



Real Estate Assets Department
SDC003

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



ORIGINAL

LEASE AGREEMENT

between

CITY OF SAN DIEGO

and

COLONIA BARRIOS SENIORS, INC.

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

I N D E X

LEASE AGREEMENT

<u>PARAGRAPH</u>		<u>PAGE</u>
1.	<u>DEMISED PREMISES</u>	2
	(a) Permitted Use	3
	(b) Obligation to Diligently Use	3
	(c) Related Council Actions	3
2.	<u>TERM OF AGREEMENT</u>	3
	(a) Commencement and Termination	3
	(b) Surrender of Premises	3
3.	<u>CONSIDERATION</u>	4
	(a) Minimum Rent	4
	(b) Additional Rent	5
4.	<u>RENTAL CHARGED TO TENANTS</u>	6
5.	<u>FINANCIAL RECORDS MAINTENANCE</u>	7
	(a) Current Revenue and Expenses	7
	(b) Projected Revenues and Expenses	8
	(c) Separate Records, Audit by City	9
	(d) Limitation	10
6.	<u>QUIET POSSESSION</u>	10
7.	<u>RIGHT TO ENCUMBER</u>	11
8.	<u>REQUEST FOR NOTICE OF LOAN DEFAULT</u>	12
9.	<u>RIGHT TO SELL, ASSIGN, SUBLET, REFINANCE OR OTHERWISE TRANSFER THE LEASE</u>	12
10.	<u>RIGHT OF FIRST REFUSAL</u>	13
11.	<u>DISTRIBUTION OF PROCEEDS</u>	14
12.	<u>CONSTRUCTION, ALTERATIONS AND ADDITIONS</u>	14
13.	<u>OWNERSHIP OF IMPROVEMENTS</u>	17

<u>PARAGRAPH</u>		<u>PAGE</u>
14.	<u>WASTE, CONTINUED OPERATION</u>	18
15.	<u>TIME FOR COMPLETION</u>	18
16.	<u>TAXES, ASSESSMENTS AND PUBLIC UTILITIES</u>	19
17.	<u>INDEMNITY</u>	20
18.	<u>INSURANCE COVERAGE</u>	20
19.	<u>DAMAGE OR DESTRUCTION</u>	23
20.	<u>MAJOR DAMAGE</u>	25
21.	<u>MAINTENANCE</u>	26
22.	<u>ENTRY AND INSPECTION</u>	27
23.	<u>EMINENT DOMAIN</u>	28
24.	<u>REMEDIES OF CITY</u>	30
25.	<u>RESERVATION OF CITY RIGHTS IN THE PREMISES</u>	38
26.	<u>HUD FINANCING PERIOD</u>	38
27.	<u>TENANTS OF THE RENTAL UNITS</u>	38
28.	<u>COOPERATION IN EQUAL OPPORTUNITY COMPLAINTS REVIEWS</u>	39
29.	<u>NON-DISCRIMINATION</u>	39
30.	<u>MANAGEMENT OF THE PROJECT</u>	39
31.	<u>AFFIRMATIVE ACTION</u>	39
32.	<u>COMPLIANCE WITH LAW</u>	40
33.	<u>ADMINISTRATION, NOTICES, APPROVAL AND CONSENT</u>	40
34.	<u>ATTORNEY'S FEES</u>	41
35.	<u>NOTICES</u>	41
36.	<u>HOLDING OVER</u>	42

PARAGRAPH

37.	<u>MERGER</u>	<u>PAGE</u>
38.	<u>MEMORANDUM OF LEASE</u>	42
39.	<u>WAIVER OF BREACH</u>	42
40.	<u>BROKERS</u>	42
41.	<u>SUCCESSORS</u>	43
42.	<u>INTERPRETATION</u>	43
43.	<u>TIME OF ESSENCE</u>	43
		44

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is executed as of the 30th day of December, 1980, by and between the CITY OF SAN DIEGO, a municipal corporation ("City") and COLONIA BARRIOS SENIORS, INC., a California nonprofit, public benefit corporation ("Lessee").

RECITALS

- A. City owns a certain parcel of property situated in the City of San Diego, County of San Diego, State of California, which is more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (the "Property"), which City has made available to Lessee for the construction and operation of multiple residential housing units containing one hundred (100) living units to be rented to low-income senior citizens (the "Rental Units") and two non-revenue living units to be occupied by the manager of the Rental Units (the Rental Units, the non-revenue living unit, and all other improvements now or hereafter erected or situated on the Property collectively referred to herein as the "Project"; and the Property and the Project collectively referred to herein as the "Premises") during the term of the Lease. City has entered into an exclusive negotiation agreement with Lessee as set forth in Document No. 766508 filed June 13, 1979, in the Office of the City Clerk, City of San Diego, California.

- B. Lessee, as consideration for the Lease, has agreed to construct and operate the Project and has agreed to make all of the Rental Units available to lowincome senior citizens and ^{DISABLE}handicapped during the entire term of the Lease to be rented at the lowest possible rental rates but in no event in excess of 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, New Construction Housing Assistance Payments Program, as amended ("Section 8"); or, if during the term of this Lease Section 8 is discontinued or in the opinion of City it is substantially altered, such maximum rents shall be established pursuant to such similar local, state, or federally sponsored rent subsidy program which is in-effect at such time and is agreed to in writing by City (the "alternative program").
- C. Lessee has obtained a construction loan and permanent financing from HUD ("HUD Financing") a copy of which shall be provided to City by Lessee prior to or concurrently with the execution of the Lease by Lessee.
- D. The period during which this Lease is subject to the HUD Financing shall be hereinafter referred to as the "HUD Financing Period."

