATION BENEFITS - PHASE 1 HOMEOWNERS

ARTICLE 17

Relocation of Spaces

17.1 Agreement to Relocate. Phase 1 HOMEOWNER agrees to allow DE ANZA to: (i) relocate his mobilehome and (ii) transfer his leasehold interest in the Space, to a Replacement Space(as defined in Article 18 below).

17.2 Temporary Lodging. If temporary lodging is necessary during relocation, DE ANZA will pay the Phase 1 HOMEOWNER'S lodging costs to the extent of 1.25 times the average cost of local area "moderate hotel accommodations" as defined by the Convention and Visitors Bureau. DE ANZA also will pay every Phase 1 HOMEOWNER a daily food allowance of Thirty Dollars ($30.00) per person within HOMEOWNER'S immediate household.

17.3 Notice of Relocation. DE ANZA will provide a sixty (60) day written notice specifying the date for relocating the Phase I HOMEOWNER'S mobilehome ("Relocation Notice").

17.4 Waiver of Rent. Commencing upon the date that DE ANZA delivers to HOMEOWNER the Relocation Notice, DE ANZA will waive the Monthly Rental Payment due from HOMEOWNER pursuant to the terms hereof for the first full month of the sixty (60) day period from the date of the Relocation Notice. No additional Monthly Rental Payments will be waived.

17.5 Timetable of Relocation. Sixty (60) days before beginning Phase 1, DE ANZA will give Phase 1 HOMEOWNER a timetable for the relocation of his mobilehome and related improvements. Updates will be distributed periodically. However, in the event that the timetable is not met, DE ANZA will not incur any liability or obligation with respect to, or towards HOMEOWNER; and HOMEOWNER shall not have any claim or right of action against DE ANZA for such delays, if any.

ARTICLE 18

Relocation Space

18.1 Comparable Space. DE ANZA will move Phase 1 HOMEOWNER to a new mobilehome space (the "Relocation Space") within the Community that is to the greatest extent practicable, comparable to the Space. Various factors, such as view and size, will be taken into consideration. In no case will the Relocation Space be smaller than the Space. The Monthly Rental Payment will not increase as a result of the relocation, unless, pursuant to the terms of section 18.2 hereinbelow, HOMEOWNER elects to move his mobilehome to an alternate Relocation Space instead of the original Relocation Space. The Relocation Space will have at least two on-space parking spaces.

(a) DE ANZA will give Phase 1 HOMEOWNER a layout of the Relocation Spaces. The layout will indicate the placement of mobilehome, amenities and the proposed Monthly Rental Payment for each Relocation Space.

(b) A committee elected by Phase 1 Homeowners(the "Committee") guided by the "like-for-like" principle, shall assign a Relocation Space to HOMEOWNER. If HOMEOWNER is dissatisfied with the Relocation Space, he may request an alternative Relocation Space assignment from the committee.

(c) The Relocation Space will be located within an area (the "Relocation Area"), a diagram of which is attached hereto as Exhibit "B". DE ANZA will make best efforts to configure the Relocation Area in a format as described in Exhibit "B".

18.2 Alternative Relocation Space. If Phase 1 HOMEOWNER is dissatisfied with the final Relocation Space assigned by the Committee, HOMEOWNER may ask DE ANZA to give him the choice of another alternative Relocation Space. Best efforts will be made to accommodate HOMEOWNER by providing an alternative Relocation Space elsewhere in the Community. The Phase 1 HOMEOWNER may negotiate with DE ANZA to change the Monthly Rental Payment on the proposed alternative Relocation Space. Phase 1 HOMEOWNER is not obligated to select an alternative Relocation Space.

18.3 Relocation - Purchase Provisions. If Phase I HOMEOWNER elects not to relocate to a Relocation Space, then Phase 1 HOMEOWNER may require DE ANZA to purchase his mobilehome pursuant to and as set forth in this Article.

(a) If DE ANZA and HOMEOWNER cannot agree on the purchase price for the mobilehome, then the purchase price for the mobilehome shall be deemed to be the fair market value of the mobilehome (the "Valuation"). The Valuation will be determined by a licensed mobilehome salesperson or dealer, active in the San Diego area, and mutually agreed upon by DE ANZA and HOMEOWNER (the "Appraiser"). The Appraiser's Valuation shall be binding on HOMEOWNER and DE ANZA.

(b) In the event HOMEOWNER and DE ANZA cannot reach a mutual decision as to the selection of the Appraiser, HOMEOWNER will choose an appraiser and DE ANZA will choose an appraiser and the two appraisers will select a third appraiser. (In this event the appraiser selected by the two will be deemed to be the "Appraiser".)

(c) For the purposes of this Section 18.3, the Valuation of the mobilehome shall include the value of the improvements on and location of the Space and shall be based upon the value of the mobilehome in its current condition and not subject to adjustment due to its possible relocation. The Valuation, however, will take into account the specified date of closure of the Community which is the year 2003.

(d) Concurrent with or prior to the transfer of title of the mobilehome by HOMEOWNER to DE ANZA, pursuant to the provisions of this Article 18.3, Phase I HOMEOWNER shall discharge and obtain the removal of all secured interests, liens, encumbrances, taxes or other charges, if any, against the mobilehome at that time. HOMEOWNER agrees to execute any and all documents necessary to convey free and clear title in the purchased mobilehome to DE ANZA. If HOMEOWNER does not comply with the foregoing, DE ANZA will not have an obligation to purchase the mobilehome from HOMEOWNER and HOMEOWNER will have to elect to relocate his mobilehome to the Relocation Space.

(e) Once HOMEOWNER sells the mobilehome to DE ANZA, HOMEOWNER will have no further claim or right whatsoever against DE ANZA with respect to any aspect of this Agreement, the mobilehome or the relationship between HOMEOWNER and DE ANZA and DE ANZA will not owe any duty or obligation of any kind or nature to HOMEOWNER. Immediately upon the transfer of title of the mobilehome to DE ANZA, HOMEOWNER will vacate the mobilehome and the Space.

18.4 Relocation Costs. DE ANZA will pay the costs of moving the moveable mobilehome to the Relocation Space, including decking and landscaping and the specimen plant material (the cost of the relocation of the specimen plant material, which excludes trees, shall not exceed $1500.00) located on the Space ("Improvements"), and the costs of necessary packing and storage. DE ANZA will indemnify HOMEOWNER for damage to the mobilehome or possessions moved, if the damage is not caused by the negligence of HOMEOWNER. If DE ANZA determines that it cannot feasibly relocate or rebuild any Improvements, it will meet with HOMEOWNER in an effort to arrive at a mutually agreed upon replacement cost of the Improvements. If they cannot agree on replacement cost or, if HOMEOWNER does not want the Improvements replaced on the Relocation Space, then the Valuation by the Appraiser will determine a replacement cost of the Improvements. DE ANZA shall pay HOMEOWNER the determined replacement cost of the Improvements and HOMEOWNER shall have no further claim or rights against DE ANZA for replacement of Improvements.

18.5 Immovable Mobilehomes. If any part or all of a mobilehome subject to relocation is either "stick built" or determined by DE ANZA to be immovable, then DE ANZA is not obligated to move it and:

(a) HOMEOWNER may move the mobilehome at HOMEOWNER'S expense to the Relocation Space or replace it and DE ANZA will pay up to Two Thousand Dollars ($2,000.00) towards the actual cost of moving the new or existing mobilehome to the Relocation Space or removing the existing mobilehome from the Community. In any event, HOMEOWNER shall have no further claim or right against DE ANZA with respect thereto. Any replacement mobilehome must meet the architectural standards of the Community (Rules and Regulations), and have the approval of DE ANZA which appproval will not be unreasonably withheld, even if used mobilehomes are brought in; or

(b) DE ANZA will lease to HOMEOWNER a replacement mobilehome of equal or greater square footage, to be situated on the Replacement Space. DE ANZA shall provide HOMEOWNER with a choice of at least three different floor plans from which to select the replacement mobilehome. In this event HOMEOWNER acknowledges and agrees that HOMEOWNER will not retain the salvage value or any other value of the existing or replacement mobilehome. However, HOMEOWNER will retain his leasehold interest pursuant to the terms of this Agreement. HOMEOWNER will transfer the title to HOMEOWNER'S mobilehome to DE ANZA for the consideration of one dollar ($1.00) free and clear of all secured interests, liens, encumbrances, taxes or other charges. HOMEOWNER will pay DE ANZA one dollar ($1.00) per month to lease the replacement mobilehome. HOMEOWNER will enter into a lease agreement similar to this Agreement for the replacement mobilehome, with such lease agreement to be fully assignable; or

(c) In the event that the alternatives which are set forth in subparagraphs (a) and (b) above are not acceptable to HOMEOWNER, DE ANZA will purchase HOMEOWNER'S mobilehome for an amount equal to the amount represented by the Valuation of the mobilehome. The Valuation will be accomplished by the Appraiser and will take into account the value of the immovable mobilehome itself and exclude the value of the Space and its location in the mobilehome park.

