

(R-90-16)

RESOLUTION NUMBER R- 274120

ADOPTED ON JUL 31 1989

BE IT RESOLVED, by the Council of The City of San Diego, that it hereby accepts, for and on behalf of the City, the generous gift of property located at 6811 La Jolla Boulevard, San Diego, California, from the Salvation Army and the Florence Riford Trust, and authorizes the City Manager to accept a deed to said property, to be known as the Florence Riford Senior Citizens Center.

BE IT FURTHER RESOLVED, that the Council hereby accepts, for and on on behalf of the City, an accompanying endowment fund of approximately \$150,000, and proceeds representing one-half (1/2) the net value from the sale of an apartment building located at 1133 Coast Boulevard, San Diego, California, owned by Florence Riford, to be added to the endowment fund.

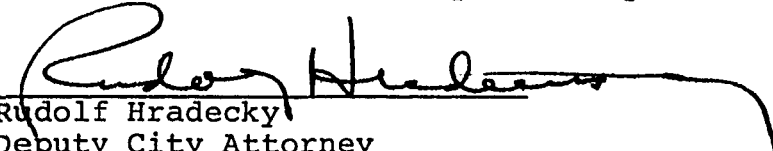
BE IT FURTHER RESOLVED, that the City Manager is hereby authorized and empowered, for and on behalf of the City, to enter into an agreement with the Salvation Army, Florence Riford, and the San Diego Community Foundation to accept the above properties and administer and manage the endowment funds, under the terms and conditions set forth in the Agreement of the parties, a copy of which is attached hereto and on file in the office of the City Clerk as Document No. RR- 274120-1.

BE IT FURTHER RESOLVED, that the City Manager is authorized and empowered, for and on behalf of the City, to enter into an

agreement with Pro-tech, Inc. to operate programs and services at the Florence Riford Senior Center, under the terms and conditions set forth in the Lease Agreement, a copy of which is attached hereto and on file in the office of the City Clerk as Document No. RR- 274120-2.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to establish an interest bearing account to accept the funds pursuant to the above Lease Agreement, and to disburse the interest thereon quarterly to Pro-tech, Inc., in accordance with the terms of said Lease Agreement.

APPROVED: JOHN W. WITT, City Attorney

By 
Rudolf Hradecky
Deputy City Attorney

RH:mb
07/11/89
Or.Dept:IRD/Pk.& Rec
R-90-16
Form=r.none

FILED JUL 31 1989

OFFICE OF THE CITY CLERK

SAN DIEGO, CALIFORNIA

**AGREEMENT FOR THE TRANSFER, OPERATION
AND MAINTENANCE OF THE FLORENCE RIFORD
SENIOR CITIZEN CENTER, WITH PROVISIONS
FOR CORRESPONDING ENDOWMENTS TO
THE CITY OF SAN DIEGO**

The parties to this agreement are THE CITY OF SAN DIEGO (hereafter referred to as "the City"), THE SALVATION ARMY, a California nonprofit corporation (hereafter referred to as "the Salvation Army"), FLORENCE RIFORD, a widow, and the SAN DIEGO COMMUNITY FOUNDATION, a nonprofit charitable foundation, (hereafter referred to as "the Foundation").

R E C I T A L S

WHEREAS, the Salvation Army as the trustee for the Florence Riford Trust now holds and operates the Florence Riford Senior Citizen Center, for and on behalf of senior citizens in the La Jolla area; and

WHEREAS, the Salvation Army as the trustee for the Florence Riford Trust currently holds an apartment building located at 1133 Coast Boulevard, La Jolla, California; and

WHEREAS, the Salvation Army currently holds certain other trust assets for the benefit of Florence Riford and for the operation and maintenance of the Florence Riford Senior Citizen Center; and

WHEREAS, the Salvation Army finds that it would be in the best interests of both the Salvation Army and the Florence Riford Trust that the Florence Riford Senior Citizen Center (hereafter referred to as "the Center") be transferred to the City in order to continue the operation and maintenance of the Center, so long as such needs shall exist within the La Jolla area; and