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 Property.

(a) Permitted Use

The Property is leased to Lessee only for the purpose of constructing and operating 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 low-income senior citizens, and handicapped, 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.

(b) Obligation to Diligently Use Lessee covenants to use the Premises only 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 the construction 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 (50) years commencing on the date of execution of the deed of trust securing the HUD Financing. Upon determination of said date, City shall promptly execute a document setting forth said date of commencement, and attach it hereto as Exhibit "B".

(b) Surrender of Premises

At the expiration or earlier termination of the Lease, Lessee

Shall execute, acknowledge and deliver to City, a valid and recordable quitclaim deed designating City as transferee covering the Premises, which shall be delivered to City free and clear of all liens and encumbrances other than those permitted pursuant to Paragraph 7 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

Commencing with the earlier of the date of initial occupancy of the Rental Units or eighteen (18) months from the date of the initial endorsement relating to the HUD Financing, the minimum annual rent for the remaining full term of this Lease shall be the greater of the following:

- (i) THIRTY-THREE THOUSAND FIVE HUNDRED FORTY-EIGHT DOLLARS (\$33,548) payable in equal monthly installments of TWO THOUSAND SEVEN HUNDRED NINETY-FIVE DOLLARS AND SIXTY-SEVEN CENTS (\$2,795.67) on or before the first day of each calendar month during such remaining term of this Lease; or
- (ii) That amount determined by multiplying 5.44% (which is the ratio of the rent set forth in subparagraph (i) to the projected gross collections as that term is defined in the HUD regulations, from the Premises) times the actual gross collections from the Premises; or
- (iii) That amount determined by multiplying 5.73% (which is the ratio of the rent set forth in subparagraph (i) to the projected effective gross income, as that term is defined in the HUD regulations, from the Premises) times the actual effective gross income from the Premises.

Lessee shall pay to City the amount set forth in subparagraph (i) above and, in the event records from the operation of the Premises disclose that an additional amount is due and owing hereunder, said additional amount shall be paid to City within sixty (60) days of the close of the relevant lease year.

(b) Additional Rent

Except during the HUD Financing Period, Lessee shall pay to City as additional rent hereunder, 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:

- (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) All payments required to be made pursuant to the terms and conditions of any deed of trust, mortgage or other security type interest encumbering the Property, which has been first approved in writing by City.
- (iii) 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 Property 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 which shall be the responsibility of Lessee. 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.

- (iv) 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

- (a) 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 of the Rental Units without compromising the living conditions afforded by the Rental Units. In no event shall the maximum rental which Lessee may charge as rental for each Rental Unit exceed the maximum published rate allowed under Section 8 or, if applicable, the alternative program,

reduced by the applicable allowance for utilities paid directly by tenants. Rent increases shall be allowed only as authorized by Section 8 or said alternative program and 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.

- (b) Prior to the end of the first five-year period of this Lease and every five-year period thereafter, City shall make an inspection of the Project. If the Project is found to be in a condition satisfactory to City, considering normal usage, City shall continue to allow the maximum allowable rent as set forth in Section 8 or said alternative program, but otherwise City retains the right to reduce the maximum allowable rental.

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 so as to allow City to determine the nature, source and amount of income and expenses related to the operation of the Project. 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 of Lessee's fiscal years, Lessee shall provide to City an audit of its financial records and accounts relating to the Project for such fiscal year prepared in accordance with generally ac-

cepted accounting principles by a Certified Public Accountant. City shall have sixty (60) days after receipt of such statement within which to object to any item of income or 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 income or expense shown on such statement, if the parties cannot resolve the matter, the dispute shall promptly 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 income or 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 of Lessee's fiscal years, Lessee shall submit to City for its approval, an annual budget for Lessee's upcoming fiscal year, which shall include but not be limited to projected operating expenses and revenues relating to the Project. The budget 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 dis-

approve 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 promptly 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 relating to the operation of the Project shall be maintained by Lessee separate from any other accounts and shall be made available to City at one location designated by Lessee in writing 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 any discrepancy 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. In the event City and Lessee are unable to agree on such independent third party, each shall designate its choice and the two so designated shall agree on an independent third party to audit said records and the latter shall prevail. The cost of said third party shall be borne equally by Lessee and City. Any additional sums due City under this Lease 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 by more than 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, loss of interest, and other costs.

(d) Limitation

Notwithstanding the foregoing, the provisions of this paragraph 5 shall not apply during the HUD Financing Period provided that Lessee complies with the applicable record keeping requirements promulgated by HUD.

6. QUIET POSSESSION

Provided that Lessee is not in default under its obligation to pay the rent and perform the obligations, covenants and conditions of this Lease, 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.

7. RIGHT TO ENCUMBER

- (a) City does hereby consent and agree that Lessee may encumber all or any portion of Lessee's interest under this Lease and the leasehold estate hereby created, for a period not to extend beyond the term of this Lease by deed of trust, mortgage, or other security type instrument issued in connection with the HUD Financing provided, however, that no encumbrance incurred by Lessee shall, and Lessee shall not have power to incur any encumbrance that will constitute in any way a lien or encumbrance on the fee of the Property, and provided, further, 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 in this Lease to such encumbrance.
- (b) In the event City shall in the future consent to any encumbrance other than an encumbrance issued in connection with the HUD Financing, then, in addition to the foregoing limitations, the holders thereof shall first agree in writing delivered to City 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 shall, as to any encumbrance not related to the HUD Financing, have the first right to cure said default or to purchase said

deed of trust mortgage or other security type instrument. If City refuses to cure or purchase, City shall accept the mortgagee or beneficiary thereof, if reputable, qualified and financially responsible in the opinion of City (such as a state or federal regulated financial institution or subsidiary thereof) as Lessee under this Lease provided that such mortgagee or beneficiary first agrees in writing delivered to City to assume all the duties and obligations imposed on Lessee under this Lease. In such event, 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 reputable, qualified and financially responsible in the opinion of City, provided that the proposed nominee first agrees in writing delivered to City to assume all of the duties and obligations imposed on Lessee under this Lease.