Other than as set forth herein, HOMEOWNER will have no further claim or right against DE ANZA for replacement of the immovable mobilehome.

RELOCATION BENEFITS - ALL HOMEOWNERS

ARTICLE 19

19.1 Financial Assistance. If HOMEOWNER desires to sell his mobilehome, HOMEOWNER must exhaust all reasonable efforts and avenues of obtaining financing for the purpose of selling his mobilehome. In the event HOMEOWNER cannot sell his mobilehome to a "Financially Qualified Buyer" (as that term is defined in Section 19.2 below), caused by the Financially Qualified Buyer's inability to obtain financing, due solely to the short remaining term of this Agreement, DE ANZA will at it's option (i) have the right to attempt to obtain the necessary financing for said buyer to purchase HOMEOWNER'S mobilehome, or (ii) provide the necessary financing to said HOMEOWNER'S buyer for the purchase of HOMEOWNER'S mobilehome, on the following terms and conditions:

(a) The buyer executing a note with interest equal to one percent (1%) over DE ANZA'S Cost of Funds as defined in Article 3 above, from the date of disbursement of funds; fully amortized over the number of years remaining in this Agreement, less two years; payable, principal and interest, monthly and continuing on the first day of each and every month thereafter until all sums are repaid;

(b) Loan-to-value ratio shall not exceed sixty percent (60%) of the mobilehome, with value to be determined by the Appraiser. Said appraisal shall include the value of HOMEOWNER'S mobilehome in it's current location and also based upon the closure of the Community on November 23, 2003.

(c) The loan will be fully recourse to the buyer. Buyer will acknowledge willingness to cover deficiencies, if they arise for any reason.

(d) The loan shall be secured, at DE ANZA'S election, by a leasehold deed of trust and/or UCC-1 filing.

(e) A default on the loan will be a default under this Agreement.

19.2 Financially Qualified Buyer Defined. "Financially Qualified Buyer" means a person who meets the qualifying criteria and standard normally used by institutional lenders for mobilehomes in the County of San Diego, State of California.

19.3 Obligation to Purchase. If HOMEOWNER elects to sell his mobilehome prior to December 31, 1993, and cannot locate a satisfactory buyer, DE ANZA will purchase the mobilehome from HOMEOWNER at a price equal to the Valuation. However, prior to DE ANZA having the obligation to purchase the mobilehome from HOMEOWNER, DE ANZA will have the right to sell the mobilehome on behalf of HOMEOWNER. HOMEOWNER will cooperate in any and all reasonable sales efforts exerted by DE ANZA in the attempt to effectuate the sale of the mobilehome. DE ANZA will have at least six(6) months in which to sell the mobilehome. For purposes of this Section, the Valuation shall include the value of HOMEOWNER'S mobilehome in its current location and also based upon the projected closure of the Community in the year 2003.

19.4 Condition to DE ANZA'S Obligation to Purchase. It is specifically understood, acknowledged and agreed by HOMEOWNER that DE ANZA'S duty to purchase HOMEOWNER'S mobilehome as set forth in this Agreement are conditioned upon HOMEOWNER delivering title to the mobilehome free and clear of all security interests, liens, encumbrances, taxes or other charges, if any. In the event HOMEOWNER is unable to deliver such clear title to the mobilehome, HOMEOWNER will have to select one of the other alternatives available to HOMEOWNER as set forth in this Agreement. In addition, at DE ANZA'S option, upon purchasing HOMEOWNER'S mobilehome, any and all other agreements between DE ANZA and HOMEOWNER, regardless of when entered into, shall be deemed terminated in their entirety.

19.5 Schedule for Completion of Phase 1 Redevelopment. DE ANZA will establish a date for completion of construction of Phase 1 of the Resort and will deliver a schedule to HOMEOWNER sixty (60) days prior to commencement of Phase 1. Thereafter, DE ANZA will periodically notify HOMEOWNER of any construction delays. However, it is acknowledged and agreed by HOMEOWNER that DE ANZA shall incur no liability or obligation to HOMEOWNER for any injuries, damages, costs or expenses that HOMEOWNER may incur in the event a delay occurs in the projected completion date of the construction of Phase I of the Resort.

19.6 Interruption of Utility Service. If construction of the Resort results in water, sewer, or electric outages in excess of thirty-six (36) consecutive hours, then DE ANZA will provide HOMEOWNER (if affected) with the daily lodging and food allowance provided in Article 17.2 above. However, this does not constitute a waiver of any right the HOMEOWNER may have in the event the HOMEOWNER experiences outages for a lesser period of time, nor does it constitute an implied admission of liability or responsibility by DE ANZA for any damages that HOMEOWNER may incur for such interruption of utilities service.

19.7 New Amenities. Sometime prior to commencing Phase 1 construction, and only in the event that construction of Phase 1 of the Resort is actually going to commence, DE ANZA will provide HOMEOWNER with the following additional amenities:

(a) Swimming pool comparable in size to that in Bay Club;

(b) Clubhouse comparable in size to that in the Bay Club;

(c) Car wash; and

ARTICLE 20

RELOCATION BENEFITS IN YEAR 2003 AFTER COMPLETION OF PHASE 1

If DE ANZA completes construction of Phase 1, as evidenced by the receipt of certificates of occupancy, during the term of this Agreement, or if DE ANZA intends to proceed with construction of Phase 1 on November 23, 2003, the following benefits will be offered to HOMEOWNER on November 23, 2003:

DE ANZA will make reasonable efforts to build or supply or assist HOMEOWNER in building or locating a replacement mobilehome park ("Replacement Park"). If DE ANZA builds or supplies HOMEOWNER with a replacement park, HOMEOWNER may relocate his mobilehome to the Replacement Park and HOMEOWNER shall have the benefits described in subparagraph (a) below:

(a) If HOMEOWNER relocates his mobilehome to a Replacement Park, DE ANZA will pay the cost (not to exceed $3,000 adjusted by CPI as defined in Section 2.9 hereof), to move and set up HOMEOWNER'S mobilehome in the Replacement Park; HOMEOWNER shall provide DE ANZA with adequate documentation evidencing such moving and set-up costs.

(b) If HOMEOWNER is unable to locate a replacement park for his mobilehome, HOMEOWNER shall have the following options:

(i) elect to have DE ANZA pay HOMEOWNER an amount equal to the sum of Two Thousand Dollars ($2,000.00) in cash, to be used as HOMEOWNER determines. Such payment to HOMEOWNER shall take place after HOMEOWNER has moved his mobilehome from the park. If, during the year 2003, DE ANZA intends to construct additional phases of the Resort beyond Phase 1, or if DE ANZA'S lease is extended for the area beyond Phase 1 , DE ANZA will pay HOMEOWNER an amount equal to Five Thousand Dollars ($5,000.00) instead of Two Thousand Dollars ($2,000.00). This Two Thousand Dollars ($2,000.00) or Five Thousand Dollars ($5,000.00) shall be subject to adjustment for CPI as defined in section 2.9. ; or

(ii) Elect to have DE ANZA buy HOMEOWNER'S mobilehome for the amount of the Valuation. Valuation of the mobilehome under the provisions of this section shall not include the value of the Space, if any, and will be at minimum equal to the payment amounts described in Article 20b(i) above.

(iii) Notwithstanding the foregoing, Phase 1 HOMEOWNER leasing a mobilehome from DE ANZA will receive cash assistance as described in 20(b)(i) instead of the other alternatives in this Section 20.

GENERAL PROVISIONS

ARTICLE 21

21.1 Community Manager. DE ANZA will provide the Community with a bona fide resident manager if the current manager in the Community ceases his employment in the Community.

21.2 Incorporation of Provisions of MASTER LEASE. The terms and provisions of the MASTER LEASE are incorporated herein by reference as though fully set out in this Agreement.

SPECIAL CONDITIONS PRECEDENT

This Agreement is subject to, conditioned upon and shall not be effective unless at least 340 of the 510 Homeowners in the Community execute Rental Agreements with DE ANZA, which Agreements shall be substantially the same as this Agreement. Any HOMEOWNER who does not execute a Rental Agreement may not claim any benefits pursuant to the Rental Agreement except during the first twelve months as required by the Mobile Home Residency Law as amended from time to time (currently Civil Code section 798.16).

