

FIRST AMENDMENT TO LEASE

That certain Lease Agreement dated January 22, 1981, between THE CITY OF SAN DIEGO (City) and ORCHARD II ASSOCIATES (Lessee) is hereby amended as follows, and the parties, each in consideration of the promises of the other, further agree:

I. Recital A at page 1 is deleted and replaced with the following:

A. The CITY owns a certain parcel of property, which is described in paragraph 1 below, which property was specified as being available for lease at a rental substantially less than fair market value to enable a developer to maintain a senior citizens multiple-residential apartment project which would be made available to low-income citizens during the term of the lease.

II. Recital B at page 1 is deleted and replaced with the following:

B. LESSEE as consideration for this lease has agreed to construct 288 low-income senior citizens' apartment units on said parcel of property and has agreed that at all times prior to the date 20 years after the later of (i) the date of issuance of the Redevelopment Agency of the City of San Diego Loan-to-Lender Revenue Bonds, Series A (hereinafter called the "Bonds") to be issued to finance the Project, and (ii) the date the Project is available for occupancy, at least 20% of such units are to be occupied by individuals of low or moderate income (within the meaning of Section 167(k)(3)(B) of the Internal Revenue Code of 1954, as amended) and has agreed to make at least 20% of such 288 units available to the Housing Authority of the CITY or its successor, during the entire term of this lease, either pursuant to the United States Department of Housing and Urban Development (hereinafter called "HUD") Section 8 Existing Housing Assistance Payments Program, or pursuant to any other available local, state or federally sponsored rent subsidy program in effect during the term of this lease.

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FILED FEB 23 1981

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

III. Subparagraph 1.a. at page 2 is deleted, and replaced with the following:

a. Permitted Use.

Said premises are leased to LESSEE only for the purposes of constructing and operating a low-income 288 unit senior citizens' multiple residential apartment project (Project), and for such other related or incidental purposes as may first be approved in writing by the CITY and for no other purpose. LESSEE covenants that during the 20 year period beginning with the later of the date of issuance of the Bonds or the date the Project is available for occupancy, at least 20% of the units in the Project shall be occupied by individuals of low or moderate income in accordance with the provisions of Section 103(b)(4)(A) of the Internal Revenue Code of 1954, as amended. Such individuals are hereinafter called "persons of low or moderate income". LESSEE shall also make at least 20% of the 288 units available to the Housing Authority of the CITY or its successor, during the entire term of this lease, either pursuant to the United States Department of Housing and Urban Development (hereinafter called HUD) Section 8 Existing Housing Assistance Payments Program, or pursuant to any other available local, state, or federally sponsored rent subsidy program in effect during the term of this lease. To the extent that any of the 20% of the units referred to in the second sentence of this subparagraph coincides with any of the 20% of the units referred to in the third sentence of this subparagraph, such units, to the extent that they coincide, shall be deemed to satisfy both requirements.

IV. There is added, at page 10 (immediately before subparagraph 4.b.), a new subparagraph as follows:

(9) The CITY shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Redevelopment Agency of the CITY on the Bonds shall, for the purposes of the Federal income tax, be exempt from all

income taxation under any valid provision of law, except that the CITY shall not be in violation of this covenant as a result of any Bond being held by a person who, within the meaning of Section 103(b)(9) of the Internal Revenue Code of 1954, as amended, is a "substantial user" of the facilities with respect to which the proceeds of such Bond were used or is a "related person" within the meaning of Section 103(b)(6)(C) of the Internal Revenue Code of 1954, as amended. The CITY shall not take or permit to be taken any action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103 of the Internal Revenue Code of 1954, as amended, by reason of classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code, except for any Bond for any period during which such Bond is held by any person who, within the meaning of Section 103(b) of said Code, is a "substantial user" or "related person."