8. REQUEST FOR NOTICE OF LOAN DEFAULT

Immediately after the recording of any deed of trust, mortgage or other security type instrument executed by Lessee pursuant to Paragraph 7 of this Lease, Lessee shall at Lessee's own cost and expense record in the office of the County Recorder of San Diego County, California, a written request executed and acknowledged by City for a copy of any notice of default under such deed of trust, mortgage or other security type instrument to be mailed to City at the address specified in the request by City.

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

Lessee shall not either voluntarily or by operation of law, sell, assign, or otherwise transfer all or any portion of this Lease or

sublet any part of its interest hereunder or refinance any part of its interest hereunder or in the Premises (collectively "transfer" in this Paragraph) without the prior written consent of City, which, subject to the terms of Paragraph 10 hereof, shall not be unreasonably withheld. Consent to any transfer shall not constitute consent to any other transfer. Lessee shall not by reason of any consent be relieved of its responsibilities, liabilities or obligations hereunder absent an express written release by City. In addition to the foregoing, consent to any transfer shall be conditioned upon the transferee first agreeing in writing to assume the rights and obligations thereby transferred and to keep and perform all of the covenants, conditions and provisions of this Lease. Notwithstanding any of the above provisions, Lessee may rent any specific Rental 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

In addition to the restrictions on transfer set forth in this Lease, Lessee shall notify City in writing of its intent to sell, assign, sublet or otherwise transfer 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 then amortized balance of any mortgage, deed of trust or other security type instrument, encumbering this Lease or Lessee's interest in the Premises pursuant to the terms of Paragraph 7 hereof and the assumption by City of such Lessee obligations and rights under then existing contracts and agreements relating to Lessee's operations of the Project which have had the prior written approval of City. Copies of said contracts and agreements, and

all correspondence and other documents relating thereto shall be promptly delivered to City upon request. Notwithstanding the foregoing, City's rights under this paragraph during the HUD Financing Period shall be subordinate and subject to any and all rights of, and restrictions promulgated by, HUD. In this regard, City acknowledges that regulations promulgated by HUD prohibit a public entity from being the lessee under a lease which is subject to encumbrances relating to financing issued pursuant to HUD's Section 202 Program. Hence, during the HUD Financing Period, the exercise of City's right of first refusal as described herein shall be limited to City presenting an acceptable nominee to HUD to assume or otherwise acquire the interest in this Lease which is the subject of such right of first refusal and it shall be in HUD's sole discretion to accept or reject such nominee.

11. DISTRIBUTION OF PROCEEDS

In the event of sale, refinance, assignment, sublease or other transfer of this Lease or Lessee's interest in the Premises, any funds derived therefrom shall be allocated as follows:

- (a) Payment of any existing mortgage, deed of trust or other security type instrument encumbering this Lease or Lessee's interest in the Premises pursuant to the terms of Paragraph 7 hereof.
- (b) Any remaining amount to accrue to the City.

12. CONSTRUCTION, ALTERATIONS AND ADDITIONS

Lessee shall not make, or suffer to be made, any alterations, improvements or additions to the Premises without the prior written consent of City and any improvements or additions to, or alterations of, the Premises, excepting such movable furniture and fix-

tures designated by Lessee in Exhibit "C" attached hereto and made a part hereof, shall become at once a part of the realty. Within sixty (60) days of 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 which shall specify with particularity the size, location and nature of such improvements. City shall have thirty (30) days after receipt of such plans and specifications to accept or reject in writing in whole

or in part such plans and specifications and failure of City to object in writing within such period shall constitute approval by City.

City shall have the right at any time thereafter to post and maintain on the Premises such notices of nonresponsibility 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.

No alteration, improvement or addition with respect to the Premises shall be undertaken until Lessee shall have procured and paid for, so far as the same may be required, all permits and authorizations of all municipal departments and governmental agencies having jurisdiction. City shall join in the application for such permits or authorizations whenever such action is necessary, but without any liability or expense to City.

Any alteration, improvement or addition shall be made promptly and in a good and workmanlike manner and in compliance with all applicable permits and authorizations and building and zoning laws and with all other laws, ordinances, orders, rules, regulations and requirements of all Federal, State and municipal governments, departments, commissions, boards and officers, or any other body

hereafter exercising functions similar to those of any of the foregoing.

Prior to the commencement of work, Lessee shall supply City with evidence that workers' compensation, public liability and such other insurance as City may reasonably request, in such amounts and limits as City may reasonably designate, have been obtained and shall be maintained by Lessee at Lessee's sole cost and expense while any of the work is in process. All such insurance shall be with insurers reasonably satisfactory to City, and all policies or certificates therefor shall show City as an additional insured.

If the estimated cost of any such alterations, improvements or additions shall be in excess of \$3,000.00, Lessee, before commencement of work, at Lessee's sole cost and expense, shall furnish to City a surety company performance bond, issued by a surety company satisfactory to City, in an amount at least equal to the estimated cost of such alteration, improvement or addition and guaranteeing the completion thereof within the periods set forth in Paragraph 15, free and clear of all liens, encumbrances, chattel mortgages, conditional bills of sale, and other charges, and in accordance with the plans and specifications approved by City, or, in lieu of such performance bond, such other security as is reasonably satisfactory to City.