DE ANZA'S construction of Phase 1 of the Resort is contingent upon approval to construct all Phases; therefore, in the event that DE ANZA does not gain approval from the City of San Diego to construct the Resort, including all anticipated Phases thereof, or DE ANZA does not commence construction of Phase 1 of the Resort under any circumstances, then DE ANZA will not provide benefits or compensation, as the case may be, as set forth in Articles 17, 18, 19, and 20 of this Agreement. Any of these benefits in effect prior to the termination of this Agreement will cease upon 30 days written notice by DE ANZA to HOMEOWNER of its intention not to proceed with development of the Resort.

DE ANZA AND/OR THE CITY OF SAN DIEGO WILL NOT PROVIDE HOMEOWNER, HIS ASSIGNEES, PERMITTED SUBLESSEES, GRANTEES, OR HEIRS OR ANY OTHER SUCCESSOR IN INTEREST, ANY ADDITIONAL BENEFITS WHEN THE TERM OF THIS AGREEMENT EXPIRES OTHER THAN AS PROVIDED IN ARTICLE 20. IT IS UNDERSTOOD THAT ANY BENEFITS AS PROVIDED IN ARTICLE 20 ARE RECEIVED IN FULL SATISFACTION OF ANY RELOCATION COSTS AND RELOCATION COSTS ADVANCES, AND HOMEOWNER DOES HEREBY AGREE THAT SUCH COMPENSATION BENEFITS ARE FAIR, PROPER AND EQUITABLE UNDER THE PROVISIONS OF CALIFORNIA GOVERNMENT CODE, 65863.7, AND ALL RELATED BENEFIT COMPENSATION STATUTES.

EXECUTED this ____ day of _____, 19__.

ASSOCIATED MOBILE ESTATES
dba DE ANZA HARBOR RESORT

By_____
"DE ANZA"

_____
"HOMEOWNER"

_____
"SPOUSE"

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
JOHN W. WITT
CITY ATTORNEY

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SENIOR CHIEF DEPUTY CITY ATTORNEY

MEMORANDUM OF LAW

DATE: August 11, 1989

TO: Steve Lerner, Assistant to Mayor O'Connor

FROM: City Attorney

SUBJECT: De Anza Mobilehome Park - Relocation and Redevelopment Issues

By memorandum dated July 19, 1989, copy attached as Attachment 1, you referred to a recent news article related to the proposed hotel redevelopment in the De Anza/Campland area of Mission Bay Park.

You asked whether the statement in the news article attributed to Mr. Michael Gelfand, representing De Anza, that the City must either approve the redevelopment or face an obligation to pay relocation to the tenants, is correct. You also asked for our comments as to "any legal constraints that exist that pertain to future development on [the] site" and whether the original grant from the state contains provisions "which limit the types of uses of park land in Mission Bay Park."

RELOCATION ISSUES

In answer to the question regarding relocation, this office has, in the past, reflected on the potential liability to pay relocation costs upon expiration of the De Anza Mobilehome Park lease. We have concluded that the City would not be obligated to pay relocation costs to the tenants upon expiration of the lease. A specific case on this issue in California is Stevens v. Perry, 134 Cal.App.3d 748, 184 Cal.Rptr. 701 (2d District 1982). In that case, the court held that residents of a mobilehome park located on land leased from a municipal district were not entitled to relocation benefits pursuant to the provisions of Government Code section 7260 et seq. (which constitute the California relocation assistance law) upon the expiration of the lease.

The court's conclusion was based upon the fact that the displacement of the tenants did not occur as a result of the

acquisition of the property by a public entity for public use, which is the standard set forth in the Government Code.

The 1982 decision has not been modified, reversed or overruled. However, California Government Code section 65863.7 is an additional law which deals specifically with relocation resulting from conversion of a mobilehome park to another use. The section, effective since 1981, allows the City Council, at its option, to require the person proposing a mobilehome park conversion "to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park."

Section 65863.7 is part of Chapter 4, of Division 1 of Title 7 of the Government Code, which chapter, as specified in section 65803, "shall not apply to a chartered city, except to the extent that the same may be adopted by charter or ordinance of the city."

However, 1986 legislation added a provision specific to section 65863.7 as follows:

> (h) This section is applicable to charter cities.

In 1988, an amendment to section 65863.7 was proposed and ultimately enacted.

The 1988 addition provides as follows:

> (i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

The above change in the state statute, which became effective January 1, 1989, has apparently lead Mr. Gelfand to conclude that the City would now have some obligation to mitigate the adverse impacts which may result to the mobilehome park tenants if they remain on the leasehold property until 2003. It should be noted

that the City's lessee has proposed to carry the burden of any relocation costs which may result from a redevelopment of the De Anza leasehold area as proposed by Mr. Gelfand.

This office does not agree with Mr. Gelfand's conclusion that the 1988 amendment to section 65863.7 would create an obligation on the part of the City to pay relocation to the De Anza tenants in 2003. Our conclusion is based upon the fact that the mere expiration of a long term lease does not constitute "a decision by a local governmental entity . . . not to renew a conditional use permit or zoning variance under which the mobilehome park has operated" nor is it "a result of any other zoning or planning decision, action, or inaction." All of the decisions specified in the statute are discretionary, whereas, in the City's fact situation, the City Council, as discussed below, will have absolutely no authority to allow the continued mobilehome park operation after the year 2003.

In addition, since the other provisions of section 65863.7 relating to the voluntary conversion of a mobilehome park to another use by a private owner merely allow a city the option of requiring mitigation measures from such private owner, it is not logical to read the amended provision as making such mitigation mandatory with regard to a local governmental agency which presumably, in the furtherance of protection of the public health, safety and welfare of its citizens, determines not to renew a conditional use permit or other such permit for a mobilehome park.

Also, a charter city's zoning laws, as reflected by the general exemption contained in Government Code section 65803, are matters of municipal concern and as a charter city San Diego cannot be preempted by the state law in managing its own zoning and planning affairs. The mere fact that the legislature enacts a statute purporting to make a particular zoning law applicable to charter cities, does not necessarily control, in view of the state constitutional provision which cannot be modified by the legislature which guarantees to a charter city control over its own municipal affairs in all areas where such affairs are not "matters of statewide concern."

We must add one significant caveat to the above decision. Despite the fact that we have concluded that the City is not presently mandated by law to make any relocation payments to De Anza Mobilehome Park residents upon expiration of the lease in 2003, we are concerned that between now and 2003 state legislation could possibly be adopted requiring, or at least purporting to require, the City to make such relocation payments. The issue involving municipal affairs of a charter city versus "matters of statewide concern" which are subject to legislative

regulation, is far from clear, and it is possible that a court could conclude that a subsequent state law regarding relocation payments for mobilehome park tenants is a matter of statewide concern.

TYPES OF USES ALLOWED IN MISSION BAY PARK

With regard to the second issue, attached as Attachment 2 is a copy of chapter 142 of the California statutes of 1945. Chapter 142 conveyed all the tidelands in Mission Bay to the City. Approximately 85 percent of the De Anza Mobilehome Park leasehold is within the tidelands grant area and is subject to the provisions of chapter 142. [The other 15 percent was conveyed to the City by the state for park and recreation use.] You will note that the tidelands grant basically requires the City to operate and maintain the tidelands for tidelands purposes which specifically include "recreational" purposes. In 1965 the City by ordinance officially dedicated Mission Bay Park to park and recreation use pursuant to section 55 of the City's Charter. Therefore, the City may now utilize the tidelands in Mission Bay Park only for park and recreation purposes in the absence of a two-thirds vote of the electorate approving some nonpark use. Residential use of the De Anza area by permanent residents is not a valid tidelands use nor is it a legal use of dedicated public park property.

Since the De Anza lease was entered into in 1953 and, therefore, precedes the dedication of the property to park use, it has been considered by this office a "grandfathered" use for the remaining term of the original lease, i.e., until 2003. Having a "grandfathered" status under the 1965 park dedication, however, did not resolve the issue that the present use was an invalid use of the tidelands. This fact resulted in a bill sponsored by then Assemblyman Kapiloff in 1982, a copy of which is attached as Attachment 3. The "Kapiloff" bill, AB 447, specifically allows the continued mobilehome park use at De Anza Cove for the period ending November 23, 2003, and provides, in addition, that "on and after November 23, 2003, the lands shall be developed for park and recreation purposes consistent with the master plan for Mission Bay Park in effect on August 11, 1981." Therefore, at the end of the year 2003 three basic provisions shall apply to the De Anza property:

1. The property must be used for the tidelands purpose of recreation under chapter 142 of the 1945 statutes.

2. The property must be used for park and recreation purposes pursuant to the 1965 ordinance of the City Council dedicating Mission Bay Park to park and recreation use.

