

DOCUMENT NO. RR-252648

FILED 10/20/80
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

(Lease-Chollas Gardens Limited)

Lease Agree w/Chollas Gardens
Limited for land at 55th and
College Grove Dr. for term of
55 years for construction and
operation of a 60 unit low income
senior citizens residential
rental complex.

R-252648 9/9/80

td cc: ✓ Auditor - 7c
10-28-80 ✓ Housing Comm. - Golovato - 49
(Dup. Orig. & Copy)

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ORIGINAL

OPTION AGREEMENT

Approved by Council Resolution No R-252648 dated September 9, 1980.

THIS OPTION AGREEMENT executed this 19th day of September, 1980 by and between the CITY OF SAN DIEGO, a municipal corporation ("City") and CHOLLAS GARDENS LIMITED, a California Limited Partnership ("Optionee"), with HOUSING OPPORTUNITIES, INC., a non-profit, public benefit California corporation ("HOI") as its managing general partner.

- A. City is the owner of a certain parcel of real property located in the County of San Diego, State of California, as more particularly described in the form of lease agreement marked Exhibit "A" attached hereto and incorporated herein by this reference (the "Premises").
- B. Optionee desires to obtain an option to lease from City the Premises for the purposes of constructing and operating a senior citizens' multiple residential rental project (the "Project"), containing approximately sixty (60) rental apartment units (the "Rental Units") and one (1) non-revenue unit to be occupied by the manager of the Premises, upon the terms and conditions set forth in the lease agreement.

NOW, THEREFORE, for good valuable and adequate consideration, which is hereby conclusively acknowledged, it is hereby agreed as follows:

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1. City hereby grants to Optionee an option for the period of twelve (12) months from the date hereinabove first set forth, to lease from City the Premises on the terms and conditions set forth in the lease agreement attached hereto and marked Exhibit "A". During the term of this Option Agreement, City will not grant to any other party any right or option to lease the Premises.
2. The consideration for this Option Agreement is Five Hundred Dollars (\$500.00), which has been paid to City in full.
3. As additional consideration for granting this option, Optionee agrees to reserve for City, its successor, or any other local, state or federal authority designated by City which serves in the same capacity, one hundred percent (100%) of the Rental Units constructed on the Premises, within the maximum Fair Market Rents published by the United States Department of Housing and Urban Development ("HUD") in the Federal Register pursuant to the United States Housing Act of 1937, Section 8 Existing Housing Assistance Payments Program ("Section 8"). In the event the standards set forth in Section 8 cease to exist, the parties shall substitute a similar standard established by HUD or its successor governmental agency. If the parties are unable to agree upon a substitute standard, the parties shall refer the choice of the substitute standard to binding arbitration in accordance with the rules of the American Arbitration Association.

4. This option may be exercised by Optionee at any time prior to expiration of twelve (12) months from the date hereof provided that Optionee has first performed all of the terms and conditions of this Option Agreement as herein set forth.
5. City hereby grants Optionee the right to enter upon the Premises for the purpose of site evaluation, engineering studies, soil testing, planning and design. Copies of all reports shall be furnished to City. Optionee shall not perform or suffer to be performed any construction or other alterations of the Premises until this option has been exercised and, once exercised, until the applicable terms and conditions of the lease agreement have been satisfied. Optionee shall have no vested or possessory interest in the Premises and City retains the right to use and enjoy its possession thereof.
6. City, its agents, officers and employees, shall not be liable, nor be held liable, for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Optionee or any of Optionee's representatives, agents, employees, guests, licensees, invitees, patrons, or of any other person whomsoever, nor for personal injuries to, or deaths of them, whether caused by or resulting from any act or omission of Optionee in or about the Premises, or any act or omission of any person or from any defect in

any part of the Premises or from any other cause or reason whatsoever. Optionee agrees to indemnify, save free and harmless and defend in any action, City and its authorized agents, officers and employees against any of the foregoing claims or liabilities and any costs and expenses incurred by City on account of any claim or claims therefor; provided however, that this paragraph shall not apply to any injury, death or property damage caused by City, its officers, employees, or authorized agents.

7. Optionee shall not be deemed to have exercised this option in a timely manner unless and until within the twelve (12) month term of this option, Optionee has:

- (a) Complied with necessary requirements of City and other governmental authorities with respect to the Project;
- (b) Submitted to City construction plans and specifications satisfactory to City for the development of the Premises;
- (c) Submitted evidence satisfactory to City of its ability to finance the cost of construction of the Project, including assurance of disbursement of funds for one hundred percent (100%) of the cost of said construction.

8. Commencing one (1) month after the date of this Option Agreement, and continuing monthly thereafter, Optionee shall furnish to City monthly written reports specifying the acts and actions engaged in by Optionee in attempting to satisfy the terms and conditions of this Option Agreement.
9. Optionee shall exercise this option by giving City written notice of its election to do so, by personal service or certified mail, return receipt requested, addressed to the City Manager of City at 202 "C" Street, 9th floor, San Diego, California, accompanied by a written lease agreement of the Premises in the form of said Exhibit "A" executed by Optionee in triplicate. City's failure to execute the lease agreement prior to the expiration of the term of this option shall not invalidate the lease agreement nor nullify Optionee's timely notice of its election to exercise this option.
10. Determination of satisfactory performance of any and all of the conditions of this option and all approvals and consents required by City for Optionee's timely performance hereunder shall vest with the City Manager of City and such approvals and consents shall not be unreasonably withheld. Upon the performance of the conditions herein contained to the satisfaction of the City Manager

and the exercise of Optionee of this option in the manner provided hereinabove, City Manager shall forthwith, without need for further authorization of the City Council of City execute for and on behalf of City that lease agreement in the form of said attached Exhibit "A".

11. Optionee may not sell, assign or otherwise transfer its rights hereunder and any attempt to transfer this option shall be null and void.
12. Optionee may record a memorandum of this option agreement in the office of the County Recorder of San Diego County, State of California.
13. Any waiver or consent of a breach or breaches of any of the terms or conditions of this option which may be given to Optionee shall not extinguish any covenant or condition of this option nor constitute a waiver of any subsequent breach or breaches thereof.
14. Should it become necessary for City or Optionee to commence legal proceedings to enforce any provisions of this option, the prevailing party will be entitled to legal costs in connection therewith, including reasonable attorneys' fees as determined by the court.
15. The laws of the State of California shall govern the validity, performance and enforcement of this option.

16. If any provision of this option is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this option and such other provisions shall remain in full force and effect.

17. Time is of the essence of this option.

IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written by The City of San Diego acting by and through its City Manager, under and pursuant to Resolution No. R-252648 authorizing such execution and by Optionee.

THE CITY OF SAN DIEGO

Approved as to form and legality

this 22 day of Sept, 19 80

JOHN W. WITT, City
Attorney

By: [Signature]
Deputy City Attorney

By: [Signature]

CHOLLAS GARDENS LIMITED

By: HOUSING OPPORTUNITIES INC.,
General Partner

By: [Signature]

R- 252648

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LEASE AGREEMENT

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LEASE AGREEMENT

THIS LEASE AGREEMENT (herein referred to as the "Lease") is executed as of the _____ day of DEC 11 1980, 1980, by and between the CITY OF SAN DIEGO, a municipal corporation ("City") and CHOLLAS GARDENS LIMITED, a California Limited Partnership ("Lessee") with HOUSING OPPORTUNITIES, INC., a non-profit, public benefit California corporation ("HOI"), as its managing general partner.

