

NEIGHBORHOOD HOUSE OPERATING AGREEMENT

[Neighborhood House Association]

THIS NEIGHBORHOOD HOUSE OPERATING AGREEMENT ("Second Operating Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and NEIGHBORHOOD HOUSE ASSOCIATION, a California nonprofit corporation ("NHA"), to be effective as of **June 1, 1994** (the "Effective Date"), upon execution by the parties and approval by the San Diego City Attorney, as follows:

RECITALS

- A. CITY and NHA were parties to that certain AGREEMENT (the "Initial Operating Agreement") dated December 15, 1970, as amended by that certain FIRST AMENDMENT TO AGREEMENT dated February 1, 1978, for the operation of a "Neighborhood Facility," defined in the Initial Operating Agreement attached hereto as **Exhibit A: Initial Operating Agreement**, and located at 841 South 41st Street, San Diego, California.
- B. Although the Initial Operating Agreement expired on May 31, 1994, CITY and NHA have continued to perform under the terms and conditions of the Initial Operating Agreement since its expiration.
- C. CITY and NHA anticipate entering into a long-term lease of the property and improvements comprising the Neighborhood Facility, and would like to memorialize their past and continuing performance under the terms and conditions of the Initial Operating Agreement since its expiration. This Second Operating Agreement will cover the period of the parties' performance from the Effective Date of this Second Operating Agreement through the effective date of the proposed lease agreement.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. Agreement. This Second Operating Agreement shall incorporate all of the terms and conditions of the Initial Operating Agreement, except for the term of the Initial Operating Agreement.

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2. Term. The term of this Second Operating Agreement shall commence on June 1, 1994, and expire on March 31, 2011, unless earlier terminated by CITY and NHA by mutual agreement.

IN WITNESS WHEREOF, this Second Operating Agreement is executed to be effective as of the Effective Date.

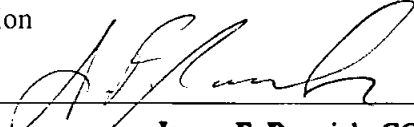
NEIGHBORHOOD HOUSE ASSOCIATION, a
California nonprofit corporation

BY: 

Name: _____

Title: _____

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: 

Name: _____

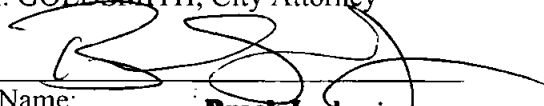
James F. Barwick, CCIM

Title: _____

Director, Real Estate Assets

Approved as to Form and Legality:

JAN I. GOLDSMITH, City Attorney

BY: 

Name: _____

Brock Ladewig

Title: _____

Deputy City Attorney

A G R E E M E N T

This AGREEMENT, consisting of this Part I and Part II entered into as of December 15, 1970 by and between The City of San Diego, herein called "City" and Neighborhood House Association, a nonprofit corporation organized and existing under and pursuant to laws of the State of California, herein called "Organization".

R E C I T A L S

A. City has entered, or will enter, into a Neighborhood Facilities Grant Contract, herein called "Grant Contract," with the United States of America, acting by and through the Secretary of Housing and Urban Development, herein called "Secretary," providing for Federal financial assistance under Title VII of the Housing and Urban Development Act of 1965 for a project, herein called "Project," having as its purpose the provision of a neighborhood facility.

B. In Grant Contract the following understandings have been, or will be, stated:

- (i) Project will be carried out by City and the completed Neighborhood Facility will be operated by Organization; and
- (ii) Use of the completed Neighborhood Facility will be subject to the continuing control of City for a period of at least twenty years after completion of Project.

C. City and Organization desire to set forth herein their mutual rights and obligations in regard to Project and operation of the Neighborhood Facility.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, City and Organization agree as follows:

PART I

1. TERM OF AGREEMENT. Unless sooner terminated, this Agreement shall be effective from December 15, 1970, until twenty (20) years after the completion of Project upon which latter date this Agreement shall terminate and the parties shall be fully released from any further obligations thereunder.