3. In the absence of some additional state legislative action the property must be "developed for park and recreation purposes consistent with the master plan for Mission Bay Park in effect on August 11, 1981."

A copy of the pertinent portion of the Mission Bay Park Master Plan in effect on that date is attached as Attachment 4.

You will note that the master plan calls for the De Anza area to be used for "Guest Housing" which is the designation used in the plan generally for hotel developments, until expiration of the lease. After the lease expires the master plan indicates that the De Anza area "designation should be changed to Park and Shoreline unless a viable alternative proposal has been presented to modify [the] existing development and provide greater public access to the De Anza Shoreline." Therefore, in the absence of some additional state legislation, it appears that the De Anza area may be redeveloped with a viable park commercial use, such as a hotel, if "a viable . . . proposal" for such commercial use is presented to the City before the end of the lease term. Otherwise, in the absence of additional state legislation, only general "park and shoreline" uses will be allowed after 2003.

The basic legal distinction which allows a hotel but not a mobilehome park on tidelands and dedicated park property is that hotels provide temporary accommodations to park and tidelands visitors. In a large park such as Mission Bay Park, the courts have upheld such temporary accommodations as a proper park use.

Finally, it is important to note that at the end of 2003 it will not be legally possible to continue the existing mobilehome use by merely having another authorization of such use by the state legislature. Since the property has been dedicated to park use, the nonpark use of the property under the "grandfathered" lease cannot be extended in the absence of a two-thirds vote of the electorate.

JOHN W. WITT, City Attorney

By Harold O. Valderhaug
Deputy City Attorney

HOV:ps:731.7(x043.2)
Attachments 4
ML-89-80

Office of
The City Attorney
City of San Diego

MEMORANDUM

236-6220

DATE: June 20, 1994

TO: Harold O. Valderhaug, Chief Deputy City Attorney

FROM: Tom Merrick, Legal Intern

SUBJECT: De Anza Mobile Home Park Relocation

You have asked me to research whether residents of the De Anza Mobile Home Park will be eligible for relocation assistance from the City of San Diego when the lease of the Park expires in 2003. This memorandum is the result of that research.

BACKGROUND

The history of this issue was summarized in this office's report to the Planning Commission on December 4, 1991:

> The Mission Bay tidelands were conveyed to the City in 1945 to be used and held in trust for park and tidelands purposes." Permanent, private residences are not a legal use of tidelands.
>
> In 1949, the original lessee of the De Anza Mobile Home Park approached the City with a proposal to lease the property and construct facilities to be used as a "travel trailer and tourist area." Negotiations for the lease were not completed and the lease was not executed until November 1953. The lease term is fifty years and expires in November 2003. The lease specifies that the property must be developed and used as a "tourist and trailer park area." The leasehold area is mostly on filled tidelands and is subject to the tidelands trust.
>
> Subsequent to 1953, "trailers" became less and less "mobile" and by the late 1960s and mid-1970s it became apparent that the mobile homes occupying the leasehold were in fact permanent, private residences creating a potential problem under the tidelands grant.
>
> The problem was increased in 1962 when the Council by ordinance officially dedicated the Mission Bay Park lands to park and recreation use. Private residences are not a valid use of dedicated park land.

In the late 1970s, one of the City Council members raised the issue of the legality of the mobile home park use in Mission Bay and this office wrote an opinion concluding that the mobile home park use was in fact a violation of the tidelands trust and also that no such private residential use could legally be allowed on dedicated park land.

The residents of the mobile home park at that time were obviously concerned with our conclusion and in early 1982 the City Council, after several public meetings, determined to allow the De Anza, park to continue in operation until 2003 or until a redevelopment plan, including potential relocation provisions, is approved by the Council prior to 2003.

The legality of the mobile home park use was addressed for the period ending in 2003 by state legislation . . . which legislation acknowledged the present improper use of the tidelands, [and] authorized the continued use until 2003. The legislation recognized the hardships which would have resulted to the tenants and allowed continued use based upon a finding that the property was not needed for tidelands purposes during the period ending 2003 . . . .

The bill specifies that the property must be utilized for park and recreation purposes at the end of the present lease.

This office concluded that, in light of the legislative authorization regarding the tidelands, the nonpark use of the dedicated park lands is allowable on the basis that the lease was entered into in 1953 and the property was not officially dedicated to park purposes until 1962. Our conclusion was, therefore, that the lease was "grandfathered" until its expiration date.

Much of the discussion at the Council meetings which led up to the City's approval of the continued mobile home park use involved the economic hardship to the numerous tenants in the event they were forced to relocate. It was felt that giving some limited assurance of a continued right to utilize the property until redevelopment occurs, or if no redevelopment occurs, until the expiration of the lease, would provide the tenants the opportunity to either sell their units for significant prices or continue to occupy their units knowing approximately 22 years in advance that the use would end in 2003.

Now, in 1994, with nine years remaining in the lease term, the residents are claiming they are entitled to relocation benefits from the City when the master lease expires in 2003.

Questions Presented

1. Are the residents of De Anza Mobile Home Park entitled to relocation benefits from the City of San Diego under the California relocation assistance law (Gov. Code § 7260 et seq.) when their lease expires in 2003?

2. Are the residents entitled to relocation assistance from the City under Gov. Code § 65863.7 (Conversion of mobile home park to other use)?

3. Are the residents entitled to relocation assistance from the City under Division 10 of the Municipal Code, specifically § 101.1002 (Discontinuance of a Mobile Home Park)?

4. Would it be an impermissible gift of public funds to provide relocation benefits to De Anza residents who do not qualify as low income citizens?

Short Answers

1. No. Case law clearly indicates that § 7260 relocation assistance is not available where mobile home park residents are dislocated because their lease term has ended. The De Anza residents will not be relocated without relocation assistance prior to the end of the lease term in 2003.

2. No. For the residents to be entitled to relocation assistance, § 65863.7(i) requires that the park's closing be the result of a "decision, action, or inaction" by the City. The City cannot by any decision, action, or inaction, allow the lease to continue. Its expiration is the result of the end of the lease term. There is no causal connection between a City decision, action, or inaction and the park's closing. For the residential use of dedicated tideland and park property to continue, a state waiver and a vote of the citizens of San Diego to amend the City Charter would both be necessary.

3. No. The De Anza Mobile Home Park is specifically excluded under the express terms of § 101.1001. The City has the power to exclude De Anza from § 101.1002 as a special case.

4. Yes. It is impermissible for the City to provide public funds for private purposes. Since the City is not legally obligated to provide relocation assistance to the De Anza residents, it would be a gift of public funds to provide such assistance to residents who do not qualify as low income.

Discussion

I. California Relocation Assistance Law (Gov. Code Section 7260 et seq.)

The California relocation assistance law (Gov. Code § 7260 et seq.) requires public entities to provide relocation assistance to persons displaced as a result of acquisition of real property for a public use. The law, however, is not applicable to situations where the dislocation is the result of the expiration of the lease term.

In Stephens v. Perry, 134 Cal. App. 3d 748 (1982), tenants of a mobile home park whose ground lease had expired, sued the City of Santa Maria for relocation benefits. The city acquired the property from the prior lessee, but allowed the tenants to remain for the balance of the lease term. The court held the tenants were not entitled to relocation assistance.

> Under the Guidelines, the plaintiffs are not displaced persons unless their displacement occurred as a *result* of the acquisition of the real property by a public entity for a public use or upon a written order to vacate the real property for a public use. The Act is applicable to public entities such as the District only when there are persons displaced by the acquisition. It is the causal connection between the acquisition and the displacement which brings into play the provisions of the Act and the Guidelines.

Id. at 755.

Similarly, in Baiza v. Southgate Recreation and Park Distr., 59 Cal. App. 3d 669 (1976), the city acquired property on which Baiza was a tenant. The city allowed him to continue as a tenant, but he quit paying the rent. The court held he was not entitled to relocation assistance from the city after he was evicted. His eviction was not the result of the city's acquisition of the property, but was due to his breach of the contract with the city as landlord.

Courts have mandated relocation assistance where the displacement was caused by the entity's acquisition of the property. (See, e.g., Superior Strut & Hanger Co. v. Port of Oakland, 72 Cal. App. 3d 987 (1977); Albright v. State, 101 Cal. App. 3d 14 (1979)).