V: Subparagraph 4.b.(12), at pages 17-18, is deleted, and replaced with the following:

(12) Section 8. The Project is intended to provide rental apartment units for persons designated in the Section 8 Existing Housing Assistance Payments Program, Title II of the Housing and Community Development Act of 1974--Public Law No. 93-383, or any other similar program of the federal, state or local government intended to provide rental subsidies for low-income senior citizens. No apartment unit shall be initially offered for rent without the City of San Diego Housing Authority first having had ten (10) days within which to designate "Section 8 Certificate Holders" as tenants in the Project. LESSEE shall thereafter by the tenth day of each month during the term furnish to CITY a list of vacant apartment units which are anticipated as of the end of the month in which the list is given, and CITY will have eight (8) business days after its receipt of each such list to designate "Section 8 Certificate Holders" to occupy as tenants the vacant apartment units in the Project. LESSEE agrees

that at all times during a twenty-year period beginning on the later of the date of issuance of the Bonds or the date the Project is available for occupancy, at least 20% of the units in the Project shall be occupied by persons of low or moderate income as defined in paragraph 1.a. Before renting apartment units to any low or moderate income person who is not a "Section 8 Certificate Holder" the LESSEE shall obtain an income certification from such prospective tenant complying with the provisions of Section 103(b)(4)(A) of the Internal Revenue Code of 1954, as amended. During such period, no unit shall be rented by LESSEE unless after such rental at least 20% of the units in the Project shall be occupied by persons of low or moderate income. For the purpose of the calculation in the preceding sentence, vacant units as to which the immediately preceding tenants were persons of low or moderate income shall be considered to be occupied by persons of low or moderate income, provided such units remain available to persons of low or moderate income. Except for complying with the foregoing provisions of this paragraph (12), LESSEE shall have the right to rent apartment units to anyone fifty-five (55) years of age or older, and LESSEE will use its best efforts to give first priority in renting apartment units to persons whose income levels meet the intent of the policies of the federal government as contained in the above-referenced Section 8 of Title II of the Housing and Community Development Act of 1974-Public Law No. 93-383, or any other similar local, state or federal rent subsidy program.

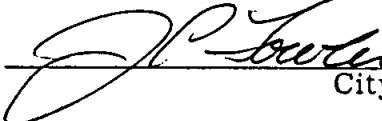
VI. There is added, at page 19 (immediately before subparagraph 4.c.), a new subparagraph as follows:

(15) The LESSEE shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Redevelopment Agency of the CITY on the Bonds shall, for the purposes of the Federal income tax, be exempt from all income taxation under any valid provision of law, except that the

LESSEE shall not be in violation of this covenant as a result of any Bond being held by a person who, within the meaning of Section 103(b)(9) of the Internal Revenue Code of 1954, as amended, is a "substantial user" of the facilities with respect to which the proceeds of such Bond were used or is a "related person" within the meaning of Section 103(b)(6)(C) of the Internal Revenue Code of 1954, as amended. The LESSEE shall not take or permit to be taken any action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1954, as amended, by reason of classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code, except for any Bond for any period during which such Bond is held by any person who, within the meaning of Section 103(b) of said Code, is a "substantial user" or "related person."

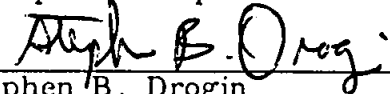
IN WITNESS WHEREOF, this First Amendment to Lease is executed as of February __, 1981, by CITY, acting by and through the City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

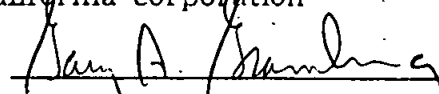
By: 
City Manager

LESSEE:

ORCHARD II ASSOCIATES,
a general partnership

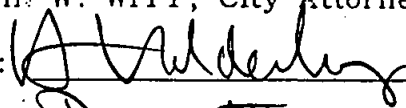
By: 
Stephen B. Drogin

By: FINANCIAL SCENE INCORPORATED,
a California corporation

By: 

Approved as to form and legality this 3 day of March, 1981.

JOHN W. WITT, City Attorney

By: 
Deputy