R E C I T A L S

- A. City owns a certain parcel of real property situated in the City of San Diego, County of San Diego, State of California, which is more particularly described on Exhibit "A" hereto (the "Premises"), which City has made available to a limited dividend profit motivated Lessee 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. City has entered into an exclusive negotiation agreement with HOI as set forth in Document #RR-250944 filed January 18, 1980, in the Office of the City Clerk, City of San Diego, California.
- B. Lessee as consideration for the Lease has agreed to construct sixty (60) revenue housing units (the "Rental Units") for low-income senior citizens' apartment units and one (1) non-revenue housing unit on the Premises

and has agreed to make all of the Rental Units available to the Housing Commission of the City or its successor, during the entire term of the Lease, to be rented within the maximum Fair Market Rents published by the United States Department of Housing and Urban Development ("HUD") in the Federal Register pursuant to the United States Housing Act of 1937, Section 8 Existing Housing Assistance Payments Program ("Section 8"), or pursuant to such similar local, state or federally sponsored rent subsidy program as determined herein which is in effect during the term of the Lease, as more particularly described in paragraph 4 hereof.

C. The parties hereto specifically agree that the purpose and intent of this Lease and the development of the Premises is to allow for the development and operation of sixty (60) units of low-income senior citizens' housing during the entire term of the Lease and that Lessee and its successors and assigns shall take all reasonable and necessary actions to maintain the lowest possible rental rates for such units and to otherwise accomplish said purpose and intent.

D. HOI has agreed to raise capital for the Project, the exact amount of which is to be set forth in Lessee's Certificate of Limited Partnership, as amended from time to time, a copy of which shall be provided to City by HOI. The amount set forth in said Certificate shall be designated herein as "Original Capital Contribution". City hereby acknowledges that HOI shall be entitled to utilize a portion of the Original Capital Contribution for future projects unrelated

to the Premises. HOI shall submit a proposed budget to City for review and approval, which shall not be unreasonably withheld, prior to the use of any funds retained by HOI for future projects.

NOW THEREFORE IN CONSIDERATION of the recitals and covenants herein and other good and valuable consideration which is hereby conclusively acknowledged, it is hereby agreed as follows:

1. DEMISED PREMISES

City hereby leases to Lessee and Lessee hereby leases from City the Premises.

(a) Permitted Use

The Premises are leased to Lessee only for the purpose of constructing and operating a low-income sixty (60) unit senior citizens' multiple residential apartment project (the "Project") and one (1) non-revenue unit to be occupied by the manager of the Project, and for such other related or incidental purposes as shall be first approved in writing by City and for no other purpose. Lessee shall make all the Rental Units available to City or its successor, during the entire term of the Lease, to be rented and operated in accordance with the provisions of this Lease, including but not limited to paragraph 27 hereof.

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(b) Obligation to Diligently Use

Lessee covenants to use the 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 City is not obligating itself with regard to any other discretionary action relating to development or operation of the Premises, including but not limited to rezonings, variances, environmental clearances or any other governmental agency approvals.

2. TERM OF AGREEMENT

(a) Commencement and Termination

The term of this Lease 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 the Lease, Lessee shall execute, acknowledge and deliver to City, within five (5) days after written demand

by City a valid and recordable quitclaim deed designating City as transferee covering all of the Premises and improvements located thereon. The Premises shall be delivered to City free and clear of all liens and encumbrances other than those permitted pursuant to paragraph 8 hereof.

3. CONSIDERATION

The rent shall be paid by Lessee to City at the Office of the City Treasurer, City Operations Building, San Diego, California 92101 and shall be as follows:

(a) Minimum Rent

The minimum rent for the full term of this Lease shall be fifty-five dollars (\$55.00), receipt for which is hereby acknowledged.

(b) Additional Rent

As additional rent hereunder, Lessee shall pay to City within ninety (90) days of the end of each of Lessee's fiscal years (which for the purposes of this

Lease, shall be a calendar year unless City is otherwise notified in writing) ending during or subsequent to the

term of this Lease, the excess of the gross income

derived by Lessee from the Premises, whether as a result of rentals to tenants of the Project, or otherwise, over the sum of the following, which shall be provided for in the following order:

ADDITIONAL RENT
BY APRIL 1ST

GROSS INCOME
- OPERATING EXPENSES
- LOAN PAYMENTS
- 6% OF ORIG. CAP. CONTRIBUTIONS

THRU 6% OF REPL. COST

INTO GROSS ACCT.
IF ANY ADDITIONAL
LEFT OVER GOES IN
AN ACCT. TO BE
ESTABLISHED TO
EQUAL UP TO
8% OF LESSEE'S
PRIOR YRS. GROSS
INCOME.

- (i) Lessee's operating expenses which, for purposes of this Lease, shall be those ordinary and necessary expenses directly and actually incurred by Lessee in connection with the Project, as set forth in the audited records referred to in paragraph 5 hereof.
- (ii) Costs of amortizing any existing mortgage or deed of trust.
- (iii) Return to the limited partners not to exceed six percent (6%) annually (non-cumulative) on the Original Capital Contribution.
- (iv) An amount paid to City as additional rent so as to allow City to maintain first, a segregated reserve account fund in an amount equal to .6% of the estimated replacement cost, as determined in accordance with the provisions of paragraph 18 hereof, of the improvements located on the Premises and second, to accumulate a contingency fund equal to eight percent (8%) of Lessee's prior year's gross income. City shall maintain separate records for each of said funds, which shall be utilized by City only for repairs, replacements and improvements to the Premises, other than routine maintenance as provided for in paragraph 21 hereof. Expenditures from said funds shall be made only upon prior written request of Lessee and

written consent of City, which shall not be unreasonably withheld. Upon termination of this Lease, the balance of the above referenced reserve and contingency funds shall be allocated in accordance with the provisions of paragraph 11 hereof.

- (v) The remaining amount, if any, shall be held by City in a segregated account for purposes of providing rental assistance to the tenants of the Rental Units, which shall be advanced at the sole discretion of the City.

4. RENTAL CHARGED TO TENANTS

It is hereby conclusively acknowledged by Lessee that as additional consideration for City's granting of this Lease to Lessee, Lessee shall use its best efforts to operate the Project so as to maintain the lowest possible rents to the tenants without compromising the living standards of the Rental Units. Subject to the foregoing, the maximum rental which Lessee may charge as rental for each Rental Unit shall be the maximum published rate allowed under the Section 8 Existing Housing Program reduced by the applicable allowance for utilities paid directly by tenants. Rent increases shall be allowed only as authorized by Section 8 but such authorized increases may only be implemented once annually and for all Rental Units simultaneously, at a date designated by Lessee, which shall be set forth in each tenant's lease. A copy of Lessee's form of lease shall be submitted to City for approval which shall not be unreasonably withheld. At the end of the first five-year period and every five year period thereafter, City shall make an inspection of the Project. If the Project is found to be in a material condition satisfactory to City, considering normal usage, City shall continue to allow the maximum allowable rent as set forth in the Section 8 Existing Program.

5. FINANCIAL RECORDS MAINTENANCE

(a) Current Revenues and Expenses

Lessee shall keep true, accurate and complete records in a manner and form satisfactory to City from which City can at all reasonable times determine the nature and amounts of income and expenses related to the operation of the Premises. Such records shall show all transactions relative to the Project and such records shall be supported by documents of original entry. Within ninety (90) days after the end of each fiscal year, Lessee shall provide to City an audit of income and expenses for such fiscal year prepared in accordance with generally accepted accounting principles by a Certified Public Accountant. City shall have sixty (60) days after receipt of such statement within which to object to any such item of expense and failure of City to object in writing to Lessee within such sixty (60) day period shall constitute approval by City. In the event of a timely objection by City to any item of expense shown on such statement, if the parties cannot resolve the matter, the dispute shall be referred to binding arbitration by the American Arbitration Association in San Diego, California, and resolved in accordance with the rules of said Association. If any item of

expense is disallowed in whole or in part by the arbitrator, the arbitrator shall also have jurisdiction to determine the disposition of the disputed item. The cost of any such arbitration shall be borne by the losing party.

