

LEASE AGREEMENT

THIS LEASE AGREEMENT (which is sometimes referred to herein as "lease" and sometimes as "agreement") is executed as of January 22, 1981, by and between THE CITY OF SAN DIEGO, a municipal corporation (hereinafter called "CITY"), and ORCHARD II ASSOCIATES, a general partnership (hereinafter called "LESSEE").

RECITALS

Replaced by 1st Amendment

A. The CITY owns a certain parcel of property, which is described in paragraph 1 below, which property was specified as being available to developers who would agree to develop and maintain a senior citizens multiple-residential apartment project which would be made available to low-income citizens during the term of the lease.

B. LESSEE as consideration for this lease has agreed to construct 288 low-income senior citizens' apartment units on said parcel of property, and has agreed to make at least 20% of such units available to the Housing Authority of the CITY or its successor, during the entire term of this lease, either pursuant to the United States Department of Housing and Urban Development (hereinafter called HUD) Section 8 Existing Housing Assistance Payments Program, or pursuant to any other available local, state, or federally sponsored rent subsidy program in effect during the term of this lease.

C. The parties hereto specifically agree that the purpose and intent of this Lease Agreement and the development of said parcel of property is to allow for the development and operation of 288 units of low-income senior citizens housing during the entire term of this lease, and that subject to the provisions

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

for rental adjustments contained in paragraph 4.c.(3) hereof, LESSEE and its successors and assigns shall take all reasonable and necessary actions to accomplish the said purpose and intent.

1. DEMISED PREMISES.

CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described as Parcel 2 of Parcel Map No. 6077, filed in the Office of the San Diego County Recorder on June 22, 1977. Said real property is hereinafter called the "premises".

Section 8 Existing Housing Assistance Payments Program
a. Permitted Use.

Said premises are leased to LESSEE only for the purposes of constructing and operating a low-income 288 unit senior citizens' multiple residential apartment project (Project), and for such other related or incidental purposes as may first be approved in writing by the CITY and for no other purpose. LESSEE shall make at least 20% of such units available to the Housing Authority of the CITY or its successor, during the entire term of this lease, either pursuant to the United States Department of Housing and Urban Development (hereinafter called HUD) Section 8 Existing Housing Assistance Payments Program, or pursuant to any other available local, state, or federally sponsored rent subsidy program in effect during the term of this lease.

b. Obligation to Diligently Use.

LESSEE covenants to use said premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof.

c. Related Council Actions.

By the granting of this lease, the City Council of the City of San Diego is not obligating itself with regard to any

other discretionary action relating to development or operation of said premises. Such discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals which may be required.

2. TERM OF AGREEMENT.

a. Commencement and Termination.

The term of this agreement shall be fifty-five (55) years commencing on the first day of the calendar month following the date of execution hereof by CITY.

b. Surrender of Premises.

At the expiration or earlier termination of this lease, LESSEE shall execute, acknowledge and deliver to CITY, within five (5) days after written demand by CITY, a valid and recordable quitclaim deed covering all of the leasehold premises free and clear of all liens and encumbrances.

3. CONSIDERATION.

a. Minimum Rent.

The minimum rent shall be deposited into a Rental Assistance Fund, administered by the San Diego Housing Commission and utilized to subsidize rental payments required of low-income tenants who do not possess "Section 8 Certificates" but whose income level would make them eligible to receive rental assistance under the Section 8 Existing Housing Assistance Payments Program.

The minimum rent during the entire term of this Lease Agreement is payable to CITY monthly in advance beginning thirty (30) days after the issuance of a final certificate of occupancy for the Project by CITY, or three hundred sixty (360) days after the effective date hereof, whichever first occurs. The minimum rent shall be \$3,333.33 per month during the entire term of this Lease Agreement. Until LESSEE is required to pay monthly rent as provided hereinabove, LESSEE shall pay to CITY monthly in arrears

Final Certificate of Occupancy
was issued on Dec. 8, 1981
according to Bill Lyons -
Bill Lyons. JWW

(within fifteen (15) days after the last day of each month), a sum equal to \$11.32 multiplied by the number of apartment units in the Project occupied for the entire month for which payment is to be made; the parties anticipate that such occupancy will be permitted by temporary certificates of occupancy which LESSEE will obtain as each building in the Project is completed.

b. Percentage Rent.