Lessee hereby agrees to indemnify, save free and harmless, and defend in any action, City and its authorized agents, officers and employees against any 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 after completion of the Project.

13. OWNERSHIP OF IMPROVEMENTS

- (a) All improvements, except movable furniture and fixtures as are hereinafter described on Exhibit "C" 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 earlier termination of the Lease.
- (b) Lessee shall have the right to remove from the Premises only those items described on Exhibit "C" 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 or cause material damage to 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 Premises and upon Lessee leaving the Premises in good order, repair and condition, reasonable wear and tear excepted.
- (c) In the event Lessee does not 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. 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 the Premises resulting from such removal,

sale or destruction, as reduced by any proceeds realized by City from any sale thereof. 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 "C" may be changed from time to time upon approval of City, without further resolution by the City Council.

- (d) Notwithstanding the foregoing, City hereby acknowledges that City's rights in any personal property placed or installed by lessee in or on the Premises shall be subordinate to the rights of HUD pursuant to any security interest in such property arising out of or relating to the HUD Financing.

14. WASTE, CONTINUED OPERATION

Lessee shall not use or permit the Premises to be used or occupied, nor do or permit anything to be done in or on the Premises, in whole or in part, in a manner which would or may in any way constitute waste or may constitute a public or private nuisance, or cause injury to any person, property or the improvements located on the Premises, and Lessee shall not violate or permit to be violated or make void or voidable any insurance policies then in force or required to be kept in force with respect to the Premises.

15. TIME FOR COMPLETION

- (a) Lessee shall obtain a building permit for construction of the Project within one hundred eighty (180) days following the date of execution hereof by City. Lessee shall cause construction of the Project to be commenced no later than ninety (90) days after Lessee receives such building permit, 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 obtain a building permit or 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; provided, however, that Lessee shall be excused for any delays caused by the act of City, the act of any agent of City, 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.

- (b) HUD shall have the right to approve any extensions of the deadlines set forth in subparagraph 15a, provided, however, that notwithstanding any such extensions City shall retain its right to terminate this Lease as provided in subparagraph 15a, in the event the construction loan commitment for the HUD Financing is not issued within one (1) year from the date of this Lease.

16. TAXES, ASSESSMENTS AND PUBLIC UTILITIES

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

Lessee recognizes and acknowledges 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 shall pay same before delinquency.

Lessee shall pay before delinquency all taxes, assessments, license fees, special taxes and 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, arising out of or in any way connected with the operation, use or occupancy in, about or relating to 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, and also to protect against loss from liability for damages to any property, resulting directly or indirectly from any act or activities in, about or relating to the Premises. 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 Three Hundred Thousand Dollars (\$300,000.00) for damage to property. Lessee agrees to submit a policy of said insurance to the City on or before the commencement 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 at Lessee's

expense 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 directly or indirectly from any act or activities in, about or relating to the Premises.

During the HUD Financing Period, Lessee agrees to comply with the terms of paragraph 4 of the Lease Addendum attached hereto. Subsequent to the HUD Financing Period, Lessee agrees to procure and maintain at its sole expense during the entire remaining term of this Lease, a policy of fire, extended coverage, vandalism and malicious mischief 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 full 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 promptly 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 commencement date of this Lease. Said policy shall contain a condition that it is not to be terminated or cancelled without at least thirty (30) days prior written notice to City by the insurance company.

Lessee agrees to increase the limits of liability at its sole expense when, in the opinion of City, the value of the improvements covered has increased subject to the availability of such insurance at the increased limits.

19. DAMAGE OR DESTRUCTION

- (a) In the case of any casualty to the Premises, this Lease shall not terminate but shall remain in full force and effect and Lessee and City hereby waive the provisions of California Civil Code Section 1933(4) or any similar rights now or hereafter granted by law. Lessee agrees to give notice to City of any casualty resulting in damage or destruction exceeding Five Hundred Dollars (\$500.00) in the aggregate that may occur on the Premises within ten (10) days of such fire or damage. Regardless of the cause or amount of any damage or destruction, and whether or not the insurance proceeds, if any shall be sufficient for the purpose, Lessee agrees to promptly make or cause to be made full repair of said damage, at Lessee's sole 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 at Lessee's sole expense 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 (30) days of the debilitating event and the required repairs, restoration or replacement shall be promptly completed within a reasonable time thereafter. All work required by this Paragraph shall be performed in accordance with Paragraph 12 hereof.

- (b) All insurance proceeds received or receivable as the result of any such damage or destruction shall be paid to an insurance trustee selected by City and Lessee, who shall disburse such proceeds in accordance with the terms of this Paragraph 19. In the event the amount of such proceeds is not sufficient to pay all costs related to repair and replacement of the improvements, Lessee shall deposit such additional funds as may be necessary to pay the total cost of such repair and restoration work, and the fee of the insurance trustee. The insurance trustee shall pay or reimburse Lessee for the cost of the restoration, repairs and replacement work, which shall be paid out from time to time as the work

progresses, upon the written request of Lessee, together with such additional certificates and documents, including architect's certificates, lien waivers, statements of contractors or subcontractors, materialmen and engineers, as City may reasonably request. In the event that the estimated cost to complete such work at any time exceeds the available proceeds held by the insurance trustee, Lessee shall deposit such additional sums as are necessary to insure that the total costs will be paid.