(b) Projected Revenues and Expenses

At least sixty (60) days prior to initial occupancy of the Rental Units and, thereafter, at least sixty (60) days prior to the end of each fiscal year, Lessee shall submit to City for its approval, an annual budget for the upcoming fiscal year, which shall include but not be limited to projected operating expenses and revenues. At a minimum, this shall include an itemized estimate of anticipated revenues and expenses including but not limited to management fees, debt service payments, operating expenses, anticipated net revenues and residual receipts. City shall have thirty (30) days after receipt of such budget within which to disapprove such budget and failure of City to disapprove in a written statement to Lessee setting forth the reasons for such disapproval within such thirty (30) day period shall constitute approval by City. In the event of timely notification of disapproval by City, Lessee shall resubmit a revised annual budget within fifteen (15) days of such

notification and City shall have ten (10) days after receipt of such budget within which to disapprove such budget and failure of City to disapprove in a written statement to Lessee setting forth the reasons for such disapproval within such ten (10) day period shall constitute approval by City. In the event of timely notification of disapproval by City to the resubmitted budget, if the parties cannot resolve the matter, the dispute shall be referred to binding arbitration by the American Arbitration Association in San Diego, California, and resolved in accordance with the rules of said Association. The cost of any such arbitration shall be borne by the losing party. City shall not unreasonably withhold approval of the budget.

(c) Separate Records, Audit by City

All records and accounts shall be maintained by Lessee separate from all other accounts not relating to the operation of the Project and shall be made available to City at one location within the limits of the City of San Diego. City shall have, through its duly authorized agents or

representatives, the right to examine and audit said records and accounts at any and all reasonable times. In the event of discrepancies between the audit furnished to City on behalf of Lessee and the City's audit, Lessee and City shall select an independent third party to audit said records and the latter shall prevail. Any additional sums due City as determined by such audit are due and payable within thirty (30) days of notification thereof by City. In the event that such audit discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then Lessee shall pay City ten percent (10%) of the amount by which said rent was underpaid in addition to the unpaid rents so shown to be due City as compensation to City for administrative cost and loss of interest.

6. TAX EXEMPT FINANCING

City agrees to use its best efforts to assist Lessee through the City-Redevelopment Agency in obtaining a tax exempt mortgage through the sale of tax exempt bonds or notes, provided, however, that the inability of Lessee to obtain such financing shall in no way alter the rights or obligations of the parties hereunder.

7. QUIET POSSESSION

Provided that Lessee is not in default under its obligation to pay the rent and perform the covenants and agreements herein, Lessee shall and may at all times during the term of the Lease peaceably and quietly have, hold and enjoy the Premises for the term hereof. If City for any reason whatsoever cannot deliver possession of the Premises to Lessee at the commencement of the Lease term as hereinbefore specified, or if Lessee is dispossessed through action of a title superior to City's, then and in either of such events this Lease shall not be void or voidable except at the option of City and City shall not be liable to Lessee for any loss or damage resulting therefrom.

8. RIGHT TO ENCUMBER

City does hereby consent and agree that Lessee may encumber this Lease, its leasehold estate and any improvements thereon for a period not to extend beyond the term of this Lease by deed of trust, mortgage, chattel mortgage or other security type instrument provided 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 Project. City further agrees to subordinate its interest hereunder to such encumbrances. Lessee hereby 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, City will have the first right of refusal to purchase said deed of trust, mortgage or other security type instrument. City's purchase price will be equal to the amount required to repay the Original Capital Contribution plus the amount of the mortgage outstanding. If City refuses purchase, the City shall accept the mortgagee or beneficiary thereof, if reputable, qualified and financially responsible in the opinion of City (such as State or Federal regulated financial institution or subsidiary thereof) as Lessee under this Lease provided that such mortgagee or beneficiary agrees to assume all the rights, privileges and duties granted and imposed on Lessee in this Lease. Said mortgagee or beneficiary shall not assign this Lease to its nominee without the prior written consent of City, which shall not be unreasonably withheld if such nominee is a reputable,

qualified and financially responsible person in the opinion of City, provided that the proposed nominee agrees to assume all of the duties and obligations imposed on Lessee under this Lease.

9. RIGHT TO SELL, ASSIGN, SUBLET, REFINANCE
OR OTHERWISE TRANSFER THE LEASE

Lessee may not sell, assign, or otherwise transfer this Lease or sublet any part of its interest hereunder or refinance any part of its interest hereunder or in the Premises, without the prior written consent of City. Subject to the foregoing, when in the opinion of City, it is deemed consistent with the best interests of City, Lessee may sell or 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 Project. Subject to the above, 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 prior written consent of City. Consent to any sale, assignment, refinance or sublease shall not constitute consent to any other sale, assignment, refinance or sublease. No sale, subletting or assignment even with the consent of City shall relieve Lessee of its obligations to pay the rent and perform all of other obligations to be performed by Lessee hereunder absent an express written release by City.

Approval of any sale, assignment or sublease shall be conditioned upon the purchaser, assignee or sublessee agreeing in writing that they will assume the rights and obligations thereby sold, assigned or subleased and that they will keep and perform all covenants, conditions and provisions of this Lease which are applicable to the rights acquired. Notwithstanding any of the above provisions, Lessee may rent any specific housing unit in accordance with the terms and conditions contained herein without City's specific approval as provided in this paragraph 9.

10. RIGHT OF FIRST REFUSAL

Lessee agrees to notify City of intent to sell or assign this Lease or any interest therein and allow City first right to acquire said interest. The acquisition cost to City shall be equal to the amount required to repay the Original Capital Contribution plus the then unamortized balance of any mortgage or deed of trust affecting the improvements to the Premises and City agrees, in the event of City acquisition, to assume any Lessee obligations and rights under then existing contracts and agreements involved in Lessee's operations on the Premises which have had the prior approval of City.

In the event of sale, refinancing, assignment or sublease of the leasehold, the parties agree that any funds from the sale, refinance, assignment or sublease shall be allocated as follows:

- (a) Payment of any existing mortgage or deed of trust affecting improvements to the Premises;
- (b) Payment to the Limited Partners in an amount equal to their annual return on investment prorated to the date of refinance, assignment or sublease, plus the amount of their Original Capital Contribution not previously returned;
- (c) City to be reimbursed in an amount equal to the sum of all subsidies given by City in connection with the Premises with annual interest thereon at the rate of nine percent (9%) per annum. The amount of said subsidies shall be set forth in Exhibit D attached hereto and made a part hereof, as amended from time to time by City with the consent of Lessee which shall not be unreasonably withheld;
- (d) City to receive, as additional rent, an amount equal to the sum, over the term of this Lease, of rent write-downs for each fiscal year between the fair annual rental

rate of the Premises, as defined herein, and the amount paid to City as rental hereunder for such fiscal year, with interest on the outstanding balance of such rent write-down at the rate of nine percent (9 %) per annum. Fair annual rental rate to City shall be an amount equal to fifteen percent (15%) of the appraised value of the Premises, as adjusted. The appraised value of the Premises ("Base Appraised Value") shall be determined upon the commencement date by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by the City. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then City and Lessee will each select a qualified professional independent real estate appraiser who in turn will select a third qualified professional independent real estate appraiser who will be employed to make an appraisal. Each party shall pay the cost of its own selected appraiser and both City and Lessee agree to equally share the cost of the third mutually appointed appraiser. City and Lessee agree to accept and be bound by the value determined by the appraiser selected to complete the assignment. The Base Appraised Value shall be adjusted as of the last day of each fiscal year in order to determine the fair annual rate for the subsequent fiscal year.