(1) Percentage Rent Rate. In addition to the minimum rent required by Section 3.a., LESSEE shall pay to CITY percentage rent in a sum equal to the amount by which 6.82% of LESSEE's gross revenues (as defined in Section 3.b.(2)) from the Project during each month of the term exceeds \$3,333.33. Percentage rent shall be computed and paid each month as follows: On or before thirty (30) days following the close of each month (after the commencement of the term), LESSEE shall pay to CITY the amount by which the sum computed as being 6.82% of LESSEE's gross revenues during the prior month exceeds \$3,333.33, and LESSEE shall within such time period furnish to CITY a statement of LESSEE's gross revenues for such month.

(2) Gross Revenues Defined. "Gross Revenues" of LESSEE means the gross income received by LESSEE as a result of LESSEE's subtenants renting apartment units within the Project, and all other amounts realized by LESSEE from use of the premises.

(3) Statement of Gross Revenues. Each statement furnished by LESSEE to CITY pursuant to Section 3.b.(1) above shall be signed and certified to be correct by LESSEE or its authorized representative. LESSEE shall keep at the Project or at an office located within the City of San Diego full and accurate books of account, records, cash receipts, and other pertinent data showing its gross revenues. Such books of account, records, cash receipts, and other pertinent data shall be kept for

a period of four (4) years after the end of the calendar year to which such items are relevant. CITY shall be entitled during the term and within four (4) years after expiration or termination of this lease to inspect and examine LESSEE's books of account, records, cash receipts, and other pertinent data, so CITY can ascertain LESSEE's gross revenues. LESSEE shall cooperate fully with CITY in making the inspection. CITY shall also be entitled at CITY's expense, once during each calendar year and once after expiration or termination of this lease, to an independent audit of LESSEE's books of account, records, cash receipts, and other pertinent data to determine LESSEE's gross revenues, by a certified public accountant to be designated by CITY. The audit shall be limited to the determination of gross revenues and shall be conducted during usual business hours at the Project. If the audit shows that there is a deficiency in the payment of any percentage rent, the deficiency shall become immediately due and payable. CITY shall keep any information gained from such statements, inspection, or audit confidential and shall not disclose it other than to carry out the purposes of this lease or comply with applicable laws.

c. Delinquent Rent.

In the event LESSEE fails to pay the applicable rents when due, then LESSEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to five percent (5%) of said delinquent rent; provided, however, in the event said delinquent rent is still unpaid after fifteen (15) days of becoming delinquent, then LESSEE shall pay CITY, instead of said five percent (5%), a sum of money equal to ten percent (10%) of said delinquent rent. It is the intent of this provision that CITY shall be compensated by such additional sums for loss resulting from rental delinquency including costs to CITY of servicing the delinquent account. The CITY may for

good cause waive any such delinquency compensation required herein, upon written application of LESSEE.

d. Inspection of Records.

Whenever CITY desires to inspect the records and accounts of LESSEE in order to determine LESSEE's compliance with the terms of this agreement, CITY shall have the right at all reasonable times to inspect any records pertinent to the subject under study. LESSEE agrees to cooperate in such inspection and to make the pertinent records available to CITY at LESSEE's place of business in the City of San Diego.

e. Development as Additional Consideration.

LESSEE agrees as additional consideration to develop the leased premises in accordance with the CITY-Approved Master Plan described in Section 4.b.(5), Development of this agreement.

4. COVENANTS AND CONDITIONS.

a. CITY Covenants and Provisions Regarding "Assignment".

(1) Quiet Possession. LESSEE, paying the said rent and performing the covenants and agreements herein, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the said premises for the term hereof.

(2) Right to Assign and Sublet. LESSEE shall have the absolute right to rent individual apartment units in the Project, and in so doing shall comply with the provisions of b.(12) below. When in the opinion of CITY, and subject to the approval of the City Council, it is deemed consistent with the best interests of the CITY, LESSEE may assign this lease or any interest therein and may sublease any portion thereof to an assignee or sublessee who has, in the opinion of CITY, the financial capability and overall competence to successfully operate the assigned or subleased premises. The consent of CITY will not be unreasonably withheld. This lease and any interest herein shall not be

assignable by operation of law without the written consent of CITY. Any or all of the following actions will be considered trafficking in the leasehold which is not a permitted activity under this contract and will be considered as contrary to the CITY's best interests:

(i) Assignment or subleasing by LESSEE

for a consideration in excess of a reasonable return on the actual value of the LESSEE's installed improvements and/or services rendered.

(ii) Subleasing or assignment of the primary function of the lease or subleasing or assignment of a major portion of the leasehold.