> Reading Superior Strut, Albright, and Baiza together, the rule which controls is this: a tenant holding under a lease which has not expired at the time property is acquired for public use and who continues lawfully in possession of the premises after termination of the lease will qualify as a "displaced person" under section 7260, subdivision (c).
>
> . . . .
>
> When the term of a lease expires but the lessee holds over without the owner's consent, he becomes a tenant at sufferance [citation omitted]. Since the possession of the tenant at sufferance is wrongful, the owner may elect to regard the tenant as a trespasser [citation omitted].

Peter Kiewit Sons' Co. v. Richmond Redevelopment Agency, 178 Cal. App. 3d 435, 445 (1986).

The residents' representatives have often used as an example the case of El Morro Mobile Home Park in Orange County. *Purchase Of Parkland Approved*, San Diego Union, Dec. 14, 1979, at A-5. After the state purchased land on which the mobile home park was located in order to create a public park, it allowed park residents to remain an additional twenty years in lieu of relocation benefits. In that case, the state's acquisition of the land for public use forced the closure of El Morro.

The public acquisition aspect entitled El Morro residents to relocation assistance. That aspect is missing from the De Anza case. The residents' displacement in 2003 will not result from the City acquiring the property for a public use. Stephens is directly on point, and the El Morro example is inapposite. The required causal link between public acquisition and forced relocation is missing. The City owned the property prior to the original lease over forty years ago. As Kiewit points out, at the expiration of the lease, the tenants will have no legal rights left in the property. They will be tenants at sufferance and may be treated as trespassers.

II. Conversion of Mobile Home Park to Other Use (Gov. Code Section 65863.7)

A. Section 65863.7 does not apply.

Government Code § 65863.7 (Conversion of mobile home park to

other use) requires an owner to file a report to the local legislative body on the effect a conversion may have on displaced residents. (Subsection (a)). The local legislative body may require the private owner to take steps to minimize the impact on the displaced residents. The city's power to require mitigation steps be taken is permissive, not mandatory. In no case are the steps taken to exceed the "reasonable costs of relocation." (Subsection (e)). Subsection (h) applies the section specifically to charter cities.

Our issue turns on an interpretation of subsection (i):

> This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required under subdivision (e). (Emphasis added).

The closure of De Anza Mobile Home Park cannot logically be considered the "result" of any "decision, action, or inaction" on the part of the City. There is no case law interpreting § 65863.7. However, the legislature chose to use the words "result of" which are the same as those used in § 7260.

> The Legislature "is deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof. [Citation.] Where a statute is framed in language of an earlier enactment on the same or an analogous subject, and that enactment has been judicially construed, the Legislature is presumed to have adopted that construction. [Citation.]"

People v. McGuire, 14 Cal. App. 4th 687, 694 (1993).

The courts have interpreted "result of" in § 7260 to require a direct causal relationship. In Stephens, the residents were not displaced as a result of the city's acquisition of the park and were therefore ineligible for relocation assistance under § 7260. In this case, the residents will not be displaced as a result of a City decision, action, or inaction, and therefore, cannot claim benefits under a similarly-worded § 65863.7.

The City did not make a zoning or planning decision which resulted in De Anza's closure. De Anza must close in 2003 when its lease expires because it is an illegal use of tidelands trust property. The state statute which granted an exception will not allow any extension in the lease, even if the City wanted to extend it. The City has no power to allow it to continue. It would be illogical to say, therefore, that the closure results from any City decision, action, or inaction.

Even if the state allows a waiver of the illegal tidelands use, the City cannot legally allow De Anza to remain open. To do so would require an approval of nonpark use under Charter § 55, which would require a two-thirds vote of the citizenry, or at least a new Charter provision, which would require a majority vote. Without such popular approval, the City cannot allow residential uses in dedicated public parks.

B. Even if Section 65863.7(i) were applied, the residents would not be entitled to relocation assistance.

Under § 65863.7(i), if a local government causes the dislocation, it is subject to the reporting requirements of the section, and "is required to take steps to mitigate the adverse impact of the change as may be required in subdivision .(e)." (emphasis added). Assuming the City were the cause of the displacement, it would have to take the same steps as a private party would be required to take under Subsection (e):

> The legislative body, or its delegated advisory body, shall review the report, prior to any change in use, and <u>may</u> require, as condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park. <u>The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation</u>. (Emphasis added).

This language clearly indicates "reasonable costs of relocation" are the maximum amount it would be in the City's power to compel. Any "steps to mitigate any adverse impact" may be adequate.

For example, the De Anza tenants' group has in the past suggested an extension of their use of the land to 2017. They argue this would allow them to amortize their equity over the remainder of the term. This, to them, would be adequate mitigation.

This is exactly what the City did in settling the original problem of the illegal lease with A.B. 447, and the notice to the tenants in 1982. At that time, the City agreed to the continued use because,

> [i]t was felt that giving some limited assurance of a continued right to utilize the property until redevelopment occurs, or if no redevelopment occurs, until the expiration of the lease, would provide the tenants the opportunity to either sell their units for significant prices or continue to occupy their units knowing approximately 22 years in advance that the use would end in 2003. (Report to the Planning Commission *supra*).

The 1982 agreement was aimed at giving the tenants firm notice that the leasehold would expire in 2003, then twenty two years off, and that there was no way possible for the city, in the absence of an approving vote by the electorate, to extend the lease. Since 1982, all tenants have been given the following notice:

> [O]ccupants shall not be entitled to and may not claim:
>
> a. Any relocation allowances, benefits, monetary payments or any other rights of any kind or amount at any time whatsoever by reason of, or arising out of, the provisions of. . . Assembly Bill 447 or by virtue of any action or inaction of LESSEE or LESSOR pursuant to said Bill; or
>
> b. Any extension by LESSOR or LESSEE of the term of their individual subleases pursuant to any provision of the basic lease or by. . . Assembly Bill 447.

Even if § 65863.7 were applied to the City in this case, a persuasive argument can be made that the City has already taken adequate steps to mitigate losses to the tenants who will be displaced in 2003. The only obligation the City may have if § 65863.7 is applied is for following the reporting requirements.

III. San Diego Municipal Code Section 101.1002, Discontinuance of a Mobile Home Park

A. Section 101.1002 does not apply

Municipal Code § 101.1002 sets out procedures to discontinue mobile home parks in the City. The City Housing Commission, in

accordance with this section, laid out guidelines on relocation assistance to be provided if a mobile home park is discontinued. (Policy # 300.401).

However, De Anza is expressly excluded:

> [A]nything to the contrary in this section or in section 101.1002 notwithstanding, this section and section 101.1002 shall not apply to the mobilehome park located in Mission Bay generally known as De Anza Mobilehome Park. It is the intention of the City to deal with any discontinuance and relocation issues involved with De Anza Mobilehome Park by separate ordinance or resolution because of the unique conditions applicable to the De Anza Mobilehome Park.

San Diego, Cal., Code § 101.1001 (1993).

The City has the power to promulgate policies regarding the discontinuance of mobile home parks within its boundaries. It has the power to tailor such policies in ways it sees fit. In this case, the City had good reason to treat De Anza differently. It specifically found this necessary "because of unique conditions applicable" to De Anza - ie., that it is located on a site where residential uses are prohibited, and therefore continuing the mobile home park on that site beyond 2003 would be illegal.

The City also has the authority to amend the municipal code. The code sections discussed are subject to modification between now and 2003. Additionally, the Housing Commission policy has not been reviewed or approved by the City Council or the Housing Authority and is therefore also subject to amendment at any time.

B. Even if Housing Commission policies were applied, the residents would be eligible for minimal benefits.

Housing Commission Policy # 300.401 sets out a range of costs for relocating mobile homes. The range is $3,000 to $15,000. In cases where relocation is not feasible, the owner would receive:

> Seventy-five percent of actual loss in value to the displaced park resident, with value defined as the difference between the value of the mobile home on site, less any sale proceeds. On site value will be established by averaging the appraised value from appraisals made by an appraiser for the home owner and an appraiser for the park owner or lessee, both of whom will be selected from the City's list of certified appraisers. (Exhibit I, 1(b)(1)).

The provision is vague as to how value is determined. It does not mention the time frame from which the mobile home's value is determined, or whether the value of the lease is included. Clearly the provision was not written to include situations like De Anza, where the valuation of the mobile home has been impacted by an imminent termination of the leasehold. It would be illogical to assume Policy # 300.401, which clarifies a Municipal Code section which specifically excludes De Anza, would be written to consider the kinds of unique valuation problems this situation presents.