The adjustment, if any, shall be based upon any increase or decrease in the Consumer Price Index (All Urban Consumers-All Items) San Diego Metropolitan Area (base year 1967 = 100), published by the United States Department of Labor, Bureau of Labor Statistics ("Index"). The adjustments shall be computed by adding to the Base Appraised Value the sum obtained by multiplying the Base Appraised Value by a factor equal to the percentage increase or decrease in the Index as last published immediately preceding the date of the initial appraisal and the Index last published immediately preceding the commencement of the relevant fiscal year. At the sole option of City, the Premises shall be reappraised in the manner described herein on each five (5) year anniversary of the commencement date of this Lease and the new appraised value shall become the new Base Appraised Value for purposes of annual adjustments thereto;

If the Index is changed so that the base year differs from that set forth above, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, City shall select another government index or computation to be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

(e) Any amount remaining shall be divided equally between the City and Lessee.

12. CONSTRUCTION, ALTERATIONS AND ADDITIONS

Lessee shall not make, or suffer to be made, any alterations, improvements or additions to the Premises without the written consent of City first had and obtained and any improvements or additions to, or alterations of, the Premises, excepting such movable furniture and fixtures designated by Lessee in Exhibit "B" attached hereto and made a part hereof, shall become at once a part of the realty. Prior to commencing any work relating to any alterations, improvements or additions approved by City, Lessee shall notify City in writing of the expected date of commencement and deliver plans and specifications to City. City shall have a reasonable time within which to accept or reject in writing in whole or in part such plans and specifications. City shall have the right at any time thereafter to post and maintain on the Premises such notices as City reasonably deems necessary to protect City and the Premises from mechanics' liens, materialmen's liens or any other liens. Lessee shall pay, when due, all claims for labor or materials furnished to or for Lessee for use in improving the Premises. Lessee shall not permit any mechanics' or materialmen's liens to be levied against the Premises arising out of work performed, materials furnished, or obligations to have been performed on the Premises by or at the request of

Lessee. Lessee hereby agrees to indemnify City, save City free and harmless, and defend City in any actions, against loss, damage, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Lessee or persons claiming under it. Lessee shall provide "as built" plans and specifications to City within sixty (60) days of completion of the Project.

13. OWNERSHIP OF IMPROVEMENTS

All improvements, except movable furniture and fixtures as are hereinafter described on Exhibit "B" attached hereto and made a part hereof, which have been placed or installed by Lessee in or on the Premises shall at the option of City become the property of City upon expiration or sooner termination of the Lease. Lessee shall have the right to remove from the Premises only those items described on Exhibit "B" at any time prior to the expiration or earlier termination of the Lease, provided that such removal would not, in the opinion of City, restrict the operation of the Premises. Lessee's removal of any said movable furniture or fixtures 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 Premises in good order and condition. In the event Lessee does not so remove said furniture or fixtures prior to the expiration of this Lease, 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 such movable furniture or fixtures not removed by Lessee may be deemed abandoned and may be utilized by City or removed and sold by City and all income received by City therefrom shall be the property of City exclusively. Said Exhibit "B" may be changed from time to time upon approval of City, without further resolution by the City Council.

14. METHOD OF DISTRIBUTION OF CONSTRUCTION FUNDS

Prior to commencement of any construction performed upon the Premises, Lessee shall submit in writing for approval by City, a method for the orderly distribution of construction funds, which approval shall not be unreasonably withheld.

15. TIME FOR COMPLETION

Lessee shall obtain a building permit for construction of the Project within one hundred eighty (180) days after the date this Lease is executed by City. Lessee shall cause construction of the Project to be commenced no later than ninety (90) days after Lessee receives a building permit for the Premises, shall cause construction of the Project to thereafter be diligently pursued without unnecessary interruption, and shall cause the

Project to be completed and ready for occupancy not later than three hundred sixty (360) days after commencement of its construction. Should Lessee fail to commence or complete construction of the Project within the times specified in this paragraph, City may, by giving sixty (60) days' written notice to Lessee, terminate this Lease pursuant to the terms of paragraph 24 hereof, provided, however, that Lessee shall be excused for any delays in construction or commencement of construction caused by the act of City, the act of any agent of City, the act of any governmental authority, the act of any public enemy, acts of God, war, strikes, walkouts, or other causes beyond Lessee's control. Lessee shall, however, use reasonable diligence to avoid any such delay and to resume construction as promptly as possible after the delay.

16. TAXES, ASSESSMENTS AND PUBLIC UTILITIES

Lessee shall pay when due all water, light, power, gas, heat and any other utility charges and City shall have no responsibility therefor. Lessee shall also pay directly before delinquency, the amount of all real property taxes, possessory interest taxes, and assessments applicable or allocable to the Premises and all improvements located thereon allocable to all periods within the term of this Lease.

Lessee recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest and must pay same before delinquency. If at any time during the term of this Lease the laws concerning the methods of real property taxation prevailing at the commencement of the term are changed so that a tax or excise on rents or any other such tax, however described, is levied or assessed against City, Lessee shall pay before delinquency such tax on rent.

Lessee shall pay before delinquency all taxes, assessments, license fees or other charges that are levied and assessed against all improvements and personal property installed or located in or on the Premises. Lessee further agrees that payments hereunder shall not reduce any rent due City under the Lease.

17. 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

Premises. Lessee agrees to indemnify, save free and harmless, and defend in any action, City and its authorized agents, officers and employees against any of the foregoing alleged claims or liabilities and any costs and expenses incurred by City on account of any claim or claims therefor.

18. INSURANCE COVERAGE

During the entire term of this Lease, Lessee agrees to procure and maintain at its sole expense public liability and property damage insurance which names City as an additional insured with an insurance company satisfactory to City licensed to do business in California to protect against loss from liability 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 or 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 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 Five Hundred Thousand Dollars (\$500,000.00) for injury or death of any one person, One Million Dollars (\$1,000,000.00) for injury or death arising out of any one occurrence, and One Hundred Thousand Dollars (\$100,000.00) for damage to property.

Lessee agrees to submit a policy of said insurance to the City on or before the effective date of this Lease indicating full coverage of the contractual liability imposed by this Lease 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, said notice to provide City with an opportunity to cure any default. If the operation under this Lease results in an increased risk in the opinion of City, then Lessee agrees that the minimum limits hereinabove designated shall be changed accordingly upon written request by City. Lessee agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which the Lessee may be 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 at its sole expense 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 Premises. Said policy shall name the City as an additional insured and shall be written by an insurance

company satisfactory to City licensed to transact business in the State of California and shall be in an amount sufficient to cover at least ninety percent (90%) of the replacement costs of said property. Said policy shall state a sum certain as the replacement cost of said property and shall provide for automatic adjustments to the replacement cost to be computed at least once every three (3) years during the term of the policy. The replacement cost set forth in said policy shall be submitted in writing to City by Lessee within thirty (30) days after the determination thereof and City shall have ten (10) days after receipt of such notification within which to object to such determination and failure of City to object in writing to Lessee within such ten (10) day period shall constitute approval by City. In the event of a timely objection by City to such determination, if the parties cannot resolve the matter, the dispute shall be referred to binding arbitration by the American Arbitration Association in San Diego, California, and resolved in accordance with the Rules of said Association. The cost of such arbitration shall be borne by the losing party. Lessee agrees to submit a certificate of said policy to 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 and shall provide 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 and this Lease shall continue in full force and effect.

In the event that this Lease is terminated by mutual agreement of Lessee and City upon the destruction of the improvements located on the Premises, the insurance proceeds shall be jointly retained by City and any mortgagee or beneficiary holding a mortgage or deed of trust upon the leasehold 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. The balance of said proceeds shall be first applied to pay the Original Capital Contribution of the limited partners which has not been previously repaid and the balance shall be paid to City.

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 the Premises, buildings and appurtenances.

19.