(3) Notice to Beneficiary. If CITY has been notified in writing of the existence of a trust deed or mortgage secured by the leasehold, CITY agrees to give the trustee or beneficiary notice of any sublease or assignment prior to CITY's approval thereof.

(4) Assumption. Approval of any assignment or sublease shall be conditioned upon Assignee or Sublessee agreeing in writing that they will assume the rights and obligations thereby assigned or subleased and that they will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired.

(5) Right to Encumber. CITY does hereby consent and agree that LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security type instrument to assure the payment of a promissory note or notes of the LESSEE. LESSEE agrees that all of the proceeds resulting from any such encumbrance shall be utilized only with respect to the planning, development, construction or financing of the low-income senior citizens' multiple residential apartment project referred to in this lease. CITY

further agrees that in the event said deed of trust or mortgage or other security type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, the CITY will accept the mortgagee or beneficiary thereof, if reputable, qualified and financially responsible, such as a State or Federal regulated financial institution, as its new tenant under this lease with all the rights, privileges and duties granted and imposed in this lease contract. In the event said mortgagee or beneficiary desires to assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY, CITY hereby agrees that upon the filing of an application for consent to such assignment, CITY will give its consent thereto.

(6) If the lease or the leasehold estate is transferred or encumbered subsequent to the original permanent loan referred to hereafter in paragraph 4.c.(3), either in whole or in part, whether voluntarily or involuntarily, or by operation of law, or if the original permanent loan on the leasehold estate which Lessee causes to be recorded at or about the time the project is completed is refinanced in whole or in part, or if the lease or leasehold estate is further encumbered for any other purpose than the sole purpose of constructing or permanently financing leasehold improvements (each of which events is hereinafter referred to as an "assignment"), LESSEE may do so as long as the proceeds realized by LESSEE are distributed in the following order and priority (to the extent the proceeds are adequate to do so): (i) payment to the holder thereof of the then unpaid balance of the initial permanent loan obtained by LESSEE with respect to the Project, (ii) reimbursement to LESSEE or to the parties entitled thereto of all funds then outstanding which were advanced (either as capital or loans) by either Stephen B. Drogin or

Financial Scene Incorporated (or affiliated entities of either of them) with respect to the development or operation of the Project, less payments made on account thereof, plus simple interest on all such advances at the rate of twelve percent (12%) per annum, (iii) payment to LESSEE of \$200,000, plus simple interest at the rate of twelve percent (12%) per annum from the date on which minimum rent is required to be paid to CITY pursuant to the Lease Agreement, until the date of the "assignment", (iv) payment to CITY of the difference between simple interest at the rate of twelve percent (12%) per annum on \$1,031,839.00 from the date on which minimum rent is required to be paid to CITY, pursuant to the Lease Agreement until the date of the "assignment", and the minimum and percentage rent paid by LESSEE to CITY relating to the same period, and (v) any remainder forty percent (40%) to CITY and sixty percent (60%) to LESSEE. Any "assignment" within the terms of this paragraph which does not receive the prior written consent of CITY shall be null and void.

(7) The proceeds of the construction loan to be obtained by LESSEE shall be used only for or in connection with the premises for the following purposes: lender's loan and brokerage fees (in an amount not to exceed the amount approved in writing by CITY); title insurance premiums and escrow costs and related expenses; architects', draftsmen's, attorneys' fees and accountants' fees (in an amount not to exceed the amount approved in writing by CITY); and engineers' fees and costs, building permit fees and utility connection deposits and related fees, bond premiums and licensing and permit fees and costs, cost of labor, services and materials, payments of interest on any construction encumbrance affecting the premises, property taxes and assessments, and, if agreed to by the CITY in advance in

writing, other similar costs arising incident to the installation, construction and development of on-site and off-site improvements on, upon, or connected with the premises. The proceeds of the initial permanent loan to be obtained by LESSEE shall be used only for refinancing of the construction loan, fees, and costs in connection with the permanent loan in an amount approved in writing by CITY prior to funding the permanent loan, and repayment to LESSEE or its members (or affiliates thereof) of funds advanced with respect to the development or construction on the premises.

(8) Funds advanced with respect to the operation of the project to be developed on the premises shall be used only for professional management (not to exceed five percent (5%) of gross revenues), possessory interest and other taxes and impositions, insurance, on-site management, water, gas, electricity, trash removal, landscaping maintenance and supplies, repairs, replacement, maintenance and supplies related to the project.