2. THE PROJECT. Project shall consist of all activities and undertakings necessary to provide a neighborhood facility hereinafter referred to as "Neighborhood Facility," as described in that certain application dated March 31, 1970, and further identified as follows: Neighborhood House Community Center, which application is duly filed at the following location: City of San Diego, California, and in any amendments or addenda to that application which are approved by City, Organization and Secretary and duly filed with said application.

3. ASSISTANCE BY CITY. City shall provide the following assistance:

- a. One Hundred and Eighty-one Thousand, Six Hundred and Fifty Dollars (\$181,650) to be used in constructing the Neighborhood Facility and acquiring the site of that facility.

b. Maintenance of landscaping and grounds of Neighborhood Facility site.

c. Exterior and structural maintenance of Neighborhood Facility.

d. Payment of gas, electricity, water and sewer costs in the operation of Facility.

e. *SEE Amendment*

4. SPECIAL CONDITIONS.

a. Organization shall assume administrative and financial responsibility for operation of Neighborhood Facility.

b. The Mountain View Community Center Advisory Board shall be organized to give policy direction for operation of Neighborhood Facility and shall include representation from City, Organization, and residents in the facility service area.

c. Organization shall annually submit a proposed program of activities approved by the Mountain View Community Center Advisory Board to the City Manager for his review and approval to determine if said program is consistent with permitted use of Neighborhood Facility.

d. In the event that Organization is unable to meet its responsibilities for operation of Neighborhood Facility under this Agreement, City shall assume this responsibility or shall contract with another nonprofit corporation to assume this responsibility for the remaining term of this Agreement.

PART II

OPERATION OF NEIGHBORHOOD FACILITY

1. USE AND CONTROL.

a. General. Neighborhood Facility shall be used to carry out a program of health, recreational, social, or similar community services in accordance with this Agreement and the application, including amendments or addenda thereto, referred to in Section 2 of Part I hereof. No change in the use of Neighborhood Facility to a use other than that contemplated under this Agreement or said application will be made by Organization, without the prior consent of City. Such consent, if given, will be based upon findings by City that the proposed conversion is in accordance with the current program of health, recreational, social or similar community services in the area and is consistent with comprehensive planning for the development of the community. Organization will not enter into any lease or agreement transferring to any other entity the control or supervision of Neighborhood Facility without the prior concurrence of City.

b. Fees and Charges. No fees or charges will be made for the services and benefits of Neighborhood Facility without the prior approval of City.

c. Nondiscrimination. Organization will carry out Project and operate Neighborhood Facility in compliance with all requirements imposed by or pursuant to regulations of Secretary effectuating Title VI of the Civil Rights Act of 1964 (78 Sts. 241, 252). Organization will not, on the basis of race, creed, color or national origin, deny to any person the use, benefits or services provided by Neighborhood

Facility, nor provide any use, services or benefits to a person which are different or are provided in a different manner from those provided to others under the same program or activity. Organization will not adopt rules, regulations or practices for the operation of Neighborhood Facility which are discriminatory in nature. Organization further agrees that it will not enter into any lease or other agreement respecting Neighborhood Facility without incorporating into such lease or agreement provisions which will insure that the use and occupancy, and the provision of neighborhood services and other benefits, will be available without regard to race, creed, color or national origin. The provisions of this subsection have no termination date and shall be effective so long as the premises are used as a neighborhood facility.

d. Encumbrances, Taxes and Assessments. Organization will not voluntarily create, cause or allow to be created any debt, lien, mortgage, charge or encumbrance against Neighborhood Facility which in any way will impair or otherwise adversely affect the preservation of said Facility for the use or uses set out in this Section. Organization will from time to time duly pay and discharge or cause to be paid and discharged when the same become due, all taxes, assessments and other governmental charges which are lawfully imposed upon Neighborhood Facility and which if unpaid may by law become a lien or charge upon said Facility and thereby impair or otherwise adversely affect the holding of said Facility for the use or uses set out in this Section.

e. Maintenance and Operation. Organization will at all times keep Neighborhood Facility in good and safe condition and repair; and in the occupancy, maintenance and operation thereof will comply with

all laws, ordinances, codes and regulations applicable thereto. Organization shall not permit, commit or suffer waste or impairment of Neighborhood Facility, its site or any part thereof.