MAJOR UNINSURED DAMAGE

If at any time during the term thereof the Premises are destroyed or damaged and if such damage is "substantial" as that term is hereinafter defined, and if such damage was caused by a casualty not required to be insured against under paragraph 18, then City may at its option either

- (i) repair such damage at City's expense, in which event this Lease shall continue in full force and effect, or
- (ii) cancel and terminate this Lease as of the date of the occurrence of such damage, by giving Lessee written notice of its election to do so within thirty (30) days after the occurrence of such damage. For the purposes of this paragraph, "substantial" damage to the Premises shall be deemed to be damage to the improvements on the Premises, the estimated cost of repairs of which exceeds one-fifth (1/5) of the then estimated replacement cost of such improvements, or which cannot reasonably be completed within one hundred twenty (120) days after the occurrence of such damage. The determination of the estimated cost of or time to complete repair of any damage and/or of the estimated replacement cost of any building shall be made by the mutual agreement of City and Lessee but, if they cannot agree, by a third party designated by the City and Lessee.

WASTE, DAMAGE, OR DESTRUCTION

Lessee agrees to give notice to the City of any fire or other damage that may occur on the Premises within ten days of such fire or damage. Lessee agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the City.

If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, then, subject to the terms of paragraphs 18 and 19 hereof, Lessee agrees to make or cause to be made full repair of said damage, at Lessee's expense, and to restore the Premises to the condition which existed prior to said damage, or Lessee agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation which existed prior to such damage.

Lessee agrees that preliminary steps toward performing repairs, restoration or replacement of the Premises shall be commenced by Lessee within thirty days of the debilitating event and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter.

21.

MAINTENANCE

Lessee agrees to assume full responsibility for the operation and maintenance of the Premises throughout the term hereof at its sole expense and to perform all repairs and replacements necessary to maintain and preserve the 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 the Premises and Lessee hereby waives all rights to make repairs or to cause any work to be performed at the expense of City as provided for in Sections 1941 and 1942 of the California Civil Code.

22.

ENTRY AND INSPECTION

City reserves and shall always have the right to enter the 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 the Premises are not in a decent, safe, healthy and sanitary condition, City shall have the right, after ten days written notice to Lessee, to have any necessary maintenance work done for and at the expense of Lessee and Lessee hereby agrees to pay promptly any and

all costs incurred by City in having such necessary maintenance work done in order to keep the Premises in a decent, safe, healthy and sanitary condition. Further, if at any time City determines that the Premises are not in a decent, safe, healthy and sanitary condition, City may at its sole option, without additional notice, require Lessee to file with City a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy and sanitary. Said bond shall be in an amount adequate in the opinion of City to correct the said unsatisfactory condition. Lessee shall pay the cost of said bond. The rights reserved in this paragraph shall not create any obligations on City or increase obligations elsewhere in this Lease imposed on City.

23. EMINENT DOMAIN

In the event the 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 of mortgage then in effect), in the award and the effect of the taking upon this Lease shall be as follows:

- (a) In the event of such taking of only a part of the Premises, leaving the remainder of the 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 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 Premises not so taken.

- (b) In the event of the taking of only a part of the Premises, leaving the remainder of the 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 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 the Premises or the portion thereof so taken vests in the condemning authority.
- (c) In the event the entire Premises are so taken, this Lease and all of the right, title and interest thereunder shall cease on the date title to the Premises so taken vests in the condemning authority.
- (d) In the event of any taking under subparagraphs (a), (b) or (c) above, the only portion of any award of compensation which shall be paid to Lessee shall be the fair market value of the Lessee's interest in the

improvements placed upon that portion of the Premises which are taken by the condemning agency, as reduced by the proportion of such value which relates to the reversionary interests of City for the period beyond the termination date of this Lease. It is the intention of this provision that Lessee shall not in any condemnation receive any bonus by reason of Lessee's leasehold or other contractual rights in connection with the property condemned.

- (e) Notwithstanding the foregoing provisions of this paragraph, City may, in its discretion and without affecting the validity and existence of this Lease, transfer City's interests in the 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 which Lessee has placed upon the Premises, in accordance with the provisions of this Lease.

24. REMEDIES OF CITY

- (a) 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 it 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 or demand upon Lessee or upon any person claiming through Lessee may at its option exercise the following remedies:

(1) If Lessee shall abandon the Premises, then with or without notice or process of law and using such force as City may reasonably deem necessary under the circumstances, and without terminating this Lease or otherwise relieving Lessee of any obligation hereunder in the absence of express written notice of City's election to do so, City may re-enter and

take possession of the Premises and of all Property of Lessee located therein and may store all property of Lessee or of any other person which is located therein for the account of and at the risk of Lessee. Under no circumstances shall City be held liable in damages or otherwise by reason of any such re-entry or eviction, or by reason of the exercise by City of any other remedy provided in this subparagraph. All property of Lessee which is stored by City pursuant hereto may be redeemed by Lessee within thirty (30) days after City takes possession thereof upon payment to City in full of all obligations then due from Lessee to City hereunder and of all costs incurred by City in providing such storage. If Lessee fails so to redeem such property within said thirty (30) day period, City may sell such property in any reasonable manner and shall apply the proceeds of such sale actually collected first against the costs of storage and sale and then against any other obligation due from Lessee hereunder.

- (2) Without terminating this Lease or otherwise relieving Lessee of any obligation hereunder in the absence of express written notice of City's election to do so, City may, without being under any obligation whatever to do so,

relet the Premises or any portion thereof at any time or from time to time and for such term or terms and upon such conditions and at such rental as City in its sole discretion may deem proper. Whether or not the Premises are relet by City, Lessee shall pay to City all amounts required to be paid by Lessee hereunder up to the date that City terminates Lessee's right to possession of the Premises and thereafter, Lessee shall pay to City, until the end of the term hereof, the amount of rent and additional charges required to be paid by Lessee hereunder. Such payments by Lessee shall be due at such times as are provided elsewhere in this Lease, and City need not wait until the termination of this Lease, by expiration of the term hereof or otherwise, to recover them by legal action or in any other manner. If City relets the Premises or any portion thereof, such reletting shall not relieve Lessee of any obligation hereunder, except that City shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Lessee hereunder to the extent that such rent or other proceeds compensate City for the non-performance of any obligation of Lessee hereunder. City may execute any Lease made pursuant hereto in its own name, and the lessee thereunder shall be under no obligation to see

to the application by City of any rent or other proceeds by City, nor shall Lessee have any right to collect any such rent or other proceeds. City shall not by any re-entry or other act be deemed to have accepted any surrender by Lessee of the Premises or Lessee's interest therein, or be deemed to have otherwise terminated this Lease or to have relieved Lessee of any obligation hereunder, unless City shall have given Lessee express written notice of City's election to do so as set forth herein.

- (3) Without terminating this Lease or otherwise relieving Lessee of any obligation hereunder, City may cure or cause to be cured 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 within ten (10) days after presentation by City of a statement of all or part of said costs, or City may cure or cause to be cured 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 any 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 cure said default or defaults or to pay the costs of such cure performed by or at the direction of City.

- (4) City may immediately terminate this Lease and all rights of Lessee and of all persons claiming rights through Lessee in or to the Premises, and expel Lessee and all persons so claiming rights thereto. Provided, however, in the event that any such default 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.

- (5) 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.
- (6) Notwithstanding anything contained in this paragraph 24 to the contrary, should any default or defaults be noncurable by Lessee, then any lender holding a beneficial interest in said leasehold whose qualifications have been approved in writing by City for assignment of the leasehold interest shall, upon providing City with a writing pursuant to which lender agrees to assume the obligations and perform all covenants and conditions to be performed by Lessee under the Lease, have the right to

substitute itself to the estate of the Lessee hereunder 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. The notice and election required hereunder must be given to City within thirty (30) days after receipt by such lender of written notice from City of the default.

(7) City may exercise any other remedy or right now or hereafter available to a landlord against a defaulting tenant under the law of the State of California and not otherwise specifically reserved herein.