Upon receipt by City and the insurance trustee of evidence that the total work of restoration, repair and replacement has been completed, paid for in full, that there are no liens of any character against the Premises arising out of or in any way related to such work, and that all potential liens have been waived, any balance held by the insurance trustee shall be paid to City.

20. MAJOR DAMAGE

Notwithstanding anything contained in Paragraph 19 of this Lease to the contrary, if during the term hereof the Premises are destroyed or damaged and if such damage is "substantial" as that term is hereinafter defined, and, if such damage was either caused by a casualty not required to be insured against under Paragraph 18 or if said damage occurs during the last three (3) years of this Lease, then City may at its option 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, and insurance proceeds re-

ceived or receivable, if any, shall be allocated first to the payment of any existing mortgage, deed of trust or other security type instrument encumbering this Lease or Lessee's interest in the Premises pursuant to the terms of Paragraph 7 hereof and any remaining amount shall be paid to City. 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 twenty percent (20%) 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 improvements shall be made by the mutual agreement of City and Lessee but, if the parties cannot resolve the matter, the dispute shall promptly 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.

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 maintain and keep the Premises in good order and condition and make all repairs and replacements necessary to maintain and preserve the Premises in a good, clean, safe and sanitary condition satisfactory to City and in compliance with all applicable

laws. All repairs made by Lessee shall be equal in quality and class to the original work. Lessee shall keep the Premises clean and clear of refuse and obstructions and shall promptly dispose of all garbage, trash and rubbish in a manner satisfactory to City.

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 or any other rights similar to those granted in such Sections now or hereafter existing.

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 good, clean, safe and sanitary condition, City shall have the right, after ten (10) days' written notice to Lessee, to have any necessary maintenance work done for and at the expense of Lessee and Lessee hereby agrees to pay promptly any and all costs incurred by City in having such necessary maintenance work done in order to keep the Premises in a good, clean, safe and sanitary condition. Further, if at any time City determines that the Premises are not

in a good, clean, safe 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 good, clean, safe 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 Lessee's 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, any award of compensation shall be paid to City, which shall apply such portion of its award that in the opinion of City is allocable to the interests of any beneficiary or mortgagee under any trust deed, mortgage or any other security type instrument encumbering the Premises pursuant to Paragraph 7 in the portion of the Premises condemned, and the only portion of any award of compensation which shall be paid to Lessee shall be that portion attributable to 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 interest of City in said improvements 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 award or 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 said authority the 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 Paragraph.
- (f) Notwithstanding anything contained in this Paragraph 23 to contrary, during the HUD Financing Period references in subparagraphs (a) and (b) hereof to "the opinion of City" shall be construed as "the opinion of HUD"; and subparagraphs (d) and (e) shall not apply during the HUD Financing Period.

24. REMEDIES OF CITY

- (a) In the event that:

- (i) Lessee fails to pay the rental reserved hereunder, or any other money due under the Lease, or any part thereof after the same shall become due; or Lessee fails or neglects to perform, meet or observe any obligation, covenant or condition herein required to be performed, met or observed 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, without further notice or demand upon Lessee or upon any person claiming through Lessee, City may at its option exercise any one or more of 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. 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 first to the expenses of reletting and collection including without limitation necessary renovation and alteration of the Premises, reasonable attorneys' fees and any real estate commissions actually paid, and, thereafter, toward payment of all sums due from Lessee hereunder. Whether or not the Premises are relet by City, 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. 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 or other security type instrument unrelated to the HUD Financing but nonetheless encumbering the leasehold interest pursuant to Paragraph 7, 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 such trust deed, mortgage or other security type instrument. 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) In the event Lessee elects to terminate this Lease, Lessee agrees to surrender immediately possession of the Premises, and to pay to City all damages City may incur by reason of the default, including the cost of recovering the Premises, and including:
 - (a) The worth at the time of award of the unpaid rent which had been earned at the time of termination;
and

- (b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination ~~until~~ the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; and
 - (c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and
 - (d) Any other amount, including without limitation attorneys' fees and court costs, necessary to compensate the City of all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.
- (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 unless and until said default is cured in accordance with the terms hereof.
 - (c) Lessee hereby waives any right of redemption or relief from forfeiture under California Code of 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 or 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.
- (g) Notwithstanding anything contained in this Paragraph 24 to the contrary, it is expressly acknowledged by City that during the HUD Financing Period the rights and remedies available to City under this Paragraph 24 shall be subject to the terms and conditions set forth in the deed of trust relating to the HUD Financing and the provisions of the 207 Lease Addendum attached hereto, including without limitation Paragraph 8 of said 207 Lease Addendum.

25. PRESERVATION OF CITY'S RIGHTS IN THE PREMISES

City hereby reserves all rights, title and interest in any and all gas, oil, minerals and water beneath the Premises, provided, however, that during the HUD Financing Period, nothing contained herein shall permit surface entry or non-surface entry to a point less than five hundred (500) feet below the surface. 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. HUD FINANCING PERIOD

Notwithstanding anything contained in this Lease to the contrary, the provisions of paragraph 4(b), 13, 19(b) and 20 shall not apply during the HUD Financing Period.

27. TENANTS OF THE RENTAL UNITS

Lessee hereby acknowledges that the Project is intended to provide rental apartment units for persons designated in Section 8 of Title II of the Housing and Community Development Act of 1974 - Public Law 93-383, or such other similar federal rent subsidy program first agreed to in writing by HUD during the HUD Financing

Period, and by City thereafter, which approval shall not be withheld unreasonably, which is intended to provide rental subsidies for low-income senior citizens and handicapped.