See Fifth Amendment for additional Section

(9) b. LESSEE Covenants.

(1) Affirmative Action. LESSEE agrees to take affirmative action to improve employment opportunities of minorities and women in a manner consistent with the operation of the apartment project located on Parcel 1 of Parcel Map No. 6077.

(2) Compliance with Law. LESSEE agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the said premises, or the operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the premises, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and

fees assessed or levied upon the LESSEE or the leased premises including the land and any building, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by LESSEE or by reason of the business or other activities of LESSEE upon or in connection with the leased premises. LESSEE recognizes and understands that this lease may create a possessory interest subject to property taxation and that the LESSEE may be subject to payment of property taxes levied on such interest. LESSEE further agrees that such tax payment shall not reduce any rent due the CITY hereunder and that any such tax shall be paid by the LESSEE before becoming delinquent. The judgment of any court of competent jurisdiction, or the admission of LESSEE or any sublessee or permittee in any action or proceeding against them, or any of them, whether CITY be a party thereto or not, that LESSEE, sublessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.

(3) Construction/Alterations. LESSEE agrees not to construct or install any buildings or structures on said premises or otherwise improve or alter said premises in any manner except in accordance with plans and specifications previously submitted to the City Manager and approved by him in writing. LESSEE shall not make any major structural or architectural design alterations to approved buildings, structures or improvements installed on said premises except in accordance with plans and specifications previously approved in writing by the City Manager. This provision shall not limit or set aside any obligation of LESSEE under this lease to maintain said premises in a decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make any improvements or alterations to said premises or to assume any expense therefor.

(4) Construction Bond. LESSEE agrees to file with CITY, prior to commencement of any construction performed upon the premises a faithful performance bond in the amount of one hundred percent (100%) of the construction costs of the work to be performed. Said bond may be in cash or may be a corporate surety bond satisfactory to CITY or in a combination of both. Said bond shall insure that the construction commenced by LESSEE shall be completed in accordance with approved plans, or at option of the CITY, that the uncompleted construction be removed and the premises restored to a condition satisfactory to CITY. The surety bond will be filed with CITY and any cash used as a part of the bond may be deposited with CITY to be held in trust for the purpose specified above or may be placed in an escrow or other trust approved by CITY. CITY shall waive this requirement to file a bond if LESSEE has a fund control satisfactory to the construction lender for the benefit of the construction lender, with respect to the funding of the construction loan. In the event that LESSEE fails to file any such bond, and is required to furnish such a bond, this lease may be terminated by CITY.

(5) Development. LESSEE agrees to develop the leased premises in accordance with the Master Plan, as approved by CITY and filed in the Office of the City Clerk. To the extent applicable to the proposed development, said Master Plan shows the design, materials of construction and elevations of all structures, the plot plan of all structures and above-ground improvements, the uses of all facilities, the schedule of development, the estimated construction costs and financing plan and such other factors as are necessary or desirable in the opinion of the CITY. CITY shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval, and a document evidencing any approved changes shall be filed in the Office of the City Clerk.

(6) Indemnity. LESSEE agrees that CITY, its agents, officers and employees, shall not be liable for any claims, alleged liabilities, penalties, fines or for any damage to the goods, properties or effects of LESSEE, its sublessees or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether alleged to have been caused by or resulting from any acts or omission of LESSEE or its sublessees in or about the leased premises, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. LESSEE agrees to indemnify and save free and harmless CITY and its authorized agents, officers, and employees against any of the foregoing alleged liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor.

(7) Insurance Coverage. During the entire term of this lease, LESSEE agrees to procure and maintain public liability insurance which names CITY, Housing Authority and Housing Commission as an additional insured with an insurance company satisfactory to CITY licensed to do business in California to protect against loss from liability imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of CITY or LESSEE, its sublessees or any person acting for CITY, or LESSEE or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of CITY, or LESSEE, or its sublessees, or any person acting for

CITY or LESSEE, or under its control or direction. Such public liability and property damage insurance shall also provide for and protect CITY against incurring any legal cost in defending claims for alleged loss. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this lease in the amount of not less than \$3,000,000.00 COMBINED SINGLE LIMIT LIABILITY. LESSEE agrees to submit a policy of said insurance to the CITY on or before the effective date of this agreement indicating full coverage of the contractual liability imposed by this agreement and stipulating that the insurance company shall not terminate, cancel or limit said policy in any manner without at least thirty (30) days prior written notice thereof to CITY. If the operation under this agreement results in an increased or decreased risk in the opinion of the City Manager, then LESSEE agrees that minimum limits hereinabove designated shall be changed accordingly upon request by the City Manager. LESSEE agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the LESSEE may be held responsible for the payment of damages to persons or property resulting from LESSEE's activities, the activities of its sublessees or the activities of any person or persons for which LESSEE is otherwise responsible.