(b) City shall be under no obligation to observe or perform any covenant of this Lease on its part to be observed or performed which accrues after the date of any default by Lessee hereunder.

- (c) Lessee hereby waives any right of redemption or relief from forfeiture under California Code or Civil Procedure Secs. 1174 or 1179, or under any other present or future law, in the event Lessee is evicted or City takes possession of the Premises by reason of any default by Lessee hereunder.
- (d) The various rights and remedies reserved to City herein, including those not specifically described herein, shall be cumulative, and, except as otherwise provided by California statutory law in force and effect at the time of the execution hereof, City may pursue any of all of such rights and remedies, whether at the same time or otherwise.
- (e) No delay or omission of City to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default by Lessee hereunder.
- (f) For the purposes of this paragraph 24, the rent due for any calendar month of default shall be deemed to be the average monthly rent for the completed Lease year immediately prior to said default including any additional rent and other charges, which shall have been payable for such period to City unless City or Lessee can prove to the contrary by competent evidence.

25.

PRESERVATION OF CITY RIGHTS IN THE PREMISES

City hereby reserves all rights, title and interest in any and all gas, oil, minerals and water beneath the Premises. City shall have the right to enter the 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 the 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 Premises resulting from City's exercising the rights retained in this paragraph. City shall pay the costs of maintenance and repair of all City installations made pursuant to the rights reserved herein.

26.

CITY'S RIGHT TO ENCUMBER

City shall have the right to encumber City's fee interest in the Premises during the term of this Lease, provided that the beneficiary of any trust deed or mortgagee of any mortgage encumbering the Premises agrees to enter into a recognition and attornment agreement to the effect should it take possession or title to the Premises pursuant to any rights contained in the trust deed or mortgage, Lessee

shall attorn to such beneficiary or mortgagee and perform all Lessee's obligations under the Lease directly to such beneficiary or mortgagee on the condition that such beneficiary or mortgagee shall continue to recognize the estate of Lessee created under the Lease and shall not disturb Lessee's peaceful possession of the Premises so long as Lessee is not in default hereof.

27. SECTION 8

Lessee hereby acknowledges that the Project is intended to provide rental apartment units for persons designated in Section 8, or, at the option of City, 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 by Lessee without City first having received in writing sixty (60) days notice within which City may contact "Section 8 Certificate Holders" to make contact with Lessee for the purpose of leasing a unit. Lessee shall thereafter by the tenth day 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.

In addition to complying with the foregoing, Lessee shall use its best efforts to give first priority in renting apartment units which have not been rented to "Section 8 Certificate Holders" to persons fifty-five (55) years or older 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 Commission and Community Development Act of 1974 - Public Law 93-383, or such other similar local, state or federal rent subsidy program designated by City. In the event Section 8 shall cease to exist during the term of the Lease, the parties shall substitute a similar standard established by HUD or its successor governmental agency. If the parties are unable to agree upon a substitute standard, the parties shall refer the choice of the substitute standard to binding arbitration in accordance with the rules of the American Arbitration Association.

28. COOPERATION IN EQUAL OPPORTUNITY COMPLIANCE REVIEWS

Lessee shall cooperate with the Government in the conducting of compliance review and complaint investigations pursuant to all applicable civil rights statutes, Executive Orders, and rules and regulations pursuant thereto.

29. NON-DISCRIMINATION

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 mental 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.

30. MANAGEMENT OF THE PROJECT

The management agent for the Project shall be subject to approval by City. Said approval shall not be unreasonably or arbitrarily withheld so long as it is found that the Project is maintained in decent, safe, and sanitary condition, the needs of the tenants are being provided for, and management fees and operating costs are determined to be competitive. Written approval of City shall be obtained prior to Lessee's awarding of any contracts or entering into any agreements with said management agent and City may revoke its approval upon determination by City that the standards set forth herein have not been satisfied.

31. METHANE GAS MONITORING

The Lessee agrees that management and ownership responsibilities shall include the monitoring of the gas control system placed on the Premises by City once every half-year during the entire term of the Lease, and to notify City should there be a need to take further measures to protect the development and its occupants. Lessee's obligations hereunder shall be limited to notifying City of needs for repair and Lessee shall not be obligated to perform any such repairs.

32.

AFFIRMATIVE ACTION

Lessee agrees to take affirmative action to improve employment opportunities of minorities and women. When applicable, Lessee agrees to abide by the Affirmative Action Program for Lessees as it now exists or is hereafter amended. A copy of the program, as amended from time to time, is on file in the Office of the City Clerk and by this reference incorporated herein.

33.

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 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. 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.

34. ADMINISTRATION, NOTICES, APPROVAL AND CONSENT

Control and administration of this Lease is under the jurisdiction of the City Manager of City or the designee of the City Council 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, shall be given to such party.

The approval or consent of the City, wherever required in this Lease, shall mean the approval or consent of the City Manager of the City of San Diego unless otherwise specified, without need for further resolution by City Council.

35. ATTORNEYS' FEES

Should either party hereto institute any action or proceeding in court to enforce any provision hereof or for damages by reason of any alleged breach of this Lease or for a declaration of such party's rights or obligations hereunder, or for any other judicial remedy, the prevailing party shall be entitled to receive from the losing party such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered to the party finally prevailing in such action or proceeding.

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NOTICES

All notices given under this Lease shall be given by registered letter deposited in the United States Mail, postage prepaid to the following addresses:

To City:

City Manager,
City of San Diego
202 C Street, 9th Floor
San Diego, California 92101

and

Executive Director
San Diego Housing Commission
121 Broadway, Suite 443
San Diego, California 92101

To Lessee:

Chollas Gardens Limited
c/o Daniel B. Grady
Sanfric, Inc.
1272 Morena Boulevard
San Diego, California 92110

Either party may change the above address by notifying the other party, as provided above. Notices shall be deemed delivered five (5) days from deposit as provided above.

HOLDING OVER

The occupancy of the Premises after the expiration of the term of this Lease shall be construed to be a tenancy from month to month, and all other terms and conditions of this Lease shall continue in full force and effect.

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38.

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.

39.

MEMORANDUM OF LEASE

A Memorandum of Lease, suitable for recording, in the office of the County Recorder of San Diego County, State of California, and satisfactory in form to both City and Lessee shall be executed and recorded. Said document is attached hereto as Exhibit "C" and shall incorporate the legal description of the Premises described in Exhibit "A".

40.

WAIVER OF BREACH

Any waiver or consent of a breach or breaches of any of the terms or conditions of this Lease which may be given to the Lessee shall not extinguish any covenant or condition of this Lease nor constitute a waiver of any subsequent breach or breaches thereof.

41.

SUCCESSORS

All of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

42.

INTERPRETATION

- (a) Whenever the singular number is used in this Lease, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporation, firm or association, when required by the context.
- (b) The headings or titles to the paragraphs of this Lease are for convenience and do not in any way define, limit or construe the contents of such paragraphs.
- (c) This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Lessee hereby

acknowledges that neither City nor any of its representatives, any employees or agents has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of the Premises and Lessee acknowledges that Lessee assumes all responsibility regarding the legal use and adaptability of the Premises and compliance thereof with all applicable laws and regulations in effect during the term of this Lease, except as otherwise specifically stated in this Lease.

- (d) The laws of the State of California shall govern the validity, performance and enforcement of this Lease.
- (e) If any provision of this Lease is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease and such other provisions shall remain in full force and effect. If any provision of this Lease is capable of two constructions, one which would render the provision void and one which would render the provision valid, the provision shall be interpreted in the manner which would render it valid.

01020

TIME OF ESSENCE

Time is of the essence in this Lease and Option.

IN WITNESS WHEREOF this Lease Agreement is executed by
 City, acting by and through the City Manager of the City
~~Executive Director of the San~~ of San Diego
~~Diego Housing Commission~~, and by Lessee, acting by and through
 its lawfully authorized officers.