2. SUBMISSION OF DOCUMENTS.

Organization will submit to the City Manager such data, reports and copies of records and documents relating to the carrying out of Project and the operation of Neighborhood Facility as City may require. Such data, reports and copies of records and documents shall upon submission become the property of City.

3. SAFEGUARDS AGAINST RISK.

During the term of this Agreement, Organization shall take adequate measures and secure such insurance as is necessary in accordance with requirements of City to safeguard against the following risks:

- a. Damage to or destruction of Neighborhood Facility.
- b. Theft or loss of funds or equipment provided or necessary for the carrying out of Project and the operation of Neighborhood Facility.
- c. Liability for injuries or death to employees or Organization, contractors and subcontractors and to any other persons.
- d. Damage due to failure of contractors or subcontractors to complete their performance or to pay laborers and materialmen.

4. DEFAULT.

- a. Definition of Default. If Organization violates the provisions of this Agreement for any reason other than

the occurrence of circumstances over which it can exercise no effective control; and such violation shall not be cured or remedied within thirty days after notice thereof by City, said violation will constitute a default under this Agreement.

b. Rights and Remedies. Upon the occurrence of a default, then so long as such default continues, City will, to the full extent permitted by law, have each of the following rights and remedies.

- (1) The right to a writ of mandamus or an injunction or other similar relief against Organization, the members of its governing body, its officers, agents or representatives.
- (2) The right to maintain any and all actions at law or suits in equity or other proper proceedings to enforce the curing or remedying of such default.
- (3) The right to have a receiver appointed by a court of competent jurisdiction to take possession of Organization's interest in any real or personal property constituting part of Project of Neighborhood Facility, with power in such receiver, so long as shall be necessary in order to cure or remedy such default, or as the court may deem necessary or proper to prevent the recurrence of such default:
 - (a) To administer, carry on, manage, operate, maintain, complete and otherwise deal with Organization's interest in Project and Neighborhood

Facility in accordance with applicable law and this Agreement.

(b) To collect, receive, safeguard, expend and otherwise deal with, handle or apply, in accordance with applicable law and this Agreement, all funds available and becoming available to Organization for or in connection with the operation and maintenance of Project and Neighborhood Facility.

(c) To do and perform any and all such other acts and things as the court may deem necessary or proper.

(4) The right to withhold payments under Section 3 of Part I hereof.

c. Subsequent Defaults. City shall have the same rights and remedies provided for in the preceding subsection upon the occurrence of each default.

5. TERMINATION.

a. Right of City to Terminate Agreement. In the event Organization violates any provision of this Agreement for any reason other than the occurrence of circumstances over which it can exercise no effective control and such violation is not cured or remedied within sixty days after notice thereof by City, in addition to any other remedy provided for in this Agreement, City shall have the right to terminate this Agreement by written notice duly served upon Organization.

b. Rights on Termination. Upon termination of this Agreement pursuant to the preceding subsection, City's rights include:

- (1) Termination of all financial and other assistance herein provided for to Project and Neighborhood Facility.
- (2) In the event any real property owned or formerly owned by City is being used by Organization for Project and Neighborhood Facility, to reenter and repossess such real property, together with any buildings, appurtenances, improvements and fixtures affixed thereto, without process of law. In such event, Organization agrees to surrender and deliver such real property, buildings, appurtenances, improvements and fixtures affixed thereto, without process of law. In such event, Organization agrees to surrender and deliver such real property, buildings, appurtenances, improvements and fixtures peaceably to City immediately. It is understood and agreed that upon such reentry and repossession, Organization and City shall take immediate action to arrange for reconveyance of the property so repossessed to City of for conveyance of the said property to a third party.
- (3) Institution of actions at law, suits in equity or other proceedings as may be appropriate to enforce

any of its rights under this subsection and as may be otherwise appropriate.

- (4) Execution and recording on file among the public land records of the jurisdiction in which this Agreement is executed, a written declaration of the termination of this Agreement, of the reentry and repossession of any real property involved by City and of the impending reconveyance or conveyance of such real property on account of such termination.