LESSEE also agrees to procure and maintain during the entire term of this lease, a policy of fire, extended coverage and vandalism insurance on all permanent property of an insurable nature located upon the leased premises. Said policy shall name CITY as an additional insured and shall be written by an insurance company satisfactory to CITY, licensed to transact business in the State of California, and shall be in an amount sufficient to cover

at least ninety percent (90%) of the replacement costs of said property. LESSEE agrees to submit a certificate of said policy to the CITY on or before the effective date of this lease. Said policy shall contain a condition that it is not to be terminated or cancelled without at least thirty (30) days prior written notice to CITY by the insurance company. LESSEE agrees to pay the premium for such insurance and shall require that any insurance proceeds resulting from a loss under said policy are payable jointly to CITY and LESSEE and said proceeds shall constitute a trust fund to be reinvested in rebuilding or repairing the damaged property or said proceeds may be disposed of as specified in Section 4.(14) Waste, Damage or Destruction, hereof; provided, however, that within the period during which there is in existence a mortgage or deed of trust upon the leasehold, then and for that period all policies of fire insurance, extended coverage and vandalism shall be made payable jointly to the mortgagee or beneficiary, the named insured, and CITY, and shall be disposed of jointly by the parties for the following purposes:

(i) As a trust fund to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust with the excess remaining after full payment of said debt to be paid over to LESSEE and CITY to pay for reconstruction, repair, or replacement of the damaged or destroyed improvements in progress payments as the work is performed. The balance of said proceeds shall be paid to the mortgagee or beneficiary to reduce the debt.

Provided further, however, nothing herein shall prevent LESSEE, at its option and with the approval of said mortgagee or beneficiary, from filing a faithful performance bond in favor of said mortgagee or beneficiary and CITY in an amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary and CITY.

(ii) In the event that this lease is terminated by mutual agreement and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be jointly retained by CITY and said mortgagee or beneficiary to the extent necessary to first discharge the debt secured by said mortgage or deed of trust and then to restore the premises in a neat and clean condition. Said mortgagee or beneficiary shall hold the balance of said proceeds for CITY and LESSEE as their interests may appear.

LESSEE agrees to increase the limits of liability when, in the opinion of CITY, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits.

LESSEE agrees, at its sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering said premises, buildings and appurtenances.

(8) Indemnification. LESSEE agrees to save CITY free and harmless, indemnify it against all claims for labor and materials in connection with improvements, repairs or alterations to the leased premises, and the cost of defending against such claims, including reasonable attorneys' fees. In the event that improvements, repairs or alterations are constructed on the leased premises by other than CITY, and a lien is filed, LESSEE agrees to file with CITY within five (5) days a bond sufficient to pay in full all claims of all persons seeking relief under the lien. The bond shall be acknowledged by LESSEE as principal and by a corporation satisfactory to CITY licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.

(9) Legal Proceedings. Should it become necessary for either CITY or LESSEE to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this lease, the prevailing party will be entitled to legal costs in

connection therewith, including reasonable attorneys' fees as determined by the court. The parties agree that the laws of the State of California shall be used in interpreting this lease agreement and will govern all disputes under this lease agreement and will determine all rights and obligations hereunder. Personal service either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this lease agreement.

(10) Maintenance. LESSEE agrees to assume full responsibility for the operation and maintenance of said premises throughout the term hereof without expense to CITY unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve said premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to CITY and in compliance with all applicable laws. LESSEE agrees that CITY shall not be required to perform any maintenance, repairs or services or to assume any expense not specifically assumed herein in connection with said premises and LESSEE hereby waives all rights to make repairs or to cause any work to be performed at the expense of CITY as provided for in Section 1941 and 1942 of the California Civil Code.

(11) Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, physical handicap or medical condition in LESSEE's use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.