WHEREAS, the City is willing to undertake the responsibilities for and accept fee title to the Center for the benefit of senior citizens of the City and the La Jolla area; provided, however, that said obligations and duties may be modified by the City when the City determines that such senior citizen services may be combined with, or be served by, other City programs essentially duplicative thereof; and

WHEREAS, the City, in order to operate the Center, will require additional financial support which the Salvation Army is willing to make available from certain assets of the Florence Riford Trust, subject to those certain obligations and conditions being met in a manner acceptable to all parties concerned; and

WHEREAS, the Salvation Army has filed a petition in the Superior Court of the State of California for the County of San Diego (Case No. 146714), to reform the trust agreement between the Salvation Army and Florence Riford, a proceeding to which Florence Riford has consented thereto, based upon the acceptance of certain obligations by the City; and

WHEREAS, the Attorney General of the State of California has likewise consented to the reformation of the above trust agreement; and

WHEREAS, this proceeding is currently pending the approval of the Superior Court;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements contained herein, the parties agree as follows, that, upon the approval of the Superior Court:

1. The Salvation Army shall transfer to the City, in fee title and without any liens or encumbrances, that certain

property known as the Florence Riford Senior Citizen Center, La Jolla, California, together with its contents.

2. The Salvation Army shall sell certain property commonly known as 1133 Coast Boulevard, La Jolla, California, and transfer one-half (1/2) of the net proceeds from such sale to the City. (These net proceeds shall hereafter be referred to as the "Coast Proceeds.")

3. The Salvation Army shall sell the assets of an existing endowment fund it administers under the Florence Riford Trust, equalling approximately \$345,000, and transfer one-half (1/2) of the net proceeds to the City, said fund to be hereafter referred to as "the Endowment Proceeds."

4. The City shall accept the transfer of the Center and its contents from the Salvation Army, and will thereafter operate and maintain the Center as a senior citizen center, with the proviso that the City reserves the right to sell or otherwise use or dispose of the Center at such time as the City shall determine that, based upon demographics and community needs, such center is either no longer necessary in the La Jolla area, or that it duplicates existing programs and facilities administered by the City in such manner as to be uneconomical to further administer, or that such Center may be more appropriately utilized in support of other City programs.

5. The City will accept the Coast Proceeds and the Endowment Proceeds and administer them in support of the Center through an endowment trust fund to be known as "the Florence Riford Senior Citizen's Endowment Fund" ("the Fund"), to be administered by the Foundation upon its acceptance of the above funds, with the

proviso that the Foundation shall pay the income from the Coast Proceeds deposited in such Fund to Florence Riford so long as she shall live, and upon her death all principal and unexpended interest from the Coast Proceeds shall then be utilized within the Fund for the operation, maintenance, and programs and services of the Florence Riford Senior Citizen's Center, or, upon the City's determination pursuant to paragraph 4 hereof that such Center is no longer necessary, then for the benefit of senior citizen's programs throughout the La Jolla area in accordance with the directions of the City.

6. The Foundation agrees that it will administer the Coast Proceeds and the Endowment Proceeds as the "Florence Riford Senior Citizen's Endowment Fund ("the Fund"), in accordance with paragraph 5 hereof. It is further understood that supplemental documents to carry out the intent and purpose of this paragraph, including but not limited to, a "Field of Interest Endowment Fund Agreement", substantially in the form attached hereto as Exhibit A, may be required for this purpose.

7. Florence Riford agrees to relinquish any life estate or other interest she may have in 1133 Coast Boulevard, La Jolla, California, or the proceeds therefrom, except as to the provisions of paragraph 5 hereof pertaining to the Coast Proceeds.

8. The parties hereto further agree that this agreement may be executed in several counterparts and, upon an original signature being affixed to any of the counterparts by each of the parties signatory hereto, this agreement shall then become legally binding upon all signatories upon the approval of the

Superior Court of the State of California for the County of San Diego.