IN WITNESS WHEREOF, this agreement is executed by The City of San Diego, acting by and through its City Manager, pursuant to Resolution No. 201405, authorizing such execution, and by Organization.

This agreement is subject to the provisions of the Economic Opportunity Act of 1964 and Title VII of the Housing and Urban Development Act of 1965.

Dated this 15th day of December, 1970.

SEAL

THE CITY OF SAN DIEGO

By

Walter J. Hubert
City Manager

NEIGHBORHOOD HOUSE ASSOCIATION

SEAL

By

Barry L. Hubert
Executive Director

I HEREBY approve the form and legality of the foregoing Agreement this 16th day of December, 1970.

JOHN W. WITT, City Attorney

By

Larry L. Marshall
Larry L. Marshall, Deputy

DUPLICATE

DOCUMENT NO. 762630

FILED FEB 10 1978

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT by and between The City of San Diego, a municipal corporation, herein called "City," and NEIGHBORHOOD HOUSE ASSOCIATION, a nonprofit corporation organized and existing under and pursuant to the laws of the State of California, herein called "Organization," is designed to realign the mutual rights and obligations in regard to the operation of a Neighborhood Facility, herein called "Neighborhood Facility."

R E C I T A L S

A. City has entered into a Neighborhood Facilities Grant Contract with the United States of America, acting by and through the Secretary of Housing and Urban Development, providing for Federal financial assistance under Title VII of the Housing and Urban Development Act of 1965 for a project having as its purpose the provision of a Neighborhood Facility.

B. City and Organization entered into an agreement dated December 15, 1970, to provide for the operation of a Neighborhood Facility by Organization for a period of at least twenty (20) years after completion of the facility. A copy of said agreement is on file in the office of the City Clerk as Document No. 734303.

C. City and Organization desire to realign the mutual rights and obligations in regard to the operation of the Neighborhood Facility and both parties are ready, willing and able to perform their respective obligations as set forth herein.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the parties as herein expressed, City and Organization agree as follows:

1. That Part I, Section 3, of said agreement is hereby amended by adding the following sentence to be referred to as Part I, Section 3(e):

Maintenance and repair of all plumbing, electrical, heating, and air handling systems (including air conditioning where applicable) to insure good working condition of said systems, except replacement of burned-out light bulbs and routine maintenance of plumbing fixtures for such items as leaky faucets and stopped drains.

2. That Part I, Section 4(b), of said agreement is hereby amended to read as follows:

(b) The Neighborhood House Association Board of Directors shall act as the Mountain View Community Center Advisory Board and shall provide policy direction for the operation of the Neighborhood Facility.

3. That the second sentence in Part II, Section 1(c), of said agreement is hereby amended to read as follows:

Organization will not, on the basis of race, sex, creed, age, color, national origin or handicapped status, deny to any person the use, benefits or services provided by Neighborhood Facility, nor provide any use, services or benefits to a person which are different or are provided in a different

manner from those provided to others under the same program or activity.

4. That the fourth sentence of Part II, Section 1(c) of said agreement is hereby amended to read as follows:

Organization further agrees that it will not enter into any lease or other agreement respecting Neighborhood Facility without incorporating into such lease or agreement provisions which will insure that the use and occupancy, and the provision of neighborhood services and other benefits, will be available without regard to race, creed, age, color, national origin or handicapped status.

5. That this amendment shall affect only those paragraphs referred to above and all other terms and conditions of the above-mentioned agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to Agreement is executed by The City of San Diego, acting by and through its City Manager, pursuant to Resolution No. 220215, authorizing such execution, and by Organization.

Dated this _____ day of FEB 1 1978.

I HEREBY APPROVE the form and legality of the foregoing agreement this 8 day of Feb, 1978.

JOHN W. WITT, City Attorney

By John K. Riess
John K. Riess, Deputy

THE CITY OF SAN DIEGO

By Assistant to the City Manager

NEIGHBORHOOD HOUSE ASSOCIATION

By Howard H. Carey