In any event, it is unlikely that the intent of the Housing Commission was other than an attempt to codify "reasonable relocation costs." The residents are claiming the City is liable for the full seventy-five percent of the value of their mobile homes (given their argument that the sale proceeds in 2003 are likely to be near zero). The costs to the City under this interpretation would almost certainly be in excess of reasonable relocation costs and therefore bring the City's provisions into conflict with Government Code § 65683.7(e). "Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates [citations], contradicts [citation], or enters area fully occupied by general law, either expressly or by legislative implication [citations]." Western Oil & Gas Ass'n v. Monterey Bay Unified Air Pollution Control Distr. 40 Cal. 3d 408, 423 (1989).

Policy # 300.401 Exhibit I was promulgated "[t]o provide consistency in evaluating the adequacy of relocation plans. . . ." Read as such, and applied to situations unlike De Anza, the Policy's provisions are in line with § 65863.7(e). In fact, since the state statute provides no guidelines to determine reasonable relocation benefits under § 65863.7(e), the City's definition of reasonable relocation benefits is especially useful. Municipal legislation should, if possible be given a construction in harmony with state law to avoid the ordinance being declared a nullity. See Evans v. San Francisco Unified School District, 209 Cal. App. 3d 1478, 1483 (1989). Construing the ordinance to require relocation benefits in excess of reasonable relocation costs would be inappropriate.

It is also important to note that the Housing Commission guidelines are subject to modification from time to time, and that such guidelines do not create any specific rights in tenants in mobile home parks.

IV. The City Cannot Legally Make Relocation Payments to Residents Who Do Not Qualify as Low Income.

Article XVI, section 6 of the California Constitution prohibits cities from making gifts of public funds. "It is well

settled that the primary question to be considered in determining whether an appropriation of public funds is to be considered a gift is whether the funds are to be used for a public or private purpose." Cal. Teacher's Ass'n v. Board of Trustees, 82 Cal. App. 3d 249, 257 (1978).

Providing relief for the needs of the poor is a legitimate use of public funds. Providing relief for the needs of those who are not poor is not. The City has no power to use public funds to bail out private parties from bad business decisions. The state constitution does not allow it. In fact, it has long been said that even a moral obligation on the part of a public entity is not legally sufficient to justify a public benefit being conferred on a private party. See Veterans' Welfare Board v. Riley, 189 Cal. 159, 170 (1922). Even if the city felt it would be equitable to provide assistance to De Anza residents who do not qualify as low income, it would not be able to do so.

Conclusion

Since at least 1982, the residents of De Anza have known they will be required to move when the ground lease expires in 2003. Under none of the existing laws discussed above is the City under any obligation to provide them with relocation assistance when the lease on their park expires. In fact, the City cannot provide them with such assistance and further cannot allow them to remain on the property after 2003 without both state action and a vote of the citizens of San Diego.

MEMORANDUM OF LAW

DATE: July 11, 1994

TO: Jim Spotts, Director, Real Estate Assets Department

FROM: City Attorney

SUBJECT: De Anza Mobile Home Park - Relocation

Please see the attached memorandum prepared by a legal intern. I specifically asked the legal intern to provide me with "an objective review." You will note that the intern prepared an extensive analysis of the relocation law issues and concluded that the De Anza residents are not entitled to any relocation payment from the City. I agree with the conclusions.

I would recommend that we share this memorandum with the attorney for the De Anza residents as well as the attorney for the De Anza lessee. They will almost certainly want to do their own legal analysis and, as I have told the attorney representing the tenants, if he has any legal basis whatsoever to support a position that the City is legally obligated to make relocation payments, I would be pleased to review the matter again.

JOHN W. WITT, City Attorney
By
Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps:731.7
Attachment
ML-94-57
TOP
TOP

LESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS

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OPINION NUMBER 99-2

DATE: July 15, 1999

SUBJECT: Applicability of San Diego Charter Section 219 to Portions of De Anza Harbor Resort Leasehold

REQUESTED BY: William T. Griffith, Director
Real Estate Assets Department

PREPARED BY: Prescilla Dugard, Deputy City Attorney

QUESTION PRESENTED

Do the limitations on leases of pueblo lands contained in San Diego Charter section 219 preclude the lease in excess of fifteen years of portions of pueblo lots 1208 and 1798 granted to the City by the State in 1964?

SHORT ANSWER

No. Because lots 1208 and 1798 were previously conveyed to the State of California, and subsequently conveyed back to the City pursuant to a grant in 1964, years after the adoption of Charter section 219, they are not subject to the limits of the section. Section 219 applies only to those pueblo lots that were part of the original Pueblo Lands grant that were still City-owned when the predecessor to Charter section 219 was adopted in 1909, and which have remained in continuous City ownership.

BACKGROUND

The area in Mission Bay commonly known as De Anza Harbor Resort is currently leased by the City to De Anza Harbor Resorts, LLP [De Anza], pursuant to a lease dated May 18, 1951 (and subsequently amended). The leased property includes portions of pueblo lots 1208 and 1798 [the Lots] of the Pueblo Lands of San Diego, according to a map made by James Pascoe in 1870.[1] At the time of the original lease between the City and De Anza's predecessor in interest, the City did not own the Lots; they were a part of State park land leased to the City. In 1963, the State granted the Lots to the City in trust as part of Mission Bay State Park contingent upon the execution of an agreement between the City and the State. In 1964, the City and the State entered into the Mission Bay State Park Agreement and Grant of Trust effecting the grant.

At a City Council hearing on February 1, 1999, the Council received public testimony on the potential redevelopment of the De Anza Harbor Resort. At that time, questions were raised about the City's ability to enter into any long-term lease of the property, in light of the provisions of Charter section 219, which states that it precludes the lease of pueblo lands in excess of fifteen years. This opinion resolves the question of which of the original pueblo lands are subject to the limitations contained in Charter section 219.

ANALYSIS

History of the Pueblo Lands

On April 10, 1874, the City received title to the Pueblo Lands of San Diego as successor to the Mexican pueblo of San Diego [the 1874 Patent]. The attached "Pueblo of San Diego (A brief history of the legal status of the Pueblo Lands of San Diego)" [the Pueblo Lands History][2] provides a concise report of the history of the pueblo land grant to the City and further describes pertinent events leading to the adoption of the current San Diego Charter section 219.

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[1]The map was filed in the Office of the Recorder of San Diego County, November 14, 1921, and is known as Miscellaneous Map No. 36. *See* copy attached as Exhibit "A."

[2]Attached as Exhibit "B," 1952 City Att'y MOL 311.

History of San Diego Charter Section 219

San Diego Charter section 219 provides as follows:

> No sale of Pueblo Lands owned by The City of San Diego which are situated North of the North line of the San Diego River shall ever be valid and binding upon said City unless such sale shall have been first authorized by an ordinance duly passed by the Council and thereafter ratified by the electors of The City of San Diego at any special or general municipal election. The City Manager shall have authority to lease Pueblo Lands, provided that any lease for a term exceeding one year shall not be valid unless first authorized by ordinance of the Council. No lease shall be valid for a period of time exceeding fifteen years.

Section 219 was part of the Charter adopted by the City of San Diego in 1931. The Pueblo Lands History demonstrates that this charter provision derives from a charter amendment adopted January 12, 1909 [the 1909 Amendment]. The 1909 Amendment was a response to the court's ruling in *Ames v. City of San Diego*, 101 Cal. 390 (1894), in which the City lost title to certain pueblo lots through a claim of adverse possession. The court's ruling was based upon the City's ability to freely alienate the lands. The 1909 Amendment was designed to prevent this from occurring again. It read:

> 50. (a) That all pueblo lands owned by the City of San Diego, lying and being situated north of the north line of the San Diego river be, and the same are hereby reserved from sale until the year 1930, *provided, however*, that at any time should it be desired to sell any part or portion of such public lands prior to the year 1930, the sale thereof may be authorized by an ordinance duly passed by the Common Council and ratified by the electors of the City of San Diego at any special or general municipal election. The Common Council shall levy annually, in addition to all other taxes provided for in this charter, 2c on each one hundred dollars valuation of property for the purpose of improving said pueblo lands herein reserved from sale.
>
> (b) The Common Council may provide for the sale and conveyance or lease of *all other lands now or hereafter owned by said city* not dedicated or reserved for public use; but all leases and sales shall

> be made at public auction, unless otherwise approved by ordinance after publication or notice thereof for at lease three (3) weeks. No lease shall be made for a longer term than two years except by an ordinance passed by an affirmative vote of two-thirds of the members of the Common Council (emphasis added).