28. COOPERATION IN EQUAL OPPORTUNITY COMPLIANCE REVIEWS

Lessee shall cooperate with all local, state and federal government agencies 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 without limitation, 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 in the opinion of City 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. Notwithstanding the foregoing, the terms of this paragraph shall not apply during the HUD Financing Period.

31. 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.

32. 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 admonition 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.

33. 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.

34. 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 prevailing party.

35. NOTICES

All notices given under this Lease shall be personally served or given by certified or registered letter return receipt requested 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:

Colonia Barrios Seniors, Inc.

Either party may change the above address by notifying the other party, as provided above. Notices shall be deemed delivered on the date of personal service or forty-eight (48) hours after deposit as provided above.

36. 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.

37. 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, either terminate all or any existing subleases or subtenancies or operate as an assignment to City of any or all such subleases or subtenancies.

38. 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 "D" and shall incorporate the legal description of the Premises described in Exhibit "A."

39. 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.

40. BROKERS

Each party hereto represents and warrants to the other that it has not engaged and will not engage any broker or finder in connection with the execution or consummation of this Lease. Each party hereto agrees to indemnify and hold the other harmless from any claim to a broker's or finder's fee or commission in connection herewith.

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.

43. 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 Executive Director of the San Diego Housing

Commission, and by Lessee, acting by and through its lawfully authorized officers.

Dated: 12-31-80

THE CITY OF SAN DIEGO

By: [Signature]

COLONIA BARRIOS SENIORS, INC.

Dated: 12/31/80

By: [Signature]

APPROVED as to form and legality this 31 day of December, 1980.

JOHN W. WITT, City Attorney

By: [Signature]

R-253391

EXHIBIT "A"

All that portion of the Southwest Quarter of Section 26, Township 18 South, Range 2 West, San Bernardino Meridian, in the City of San Diego, County of San Diego, State of California, according to the Official Plat thereof, lying Easterly of a line described as follows:

Beginning at a point on the South line of the Southwest Quarter of Section 26 from which the Southeast corner of the Southwest Quarter of Southwest Quarter of Section 26 bears South $89^{\circ}53'30''$ East and distant 433.25 feet, said point being also on the center line of a 60.00 foot easement for public highway conveyed to the County of San Diego by Frank B. Beyer by deed dated December 11, 1929, recorded in Book 1730, page 20 of Deeds; thence North $23^{\circ}01'30''$ West along said center line to an intersection with the Southeasterly line of that certain tract of land condemned by the State of California, for a state highway, as said highway is described in that certain order in condemnation recorded in Book 326, page 118 of Official Records, records of San Diego County, said point being in Engineer's Station 175 plus 13.76 of the Department of Public Works Survey between San Ysidro and National City, Road XI-SD-2-F; thence along said Southeasterly line North $67^{\circ}02'45''$ East 50.00 feet to the most Easterly corner thereof; thence Northwesterly along the Northeasterly line of said highway to an intersection with the West line of the Southwest Quarter of Section 26; thence North along said West line to the Northwest corner of said Southwest Quarter of Section 26.

Excepting from the above described land that portion lying Easterly of the center line of a strip of land 60.00 feet wide described as follows:

Beginning at a point on the North line of Southwest Quarter of said Section 26 from which the West Quarter corner of said Section bears North $89^{\circ}39'30''$ West and distant 683.95 feet and running thence from said point of beginning South $18^{\circ}49'30''$ West 526.95 feet to the beginning of a curve to left having a radius of 1000.00 feet; thence along said curve through an angle of $14^{\circ}35'00''$ a distance of 254.53 feet; thence South $04^{\circ}14'30''$ West 433.15 feet to beginning of a curve to left having a radius of 700.00 feet; thence along said curve through an angle of $27^{\circ}13'00''$, a distance of 332.97 feet; thence South $23^{\circ}01'30''$ East 1225.25 feet to a point on South line of Southwest Quarter of said Section 26 from whence Southeast corner of Southwest Quarter of Southwest Quarter of said Section 26 bears South $39^{\circ}53'30''$ East and distant 433.25 feet.

ALSO EXCEPTING from the above described land that portion lying Southerly of the center line of Del Sol Boulevard 102.00 feet wide as more particularly described

C-593371

E-19942

AMENDED

E-20072

AMENDED 8/21/80

Page 2 of 2

in deed to the City of San Diego recorded November 8, 1971 as File No. 259221.

AND ALSO EXCEPTING THEREFROM that portion lying Northerly of the center line of County Road Survey No. 307 (now known as Fern Avenue) according to plat thereof on file in the Office of the County Engineer of San Diego County.

TYPED/BH

AMENDED

6-27-79

C-593871

E-20072

AMENDED 8/21/80

EXHIBIT "B"

Commencement Date of Lease

The commencement date of of this Lease is _____, 19____, which is the date of execution of the Deed of Trust securing the HUD financing, as explained in Subparagraph 2(a) of the Lease.

Acknowledged:

CITY OF SAN DIEGO

Date: _____

By _____

COLONIA BARRIOS SENIORS, INC.
A California Nonprofit Public
Benefit Corporation

Date: _____

By _____

EXHIBIT "C"

LIST OF PERSONAL PROPERTY

EXHIBIT "D"

Recording Requested By:

Attorneys

When Recorded, Return To:

Peterson, Thelan & Price
California First Bank

530 "B" Street, Suite 2300
San Diego, CA 92101

MEMORANDUM OF LEASE

This memorandum of lease is made this 30th day of December, 1980, by and between the CITY OF SAN DIEGO, a municipal corporation, ("City") and COLONIA BARRIOS SENIORS, INC., a California non-profit, public benefit corporation ("Lessee"), 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 (50) 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 7 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. Provisions Binding. The provisions of the lease to be performed by either party, whether to be performed at or in any portion of the premises, or otherwise, 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.