Replaced by First Amendment

(12) Section 8. The Project is intended to provide rental apartment units for persons designated in the Section 8 Existing Housing Assistance Payments Program, Title II of the Housing and Community Development Act of 1974--Public Law No. 93-383, or any other similar program of the federal, state

or local government intended to provide rental subsidies for low-income senior citizens. No apartment unit shall be initially offered for rent without the City of San Diego Housing Authority first having had ten (10) days within which to designate "Section 8 Certificate Holders" as tenants in the Project. LESSEE shall thereafter by the tenth day of each month during the term furnish to CITY a list of vacant apartment units which are anticipated as of the end of the month in which the list is given, and CITY will have eight (8) business days after its receipt of each such list to designate "Section 8 Certificate Holders" to occupy as tenants the vacant apartment units in the Project. Except for complying with the foregoing provisions of this paragraph (12), LESSEE shall have the right to rent apartment units to anyone fifty-five (55) years of age or older, and LESSEE will use its best efforts to give first priority in renting apartment units to persons whose income levels meet the intent of the policies of the federal government as contained in the above-referenced Section 8 of Title II of the Housing and Community Development Act of 1974 - Public Law No. 93-383, or any other similar local, state or federal rent subsidy program.

(13) Utility Costs. LESSEE agrees to order, obtain and pay or have tenants in the Project pay for all utilities and service and installation charges in connection therewith. All utilities installed by LESSEE shall be installed underground.

(14) Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY. If the leased premises shall be damaged by any cause which puts

the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage, or LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty (30) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum monthly rent requirement for such period or periods that said premises are untenable by reason of such damage.

(15) c. Restrictive Conditions.

(1) Administration and Notices. Control and administration of this lease is under the jurisdiction of the CITY as to CITY's interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this lease or by law to be given or served upon CITY may be given or served by registered letter deposited in the United States mails, postage prepaid, and addressed to the City Manager at 202 "C" Street, San Diego, California, and to the Executive Director of the San Diego Housing Commission, 121 Broadway, Suite 443, San Diego, California 92101. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE, Mortgagee, Trustee or Beneficiary may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to said LESSEE at the leased

premises or at such other address designated in writing by LESSEE, Mortgagee, Trustee or Beneficiary or may be personally served upon them or any person hereafter authorized by them to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served upon personal service or forty-eight (48) hours after mailing in the manner required herein.

(2) CITY Approval and Consent. The approval or consent of the CITY, wherever required in this agreement shall be given by such person or agency as the City Council may from time to time designate.

(3) Tenant, Rental Increases. LESSEE agrees that the monthly rent to be charged by LESSEE for each apartment unit in the Project shall not exceed the fair market rent, excluding utilities allowance, established by HUD for studio and one-bedroom apartments under the Section 8 Existing Housing Assistance Payments Program, as said monthly rents may be adjusted by HUD from time to time. LESSEE may, however, adjust the rents for each apartment unit in the Project not more frequently than once a year, based upon the then fair market rent as so established by HUD; each such adjustment will take place on the anniversary date of each tenant's rental agreement or when a new rental agreement is entered into by LESSEE as a result of the turnover of an apartment unit in the Project. If the Section 8 Existing Housing Assistance Program is ever eliminated or so changed that it is no longer a reasonable standard for establishing rental adjustments as contemplated hereby, the parties shall mutually and in good faith select another reasonable standard for determining such adjustments. To the extent that CITY can legally commit itself so to do, CITY agrees that LESSEE, other than as set forth above, shall not be affected or concerned by, nor shall LESSEE's ability to adjust monthly rent for each apartment unit in the Project be affected by any law, ordinance, administrative ruling or other action or enactment which has the effect of limiting rents or rental increases, or in any other manner directly or indirectly attempts or purports to control rents or rent increases.

(4) Eminent Domain. In the event the leased premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then the interests of CITY and LESSEE (or Beneficiary or Mortgagee if there is a trust deed or mortgage then in effect), in the award and the effect of the taking upon this lease agreement shall be as follows:

(a) In the event of such taking of only a part of the leased premises, leaving the remainder of said premises in such location and in such form, shape and size as to be used effectively and practicably in the opinion of CITY for the conduct thereon of the operations permitted hereunder, this lease shall terminate and end as to the portion of the leased premises so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the leased premises not so taken and from and after such date the contract rent, or in the event there is a minimum rent specified herein, then the minimum rental required by this lease to be paid by LESSEE to CITY shall be reduced in the proportion to which the number of units of the leased premises so taken bears to the total units of the demised premises; provided, however, CITY shall have the right, with the consent of LESSEE, to substitute like adjacent property and maintain the rent schedule without diminution.