The reading of the 1909 Amendment demonstrates that the provision was intended to prevent sale of only those pueblo lands then in City ownership based upon the following facts: (1) the provision uses language in the present tense, "are reserved" and (2) subdivision (a) does not refer to pueblo lands "hereafter owned" as does subparagraph (b). Because this language was not included in subparagraph (a), standard principles of legislative interpretation lead to the conclusion that the section was not intended to protect pueblo lands acquired after the date of the provision.

In 1929, the pueblo lands reservation issue was before the voters again in the form of a charter amendment. The description of propositions to be voted upon described the item as follows:

> Amend Sub-section 48(a) of Section 1, Chapter II, Article II of the City Charter. This amendment provides that the City pueblo lands lying north of the San Diego river shall be reserved from sale until the year 1940, instead of the year 1930, as now provided.

As a result of the 1929 election, the charter section was amended to read as follows:

> 48 (a). That all pueblo lands owned by the city of San Diego lying and being situated north of the north line of the San Diego river, be, and the same are hereby reserved from sale until the year 1940; *provided, however*, that at any time should it be desired to sell any part or portion of such pueblo lands prior to the year 1940, the sale thereof may be authorized by an ordinance duly passed by the common council and ratified by the electors of the city of San Diego at any special or general municipal election; *and provided, further*, that if at any time it should be desired to lease any part or portion of such public lands prior to the year 1940, the leasing thereof may be authorized by an ordinance duly passed by the common council; *provided*, that no lease so authorized shall be for a longer period of time than fifteen years. The common council shall levy, annually, in addition to all other taxes provided for in

> this charter, two cents on each one hundred dollars valuation of property for the purposes of improving said pueblo lands herein reserved from sale. (Italics in original.)

Thus, in 1929, the City added 10 years to the restriction on the sale of pueblo lands north of the north line of the San Diego river and added a restriction on the lease of those same lands.

In 1931, the City of San Diego reformed itself, losing the five member common council and adopting a freehold charter, containing the current Section 219. This section is a virtual restatement of the 1929 amendment, without the added language allowing taxation for improvement of the pueblo lands and without the 1940 expiration date.

Based upon the review of the legislative history of Section 219, as outlined above, it is the City Attorney's opinion that merely having the designation "pueblo lot no. __" on a piece of property does not answer the question of whether Charter section 219 controls the City's disposition of that property. That designation appears to be part of the legal description of a lot irrespective of who owns the lot. Section 219 applies only to pueblo lands north of the north line of the San Diego river[3] that were part of the 1874 Patent and still in City ownership when the 1909 Amendment was adopted to protect those lands, and which have remained in continuous City ownership since that time. Disposition of any other City-owned property is determined by any limitations contained in the original grant of ownership in that property. Because the City's current ownership interest in the Lots is through the State grant acquired in 1964, disposition of the Lots, including lease limitations, is controlled by the provisions of Chapter 142 of the Statutes of 1945, as amended by Chapter 1455 of the Statutes of 1955 (which provide for a fifty-year limit on leases).

This analysis is consistent with prior opinions and memoranda of this office relating to the disposition of pueblo lands.[4] To interpret the provision so broadly as to encompass pueblo lands regardless of when acquired would lead to the unintended result of subjecting any property

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[3]*See* attached for reference a map showing the course of the San Diego River as it was at the time of the adoption of the original Charter provision (Exhibit "C"). Pueblo lots have been overlaid to show which lots lie north of the boundary as provided in the Charter.

[4]*See* attached 1956 City Att'y Memorandum to the Mayor and Council (Exhibit "D"). This memorandum provides a thorough analysis of the then status of ownership of various parcels in Mission Bay, including how the City acquired the parcels. *See also* 1981 Op. City Att'y 7 and 1976 City Att'y MOL 286.

owned or acquired by the City north of the north line of the San Diego River to the Section 219 restrictions.

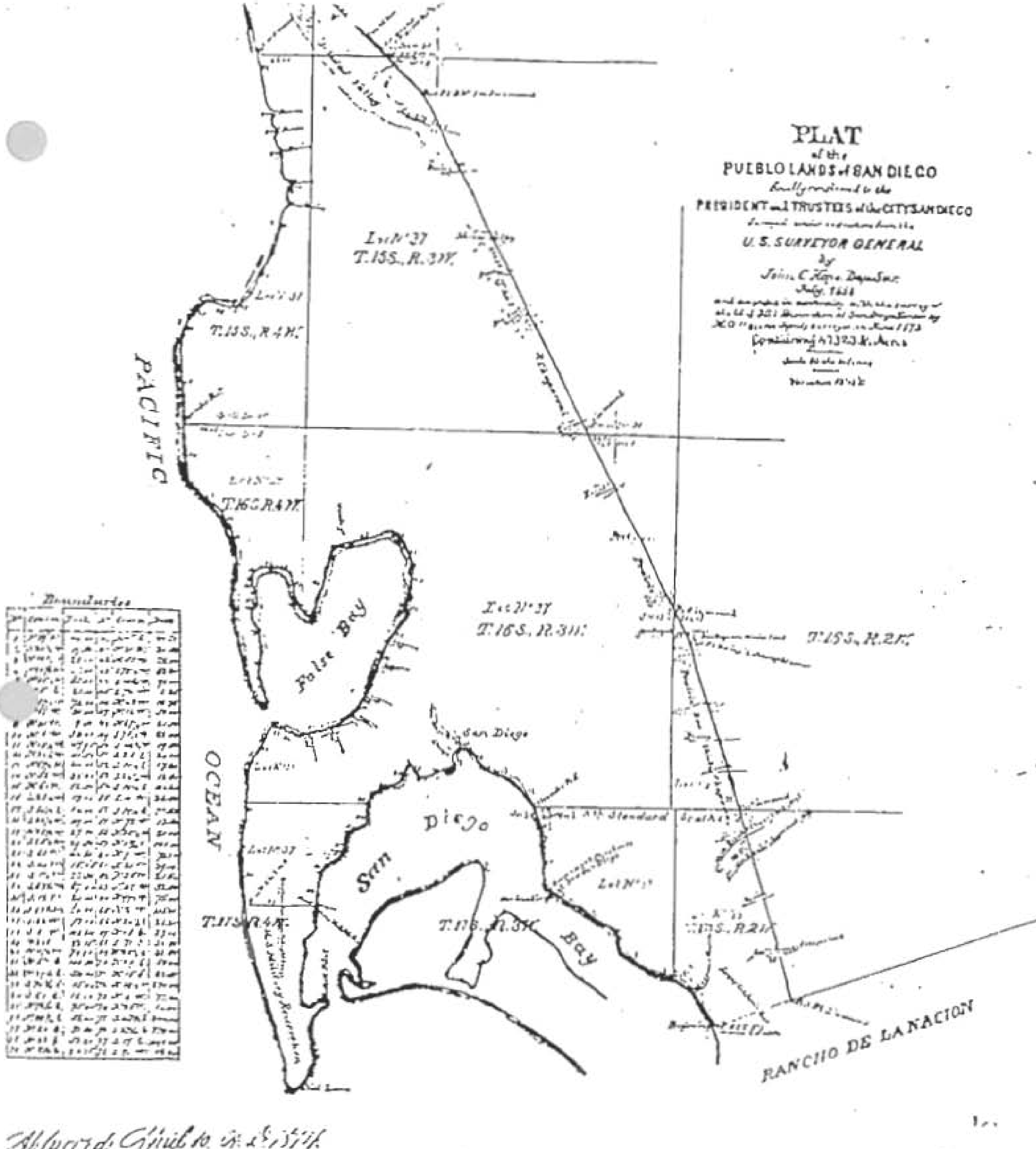
CONCLUSION

It is clear from the history of San Diego Charter section 219 and the pueblo lands that the intent of the charter provision as originally adopted was to preserve the pueblo lands north of the north line of the San Diego river then in City ownership. Current Charter section 219 merely lifted the time limit on the protection of those lands. Therefore, it is the City Attorney's opinion that the limitations of Charter section 219 apply only to those of the pueblo lands lying north of the north line of the San Diego river (as depicted on Exhibit "C") granted to the City of San Diego as part of the 1874 Patent that were in City ownership on January 12, 1909. Any property acquired by the City after that date or south of the line depicted on Exhibit "C" is subject only to the restrictions and limitations of the applicable grant of title.

Respectfully submitted,

CASEY GWINN
City Attorney

PD:lc:cdk(731.7x043)
Attachments
LO-99-2



The field notes of the survey of the Pueblo Lands of San Diego from which this plat has been made have been examined and approved and are on file in this office.
U.S. Surveyor General's Office
San Francisco, California
February 12th 1874

U.S. Surv. Gen. Cal.