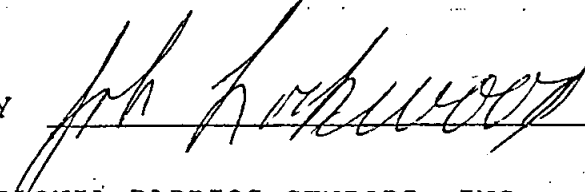
4. Purpose of Memorandum of Lease. This memorandum of lease is prepared for the purpose of recordation, and it in no way modifies the provisions of the lease referred to in paragraph 1.

This exhibit is attached to the lease pursuant to paragraph 7 of the lease.

THE CITY OF SAN DIEGO

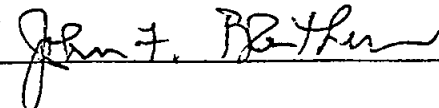
Date: 12-31-80

By


COLONIA BARRIOS SENIORS, INC.
A California Non-Profit Public
Benefit Corporation

Date: 12/31/80

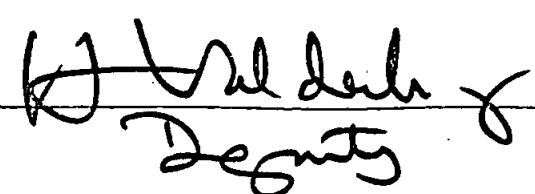
By



APPROVED as to form and legality this 31 day of December,
1980.

JOHN W. WITT, City Attorney

By


Deputy

207 LEASE ADDENDUM

Notwithstanding any other provisions of this lease, if and so long as this leasehold is subject to a mortgage or deed of trust held by the Federal Housing Commissioner or given to the Commissioner in connection with a resale, or the demised premises are acquired and held by him because of a default under said mortgage or deed of trust:

1. The tenant is authorized to obtain a loan from the Federal Housing Commissioner and secured by a mortgage on this leasehold estate. Tenant is further authorized to execute a mortgage on this leasehold and otherwise to comply with the requirements of the Federal Housing Commissioner for obtaining such a mortgage loan.

2. The Federal Housing Commissioner, or his successors in office, shall have the option, in the event that he or his successor in office, shall acquire title to the leasehold interest, to purchase good and marketable fee title to the demised premises, free of all liens and encumbrances except such as may be waived or accepted by him or his successor in office, within twelve (12) months after so acquiring the leasehold interest, for the sum of

SEE
REVISION
ATTACHED

payable in cash, or by Treasury check, provided all rents are paid to date of transfer of title, upon first giving sixty (60) days' written notice to the Landlord or other person or corporation who may then be the owner of the fee, and the owner of the fee shall thereupon execute and deliver to the Federal Housing Commissioner, or his successor in office, a deed of conveyance to the said demised premises, containing a covenant against the grantor's acts, but excepting therefrom such acts of the Tenant and those claiming by, through or under the Tenant of the leasehold interest. Nothing in this option shall require the Landlord to pay any taxes or assessments which were due and payable by the Tenant.

3. If approved by the Federal Housing Commissioner, tenant may assign, transfer or sell his interest in the demised premises.

4. (a) Insurance policies shall be in an amount, and in such company or companies and in such form, and against such risks and hazards, as shall be approved by the Federal Housing Commissioner.

(b) The Landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Tenant to the mortgagee. The Landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by the Tenant.

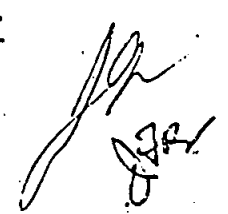
5. (a) If all or any part of the demised premises shall be taken by condemnation that portion of any award attributable to the improvements or damage to the improvements shall be paid to the mortgagee or otherwise disposed of as may be provided in the insured mortgage. Any portion of the award attributable solely to the taking of land shall be paid to the Landlord. After the date of taking the annual ground rent shall be reduced ratably by the proportion which the award paid to the Landlord bears to the total value of the land as established by the amount the Federal Housing Commissioner would be required to pay upon acquisition of the fee as set out in paragraph 2 of this addendum.

(b) In the event of a negotiated sale of all or a portion of demised premises in lieu of condemnation, the proceeds shall be distributed and ground rents reduced as provided in cases of condemnation, but the approval of the Commissioner shall be required as to the amount and division of the payment to be received.

[Handwritten signature]