EMB

THE CITY OF SAN DIEGO

Date: DEC 11 1980

By: Elaine M. Balch

ASSISTANT TO THE CITY MANAGER

CHOLLAS GARDENS LIMITED,
 a California Limited Partnership

By: HOUSING OPPORTUNITIES, INC.,
 General Partner

By: [Signature]

APPROVED as to form and legality this 11 day of December

1980.

JOHN W. WITT, City Attorney

By: [Signature]
Deputy

EXHIBIT "A"

(Legal description of the Premises)

Parcel 1 on Parcel Map 10-701, dated November 13, 1980,
and recorded in the office of the County Recorder as File
No. 80-382989.

C1022

SUBDIVISION
BOARD
DATE 6-30-80
T.M. NO. 01-076-0

0-608-0

PARCEL MAP

BEING A CONSOLIDATION AND DIVISION OF PORTIONS OF LOTS 1 & 2 OF C.C. SEAMAN'S SUBDIVISION ACCORDING TO MAP THEREOF NO. 214 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND STATE AUGUST 2, 1887.

NOTES:

ASSESSOR'S PARCEL NOS. 477-341-33 & 477-440-03
GROSS AREA: 4.93 AC.
NUMBER OF EXISTING PARCELS: 2
NUMBER OF PROPOSED PARCELS: 2
EXISTING ZONING: R-1-5
PROPOSED ZONING: R-1-5
EARTHWORK: 7,500 CU. YD. BALANCED

AREAS:

EXISTING PORTION LOT 1: 0.58 AC.
EXISTING PORTION LOT 2: 4.35 AC.
PROPOSED PARCEL "A": 3.07 AC.
PROPOSED PARCEL "B": 1.86 AC.

K-20

206-1743
PRESSURE REG. REQ'D

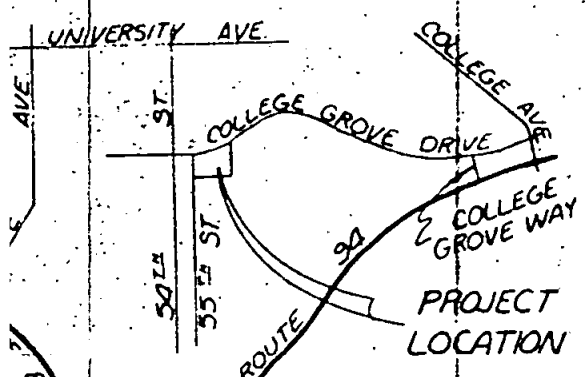
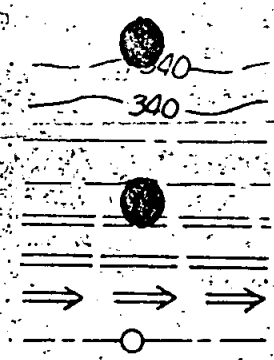
OWNERS' CERTIFICATE:

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

Philip L. Walling
BY: PHILIP L. WALLING, EXECUTIVE DIRECTOR
HOUSING OPPORTUNITIES, INC.
438 CAMINO DEL RIO SOUTH, SUITE 206
SAN DIEGO, CALIF., 92108
(A NON-PROFIT HOUSING DEVELOPMENT CORP.)

LEGEND:

EXISTING CONTOUR
PROPOSED CONTOUR
EXISTING 8" V.C. SEWER
EXISTING 8" A.C. WATER
EXISTING 30" R.C.P. STORM DRAIN
PROPOSED STORM DRAIN
PROPOSED LINED DITCH
PROPOSED 8" V.C. SEWER AND MANHOLE



CINITY MAP
SAN DIEGO, CA

RECEIVED
JUN 5 1980
SUBDIVISIONS

01-076-0 6-30-80

		NASLAND ENGINEERING	
CIVIL ENGINEERING · SURVEYING · LAND PLANNING 4855 RUFFNER STREET, SAN DIEGO, CALIFORNIA 92111 292-7770			
ENGINEER OF WORK <i>William A. Moser</i> WILLIAM A. MOSER		R.C.E. 23128 DATE 2-1-80	
PROJECT ENGR: H.R. FLETCHER DESIGNED BY: C.R. NOLAND DRAWN BY: C.R. NOLAND		DATE: FEBRUARY, 1980 SCALE: AS SHOWN JOB NO: 180-1014	