EXHIBIT A

CC: LMF
S [illegible]

SLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
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PRESCILLA DUGARD
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MEMORANDUM OF LAW

DATE: March 28, 2001

TO: William T. Griffith, Real Estate Assets Director

FROM: City Attorney

SUBJECT: Proposed Mission Bay Hotel with "Pre-sold" Reservations

QUESTIONS PRESENTED

May the City, pursuant to both San Diego Charter section 55 and restrictions on the use of tidelands trust property, lease dedicated parkland in Mission Bay to permit the development of a hotel with pre-sold reservations? What, if any, additional restrictions would be necessary for a hotel with pre-sold reservations to be permissible?

SHORT ANSWER

Yes. Consistent with the tidelands trust doctrine, and under Charter section 55, the City may lease dedicated parkland in Mission Bay for development of a hotel with pre-sold reservations provided that such a hotel is determined to be reasonably necessary to accommodate park visitors. In addition, and to ensure that access by the general public to the tidelands and dedicated parkland is maintained, we recommend that an appropriate policy be adopted which requires: (1) the total number of units with pre-sold reservations within Mission Bay Park be limited to ensure sufficient rooms are still available to the general public on a first come, first served basis; (2) any unused units be made available to the general public on a daily rental basis; (3) contracts permitting such uses contain audit provisions permitting the City to audit the use and availability of the rooms consistent with the purported and intended purpose and operation of the hotel; (4) contracts permitting such uses include specific provisions to ensure the occupancy of the units is transient in nature and no property rights are conveyed for individual units; (5) the sale of vacation credits provides that the credits expire with the ground lease, regardless of the date of termination; and (6) pre-sold reservations are limited to one-week increments.

BACKGROUND

We are informed that the City is currently in negotiations with a developer for the redevelopment of dedicated City parkland in Mission Bay with a number of visitor-serving uses. The developer has proposed two hotels on the site, one to include a "vacation club," outlined in the memorandum attached as Exhibit A. The proposed project is similar to a vacation timeshare project, except that it would not include any ownership of individual units, as is common in typical timeshare projects. Instead, vacationers would purchase vacation credits and then make reservations, just like at any other resort. The vacation credits would give the vacationer a right to a reservation for one week of vacation time each year for a 50-year period. The proposed project would provide for significant use by members of the public and would make unreserved units available to the general public on a daily basis.[1] The proposed project is also on filled tidelands held in trust by the City subject to restrictions imposed by the tidelands trust as overseen by the State Lands Commission.

ANALYSIS

I.

THE PROPOSED USE IS CONSISTENT WITH THE TIDELANDS TRUST.

In 1996, the State Attorney General issued an opinion approving the lease of filled tidelands for construction of a timeshare resort on the assumption that the timeshare had the following features: (1) a vacation-oriented development with typical one-week occupancy by the timeshare owner; (2) units not timely reserved by the owner could be rented on a nightly basis by the timeshare management company; (3) owners' rights to occupy units would terminate with the ground lease; and (4) the resort would afford improved access to the shoreline for use by the general public. 79 Op. Cal. Att'y. Gen. 133, 141 (1996). The Attorney General approved the use on tidelands because in considering the duration of occupancy and exclusivity of ownership, the Attorney General found the modern timeshare to be more like a hotel than a residential use. *Id.* at 140. However, the Attorney General also stated that in approving a specific use the public Agency trustee (e.g., the City of San Diego) would have to assess "how much tideland property would be committed to the timeshare resort relative to adjacent public trust land" in order to properly determine the impairment of public trust lands by the use.

Here, because the vacationers acquire no real property interest in the units and therefore do not own or control individual units, the proposed project is even more like a hotel than the

---

[1]The memorandum does not include any information regarding how far in advance vacationers with credits would need to make reservations, or how the proposal might affect the ability of members of the general public to make extended-stay reservations.

timeshare resort analyzed by the Attorney General. With control of the units retained in the City's lessee, rather than multiple individual owners, the City can better ensure that unreserved units are made available to the general public. However, the ability to purchase fifty years of one-week vacations at the hotel in advance limits the availability of rooms to the general public. Theoretically, if all of the units in the Park were subject to pre-sold reservations and all of the vacationers used their vacation time, there would be no units in the Park available to the general public on a first come, first served basis. To ensure the transient occupancy is retained and that an adequate number of rooms are available to the general public on a first come, first served basis, the City Attorney recommends that an appropriate policy be adopted that ensures: (1) the total number of units with pre-sold reservations within Mission Bay Park is limited to ensure sufficient rooms are still available to the general public on a first come, first served basis; (2) any unused units are made available to the general public on a daily rental basis; and (3) contracts permitting such uses contain audit provisions permitting the City to audit the use and availability of the rooms to ensure consistency with the purported purpose and represented operation of the hotel. If adopted, such a policy will help ensure that the use and operation of such hotels remains consistent with the tidelands trust.

II.

THE PROPOSED USE IS CONSISTENT WITH CHARTER SECTION 55.

Charter section 55 provides that dedicated park land

> shall not be used for any but park [and] recreation . . . purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose.

The general rule for permissible park uses has been stated by this Office as follows:

> [A] proper park use is one that does not interfere with the enjoyment by the general public of the park for park and recreational purposes and is consistent with and complementary to or enhances such purposes.

1975 Op. City Att'y 139, 140.

Hotel uses have long been upheld by the courts as permissible park uses. *Harter v. San Jose*, 141 Cal. 659 (1904). *See also, Spires v. City of Los Angeles*, 150 Cal. 64, 66 (1906) (recognizing the general approval of hotels as park uses). The City Attorney has previously advised that a hotel is permissible in a dedicated public park where the hotel is reasonably determined to be needed to accommodate the needs of park visitors. 1984 City Att'y MOL 234.

The City has approved leases for a number of hotels on dedicated City parkland, including the Mission Bay Hilton, the Princess Resort, and the Dana Inn. Residential use, on the other hand, is inconsistent with the dedication of parkland for the benefit of the public. *See, e.g., Griffith v. City of Los Angeles*, 78 Cal. App. 2d 796 (1974) (allowing residential use only as a temporary emergency housing measure).

The salient feature of hotel use that makes the use permissible on dedicated parkland is the transient nature of the occupancy. Transient occupancy does not create a real property interest which would include the right to exclude others. It continues to allow the parkland to be available for use by the general public and enhances the general public's use by making transient lodging available for visitors. As explained above, timeshare resorts are typically a hybrid between a hotel and a residential use. These facilities generally permit the "ownership" of units for transient occupancy periods. Such a use would not be consistent with Charter section 55; however, the vacation club concept proposed here does not appear to be inconsistent with that purpose provided that the use of such facilities does not become de facto "ownership" by a relative few.

Toward that end, we recommend that, in addition to the policy recommended above and the general finding that such a hotel is determined to be reasonably necessary to accommodate park visitors, a further policy be adopted which provides that any contract permitting the described use includes specific provisions to ensure that: (1) the occupancy of the units is transient in nature and no property rights are conveyed for individual units; (2) the sale of vacation credits should provide that the credits expire with the ground lease, regardless of the date of termination; and (3) vacation credit sales should be limited to one-week increments.

CONCLUSION

The project, as proposed, will not be inconsistent with the tidelands trust and Charter section 55 if a hotel use in Mission Bay Park is reasonably determined to be necessary to accommodate Park visitors. In addition, in order to ensure that the proposed use remains consistent with both the tidelands trust and Charter section 55, we recommend that an appropriate policy be adopted which requires: (1) the total number of units with pre-sold reservations within Mission Bay Park be limited to ensure sufficient rooms are still available to the general public on a first come, first served basis; (2) any unused units be made available to the general public on a daily rental basis; (3) contracts permitting such uses contain audit provisions permitting the City to audit the use and availability of the rooms consistent with the purported and intended purpose and operation of the hotel; (4) contracts permitting such uses include specific provisions to ensure the occupancy of the units is transient in nature and no property rights are conveyed for individual units; (5) the sale of vacation credits provides that the credits expire with the ground lease, regardless of the date of termination; and (6) pre-sold reservations are limited to one-week increments. To the extent any of the land proposed for lease includes tidelands, the use must also comply with the guidelines provided by the Attorney General for tidelands use.

This Memorandum of Law is limited to the facts as represented to us, and is further limited to the provision of the described project within Mission Bay Park. Any application of these principles to different projects or locations other than Mission Bay Park must be specifically analyzed.

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PD:lc
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ML-2001-4