6. The Landlord agrees that, within ten (10) days after receipt of written request from Tenant, it will join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which the Tenant may do hereunder, and will also join in any grants for easements for electric, telephone, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the demised premises or of any improvements that may be erected thereon. ~~and if, at the expiration of such ten (10) day period, the Landlord shall not have joined in any such application, or grants for easements, the Tenant shall have the right to execute such application and grants in the name of the Landlord and, for that purpose, the Landlord hereby irrevocably appoints the Tenant as its attorney-in-fact, to execute such papers on behalf of the Landlord.~~
7. Nothing in this lease contained shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord, or any income, excess profits or revenue tax, or any other tax, assessment, charge or levy upon the rent payable by the Tenant under this lease.
8. Upon any default under this lease which authorizes the cancellation thereof by the Landlord, Landlord shall give notice to the Federal Housing Commissioner, and the Federal Housing Commissioner, his successors and assigns, shall have the right within any time within six (6) months from the date of such notice to correct the default and reinstate the lease unless Landlord has first terminated the lease as provided herein.
- At any time after two (2) months from the date a notice of default is given to the Commissioner, the Landlord may elect to terminate the lease and acquire possession of the demised premises. Upon acquiring possession of the demised premises Landlord shall notify Commissioner. Commissioner shall have six (6) months from the date of such notice of acquisition to elect to take a new lease on the demised premises. Such new lease shall have a term equal to the unexpired portion of the term of this lease and shall be on the same terms and conditions as contained in this lease, except that the Commissioner's liability for ground rent shall not extend beyond his occupancy under such lease. The Landlord shall tender such new lease to the Commissioner within thirty (30) days after a request for such lease and shall deliver possession of the demised premises immediately upon execution of the new lease. Upon executing a new lease the Commissioner shall pay to Landlord any unpaid ground rentals due or that would have become due under this lease to the date of the execution of the new lease, including any taxes which were liens on demised premises and which were paid by Landlord, less any net rentals or other income which Landlord may have received on account of this property since the date of default under this lease.
9. All notices, demands and requests which are required to be given by the Landlord, the tenant, or the Commissioner shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.
10. This lease shall not be modified without the consent of the Federal Housing Commissioner.
11. As used herein, the Federal Housing Commissioner shall include the Secretary of Housing and Urban Development, her successors and assigns.

2. The Federal Housing Commissioner, or his successors in office, shall have the option, in the event that he or his successor in office, through the operation of his contract of mortgage insurance, shall acquire title to the leasehold interest, to purchase good and marketable fee title to the demised premises, free of all liens and encumbrances except such as may be waived or accepted by him or his successor in office, within twelve (12) months after so acquiring the leasehold interest for the sum of \$428,500 , payable in cash, or by Treasury check, provided all rents are paid to date of transfer of title, upon first giving sixty (60) days' written notice to the Landlord or other person or corporation who may then be the owner of the fee, and the owner of the fee shall thereupon execute and deliver to the Federal Housing Commissioner, or his successor in office, a deed of conveyance to the said demised premises, containing a covenant against the grantor's acts, but excepting therefrom such acts of the Tenant and those claiming by, through or under the Tenant of the leasehold interest. Nothing in this option shall require the Landlord to pay any taxes or assessments which were due and payable by the Tenant. In the event the Federal Housing Commissioner exercises the option to acquire title to the demised premises, Landlord shall have a right of first refusal to purchase the property at its fair market value as determined by the Federal Housing Commissioner at any time during the period ending December 31, 2031. In the event that the Landlord sells the fee simple title, prior to the exercise of its right of first refusal, such right shall have no further force and effect and, therefore, shall not inure to the benefit of any purchaser. Failure by Landlord to execute a contract of sale for the property 90 days from the time that the Federal Housing Commissioner has offered to sell the property to Landlord shall constitute a waiver of Landlord's option herein.



cert copy

R-81-1208

RESOLUTION NO. R-253391

JAN 5 1981

WHEREAS, the City of San Diego entered into an Exclusive Negotiation Agreement with Colonia Barrios Seniors, Inc. for the purpose of developing a low-income senior citizens housing project on City-owned Site 132; and

WHEREAS, Colonia Barrios Seniors, Inc. has received from the U.S. Department of Housing and Urban Development (HUD) a \$4.2 million program reservation to develop said project; and

WHEREAS, City approved execution of lease with Colonia Barrios Seniors, Inc. on October 6, 1980; and

WHEREAS, HUD has subsequently requested that such lease be revised to reflect certain rights that HUD retains as leader for the project; and

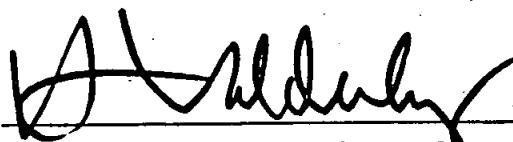
WHEREAS, San Diego Housing Commission approved such revised lease on November 21, 1980, and recommended that City Council authorize execution of a revised lease; NOW, THEREFORE,

BE IT RESOLVED, that the City Manager is authorized to execute a revised lease for City-owned Site 132, which is comprised of approximately 3.6 acres of land located at Coronado and Beyer Boulevard, a copy of which lease is on file in the office of the City Clerk as Document No. RR-253391.

BE IT FURTHER RESOLVED, that Resolution R-253247 adopted on December 8, 1980, is hereby rescinded.

APPROVED: JOHN W. WITT, City Attorney

By



Harold O. Valderhaug, Deputy

Passed and adopted by the Council of The City of San Diego
on January 5, 1981, by the following vote:

YEAS: Mitchell, Cleator, Williams, Schnaubelt, Gotch, Murphy, Killea.

NAYS: None.

NOT PRESENT: Wilson.

DISTRICT 3 VACANT.

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 ELLEN BOVARD, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. R-253391
passed and adopted by the Council of The City of San Diego,
California, on JAN 5 1981.

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

(SEAL)

By Ellen Bovard, Deputy.

(Rev. 8/79)
lbc

DOCUMENT NO. RR-253391

FILED Jan. 5, 1981

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

(Lease - Colonia Barrios Seniors,
Inc. 1/5/81 R-253391)

Lease agree w/City of San Diego and
Colonia Barrios Seniors, Inc. for
purpose of developing a low income
senior citizens housing project
relating to U.S. Department of
Housing and Urban Development (HUD).

cc: Housing - Linda Robles ms 49

ms
1-8-81 ✓ (picked-up copies)

✓ Auditor 7c

✓ County Assessor A4