(b) In the event of the taking of only a part of the leased premises, leaving the remainder of said premises in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, in the opinion of CITY or LESSEE, for the conduct thereon of the operations permitted hereunder, this lease and all right, title and interest thereunder shall cease on the date title to said premises or the portion thereof so taken vests in the condemning authority.

(c) In the event the entire leased premises are so taken, this lease and all of the right, title and interest thereunder shall cease on the date title to said premises so taken vests in the condemning authority.

(d) In the event of any taking under Sub-paragraphs (a), (b) or (c) hereinabove, the only portion of any award of compensation which shall be paid to LESSEE shall be the fair market value of the improvements placed upon that portion of the leased premises which are taken by the condemning agency, but reduced by a proportion which relates to the reversionary interests of CITY (being that period of time after the expiration of the term of this lease). It is the intention of this provision that LESSEE shall not in any condemnation receive any bonus or penalty by reason of LESSEE's contractual rights in connection with the property condemned.

(e) Notwithstanding the foregoing provisions of this section, CITY may, in its discretion and without affecting the validity and existence of this lease, transfer CITY's interests in said premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE shall retain whatever rights it may have to recover from the said authority the fair market value of LESSEE's interest in the improvements taken by the authority and which LESSEE has placed upon the leased premises in accordance with provisions of this lease.

(5) Entry and Inspection. CITY reserves and shall always have the right upon the giving of reasonable advance written notice to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said

premises are not in a decent, safe, healthy condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done for and at the expense of LESSEE and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done in order to keep said premises in a decent, safe, healthy and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy and sanitary. Said bond shall be in an amount adequate in the opinion of the CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

(6) Holding Over. The occupancy of the demised premises after the expiration of the term of this agreement shall be construed to be a tenancy from month to month, and all other terms and conditions of this agreement shall continue in full force and effect.

(7) Merger. The voluntary or other surrender of this lease by LESSEE, or a mutual cancellation thereof, shall not work a merger and shall, at the option of CITY, terminate all or any existing subleases or subtenancies or may, at the option of CITY, operate as an assignment to it of any or all such subleases or subtenancies.

(8) Oral Representation. It is specifically understood and agreed hereby that this lease contains the complete expression of the whole agreement between the parties hereto, and that there are no promises, representations, agreements, warranties

or inducements, either expressed orally or implied by the said parties, except as are fully set forth herein; and further, that this lease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the said parties.

(9) Ownership of Improvements. All improvements, including fixtures which have been affixed by LESSEE in any manner whatsoever, shall at the option of CITY become the property of CITY upon expiration or sooner termination of this agreement. LESSEE shall have the right to remove from the demised premises only personal property, at any time prior to the expiration or earlier termination of this agreement, provided that such removal would not, in the opinion of CITY, restrict the operation of the demised premises to the extent that the rent paid to CITY is reduced as a direct result therefrom. LESSEE's removal of any such personal property shall be at LESSEE's own expense and shall be conditioned upon LESSEE's repairing any damage to the remaining improvements and upon LESSEE leaving the demised premises in good order and condition. In the event LESSEE does not so remove said personal property prior to the expiration of this agreement, CITY may remove, sell or destroy the same at the expense of LESSEE, and if the proceeds of the sale are not adequate, LESSEE shall promptly pay to CITY its reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to CITY's property resulting from such removal, sale or destruction. At the option of CITY, any personal property not removed by LESSEE may be deemed abandoned and may be removed and sold by CITY and all income received by CITY therefrom shall be the property of CITY exclusively. Lessee shall not have the right to remove from the demised premises any fixtures upon expiration or sooner termination of this Agreement.

(10) Remedies of CITY.

(a) Default by LESSEE. In the event that:

(i) LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail to cure said default within thirty (30) days following the service on LESSEE of a written notice from CITY specifying the default complained of; or

(ii) LESSEE shall voluntarily file or have involuntarily filed against him any petition under any bankruptcy or insolvency act or law; or

(iii) LESSEE shall be adjudicated a bankrupt; or

(iv) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice of demand upon LESSEE or upon any person claiming through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE in or to the said premises or in or to further possession thereof and CITY may thereupon enter and take possession of said premises and expel LESSEE and all persons so claiming rights thereto. Provided, however, in the event that any default described in Part (a) (i) of this section is not curable within thirty (30) days after the service of a written notice upon LESSEE, CITY shall not terminate this lease pursuant to said default if LESSEE immediately commences to cure said default and diligently pursues such cure to completion.