TENTATIVE

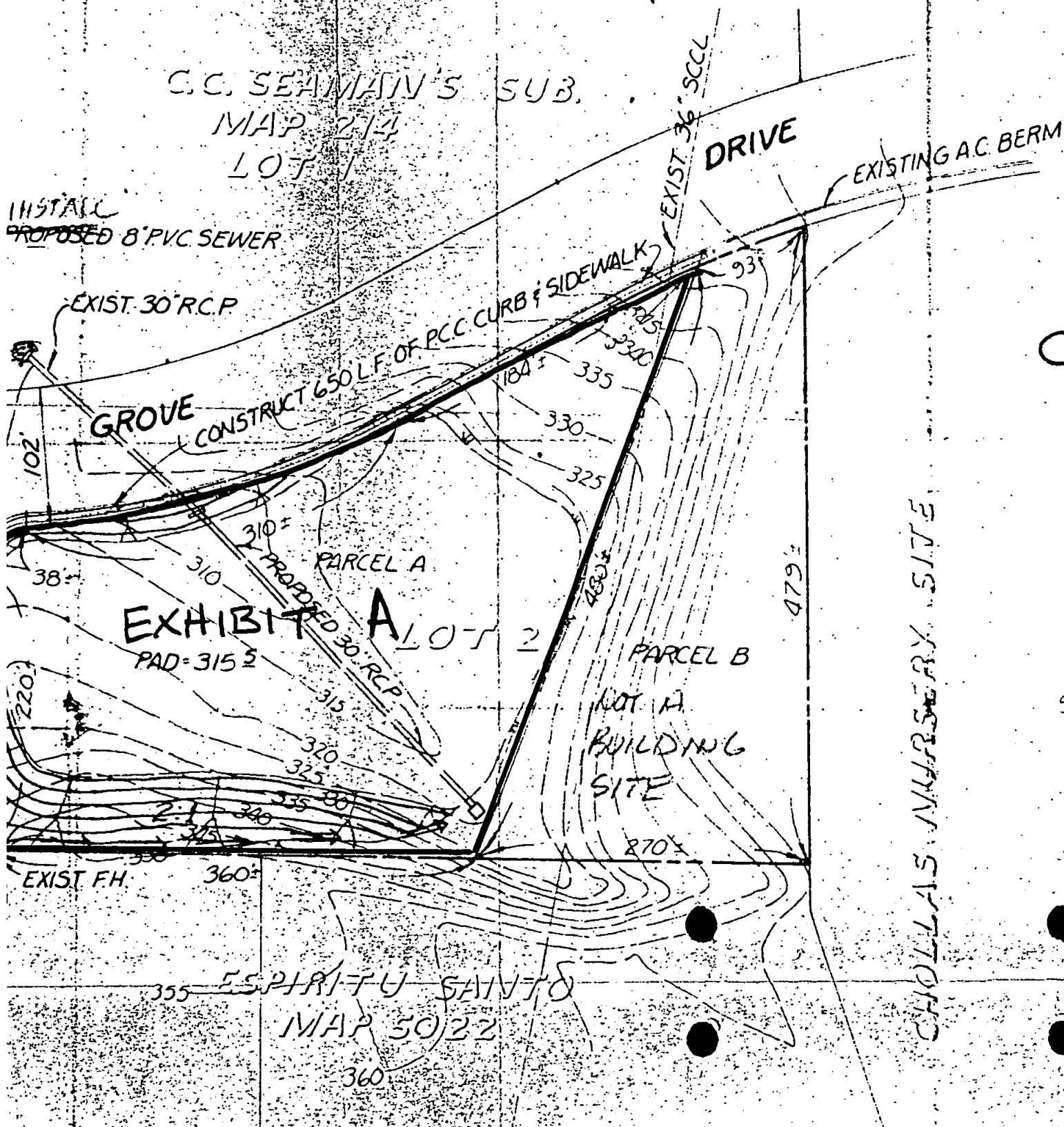
APPROVED
SUBDIVISION

BOARD

DATE 6-30-80

AM NO

CUP 10-608-0

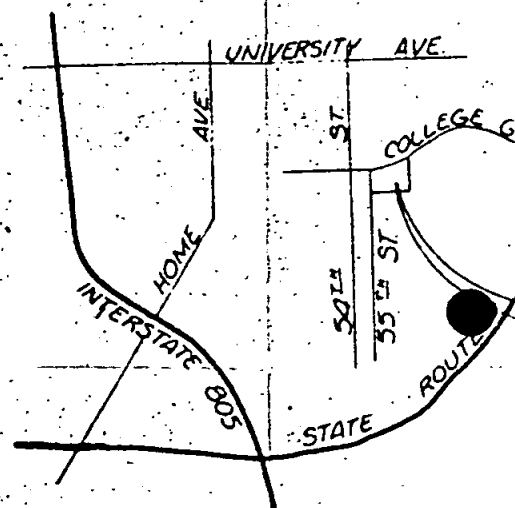


SCALE:



1"=100'

NO SCALE



VICINITY MAP
SAN DIEGO, CA.

CUP 10-608-0

C.C. SEAMAN'S SUB.
MAP 214
LOT 1

FURLOW HEIGHTS
UNIT NO. 3
MAP 2363

COLLEGE

COLLEGE GROVE
CONDOMINIUMS
MAP 9213

OLIVE ST.

BALBOA VISTA
MAP 2142

INSTALL
PROPOSED 8" PVC SEWER

EXIST. 30" R.C.P.

GROVE

CONSTRUCT 650' L.F. OF P.C.C. CURB & SIDEWALK

EXHIBIT A
PAD-3152

PARCEL A

LOT 2

LOT
BUIL
SITE

EXIST. F.H.

360'

ESPIRITU SANTO
MAP 5022

360

SEIFERT

ST.

EXIST. CURB GUTTER AND SIDEWALK
55TH
EXIST. 8" V.C.

APPROVED
SUBDIVISION
BOARD

DATE 6-30-80

T. M. NO. 01-076-0

CUP 10-608-0

EXHIBIT "B"

THIS EXHIBIT "B" IS ATTACHED TO AND MADE A PART OF THAT CERTAIN
LEASE BY AND BETWEEN THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION
AND CHOLLAS GARDENS LIMITED, A CALIFORNIA LIMITED PARTNERSHIP,
DATED _____

The Lessee in accordance with Paragraph 13 hereof, has the
right to remove from the Premises only such movable furniture
and fixtures as described below: (if none, write none).

EMB

EXHIBIT "C"

Recording Requested By:

When Recorded, Return To:

MEMORANDUM OF LEASE

This memorandum of lease is made this _____ day of _____, 1980, by and between the CITY OF SAN DIEGO, a municipal corporation ("City") and CHOLLAS GARDENS LIMITED, a California Limited Partnership ("Lessee") with HOUSING OPPORTUNITIES, INC., a non-profit, public benefit California corporation ("HOI"), as its managing general partner, who agree as follows:

1. Term and Premises. City leases to Lessee, and Lessee leases from City, the real property located in the City of San Diego, San Diego County, California, described in Exhibit "A" attached to this memorandum of lease, for a term of fifty-five (55) years, commencing _____, which lease is dated on the same date as this memorandum of lease ("the lease"), all the terms and conditions of which are incorporated into this memorandum of lease by reference as though fully set forth herein.

2. Lessee's Right to Encumber. Reference is made to paragraph 8 of the lease which provides that Lessee may encumber its

leasehold estate provided that all proceeds derived from such encumbrances are utilized in connection with the development of the leased premises. City will subordinate its interest in the lease to such encumbrances.

3. Priority of Lessee's Interest in Leased Premises.

Reference is made to paragraph 26 of the lease, which provides that City shall have the right to encumber City's fee interest in the leased premises during the term of this lease, so long as the beneficiary of any trust deed or mortgagee of any mortgage encumbering the premises agrees that should they take possession or title of the premises pursuant to any rights contained in the trust deed or mortgage, such beneficiary or mortgagee shall not disturb the peaceful possession of the premises by Lessee. The lease is and shall be prior to any encumbrance recorded after the date of the lease affecting the leased premises. No foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrance, and no steps or procedures taken under the encumbrance, shall affect Lessee's rights under the lease.

4. Provisions Binding. The provisions of the lease to be performed by either party, whether to be performed at the premises or in any other portion of the premises, and whether affirmative or negative in nature, are intended to and shall bind and inure to the benefit of the parties hereto, their heirs, successors, and assigns, whether voluntary or involuntary.

01029

5. Purpose of Memorandum of Lease. This memorandum of lease is prepared for the purpose of recordation, and it in no way modifies the provisions of the lease referred to in paragraph 1.

This exhibit is attached to the lease pursuant to paragraph 40.

THE CITY OF SAN DIEGO

By: Elaine M. Balch

ASSISTANT TO THE CITY MANAGER

CHOLLAS GARDENS LIMITED,
A California Limited Partnership

By: HOUSING OPPORTUNITIES, INC.,
General Partner

By: [Signature]

APPROVED as to form and legality this 11 day of December,
1980.

JOHN W. WITT, City Attorney

By: [Signature]
Deputy

01030

CLERK'S FILE COPY

LEAS
5500 a

RESOLUTION No. R- 252518 (R- 81-381)

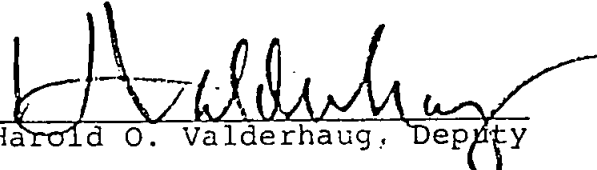
Adopted on SEP 9 1980

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

That the City Manager is hereby authorized and empowered to execute an Option Agreement between the City and CHOLLAS GARDENS LIMITED, a California limited partnership, (with HOUSING OPPORTUNITIES, INC., a non-profit corporation, as its managing general partner), which Option Agreement provides for the lease and development of a parcel of City-owned land located at 55th and College Grove Drive, with a lease term of 55 years, to be utilized solely and exclusively for the construction and operation of a 60 unit low income senior citizens residential rental complex with the City to receive income in the event gross income exceeds operating expenses and a 6% rate of return on the investment of the limited partners.

BE IT FURTHER RESOLVED, that, contingent upon satisfaction of all the terms and conditions of the Option Agreement by Chollas Gardens Limited, the City Manager is hereby authorized and empowered to execute said Lease Agreement, a copy of which Option and Lease Agreement are cumulatively on file in the office of the City Clerk as Document No. RR- 252518.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug, Deputy

HOV:ps:559

8/22/80

Or.Dept. Hsg. Comm.

01031

Passed and adopted by the Council of The City of San Diego
on SEPTEMBER 9, 1980, by the following vote:

YEAS: Mitchell, Lowery, Williams, Gotch, Killea, Mayor Wilson.

NAYS: Schnaubelt.

ABSENT: Cleator, Stirling.

AUTHENTICATED BY:

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

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

(SEAL)

By MAYDELL L. PONTECORVO, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. R- 252648
passed and adopted by the Council of The City of San Diego,
California, on SEP 9 1980.

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

(SEAL)

By Maydell L. Pontecorvo, Deputy.
Maydell L. Pontecorvo