Provided, further, in the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall not terminate this lease until it first shall have served upon the mortgagee or beneficiary written notice of the default or defaults complained of, and the mortgagee or beneficiary shall have thirty (30) days from service of such notice within which to commence such cure as may be necessary and this lease shall not terminate if said mortgagee or beneficiary shall prosecute said cure with reasonable diligence thereafter, and said thirty (30) day period shall be extended during the

time required for said mortgagee or beneficiary to perfect, through litigation or through foreclosure, its rights to cure.

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

(i) CITY may correct or cause to be corrected said default or defaults and charge the costs therefor (including costs incurred by CITY in enforcing this provision) to the account of the LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY of a statement of all or part of said costs.

(ii) CITY may correct or cause to be corrected said default or defaults and may pay the costs thereof (including costs incurred by CITY in enforcing this provision) from the proceeds of any insurance fund held by CITY and LESSEE or by CITY and mortgagee or beneficiary or CITY may use said funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct said default or defaults or to pay the costs of such correction performed by or at the direction of CITY.

(iii) CITY may terminate this lease as to the rights of LESSEE herein by assuming liability for any trust deed or mortgage. LESSEE will assume and agrees to pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related notes by CITY. CITY may, as an alternative, substitute for

said terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary,

Should said default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in said leasehold whose qualifications have been approved by CITY for assignment of the leasehold interest shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease and this lease shall not terminate if such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself and commence performance within said thirty (30) day period after service upon it of said written notice by CITY of the default. In the event of the election by the mortgagee or beneficiary to so substitute itself to LESSEE's estate hereunder, CITY expressly consents to said substitution and authorizes said mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the original LESSEE hereunder, subject to cure of the default if possible by mortgagee or beneficiary, and LESSEE expressly agrees to assign all its interest in and to its leasehold estate in that event.

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

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

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

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

(11) Reservation of CITY Rights. CITY hereby reserves all rights, title and interest in any and all gas, oil, minerals and water beneath said leased premises. CITY shall have the right to enter said leased premises for the purpose of making repairs to or developing municipal services. CITY hereby reserves the right to grant and use such easements or establish and use such rights of way over, under, along and across said leased premises for utilities, thoroughfares, or access as it may deem advisable for the public good. Provided, however, CITY shall not unreasonably interfere with LESSEE's use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements of LESSEE located on the leased premises resulting from CITY's exercising the rights retained in this paragraph. Such reimbursement shall include a reduction in the annual rent proportionate to the amount of said physical damage as determined by the City Manager. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to the rights reserved herein.

(12) Time is of the Essence. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successor of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns or sublessees of LESSEE.

(13) Waiver. The waiver by CITY of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by CITY shall not be deemed to be a waiver of any preceding breach by LESSEE of any term, covenant or condition of this lease, regardless of CITY's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of CITY to require or exact full and complete compliance with any of the covenants, conditions or agreements of this lease shall not be construed as in any manner changing the terms hereof and shall not prevent CITY from enforcing any provision hereof.

(14) The relationship between the parties hereto shall at all times be deemed to be that of landlord and tenant, and the share payable to the CITY pursuant to subparagraph 4.a.(2) of the Lease Agreement shall for all purposes be deemed to be additional rent. The parties do not intend, nor shall this Agreement be deemed to create a partnership or joint venture.

(15) In addition to its rights to audit books of the LESSEE for purposes of determining gross rental, CITY shall also have the right to audit the books of LESSEE for purposes of determining and verifying all of the matters covered in sub-

paragraphs 4.a.(2), (7) and (8) of the Lease Agreement at CITY's expense, on reasonable notice to tenant, and not more than once a year.

(16) Subject to all other limitations of this lease as to transfer and assignment, this lease shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns (whether voluntary or involuntary).

(17) CITY may designate through either action by the City Council or written direction of the City Manager persons within the Housing Authority and/or Housing Commission of the CITY to act for and receive notices on its behalf, and shall promptly notify LESSEE in writing of any such designations.

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

THE CITY OF SAN DIEGO

By: _____

J. P. Fowler

City Manager

LESSEE:

ORCHARD II ASSOCIATES,
a general partnership

By: _____

Stephen B. Drogin

Stephen B. Drogin

By: FINANCIAL SCENE INCORPORATED,
a California corporation

By: _____

Sam A. Brumley

By: _____

W. E. Thatch

APPROVED as to form and legality this 10 day of Feb.

1981.

APPROVED: JOHN W. WITT, CITY ATTORNEY.

BY: _____

John W. Witt

DEPUTY CITY ATTORNEY