DATED this _____ day of _____, 1989.

IN WITNESS WHEREOF, this original is executed by the City of San Diego by its City Manager pursuant to Resolution No. R-_____, authorizing such execution by the parties hereto.

THE SALVATION ARMY

FLORENCE RIFORD

By _____

By Florence Riford.

THE CITY OF SAN DIEGO

SAN DIEGO COMMUNITY FOUNDATION

By _____
City Manager *CR*

By _____

FIELD OF INTEREST ENDOWMENT FUND AGREEMENT

BETWEEN
SAN DIEGO COMMUNITY FOUNDATION

AND _____

THIS AGREEMENT made and entered into on _____ by and between
SAN DIEGO COMMUNITY FOUNDATION ("SDCF"), and _____
_____(hereinafter referred to as _____).

WITNESSETH:

WHEREAS, _____, in furtherance of her charitable purposes, deems it to be
in the best interest of _____ to create a charitable endowment to
aid her in carrying out her work in San Diego County; and,

WHEREAS, SDCF is a non-profit California corporation exempt from taxation pursuant
to Section 170(b)(1)(A)(vi) of the Internal Revenue Code, and is an appropriate
institution within which to establish such charitable endowments; and,

WHEREAS, SDCF is willing and able to create such an endowment as a Field of Interest
Fund subject to the terms and conditions hereof;

NOW THEREFORE, the parties agree as follows:

1. NAME OF THE FUND

There is hereby established in SDCF, and as a part thereof, a fund designated
as _____ (hereinafter referred
to as "the Fund") to receive gifts, in whatever form of money or property, and
to administer the same.

2. PURPOSE

The primary purpose of the Fund shall be to _____
Further purposes of the Fund include, but are not limited to, _____
_____.

3. GIFTS

Any person, whether an individual, corporation, trust, estate or organization
(hereinafter referred to as "Donor") may make a gift to SDCF for the purposes
of the Fund by a transfer to SDCF of property acceptable to SDCF in whole or
in part for the Fund. All gifts, bequests and devises to this Fund shall be
irrevocable.

4. DISTRIBUTION

The annual earnings allocated by SDCF to the Fund, net of the fees set forth
in paragraph 10 and principal to the extent permitted by the gift, shall be
committed, granted or expended for, or in furtherance of, the purposes of the
Fund. If any gifts to SDCF for the purposes of the Fund are received and
accepted subject to a Donor's restrictions as to the use of income or principal,

said restrictions will be honored, subject, however, to the authority of SDCF's Board of Governors (hereinafter "the Board") to vary the terms of any gift if continued adherence to any restriction is impractical or impossible.

5. ADMINISTRATIVE PROVISIONS

Notwithstanding anything herein to the contrary, SDCF shall hold the Fund, and all contributions to the Fund, pursuant to the terms of the California Corporations Code, including Sections 5231 and 5240, and subject to the provisions of its Articles and Bylaws. The Board shall monitor the distribution of the Fund, and shall have all powers of modification or removal specified in United States Treasury Department Regulation Section 1.170.A-9(e)(11)(v)(B).

The Board agrees to provide _____ a copy of the annual examination of the finances of SDCF as reported upon by independent certified public accountants.

6. CONDITIONS FOR ACCEPTANCE OF FUNDS

Donors agree and acknowledge that the establishment of the Fund herein created is made in recognition of, and subject to, the terms and conditions of the Articles of Incorporation and By-laws of SDCF as from time to time amended, and that the Fund shall at all times be subject to such terms and conditions, including but not by way of limitation, provisions for:

- (a) Presumption of Donors' intent;
- (b) Variance from Donors' direction;
- (c) Amendments.

7. CONTINUITY

The Fund shall continue so long as assets are available in the Fund and the purposes in the Fund can be served by its continuation. If the Fund is terminated for either of the above reasons, SDCF shall devote any remaining assets in the Fund exclusively for charitable purposes that:

- (a) are within the scope of the charitable purposes of SDCF's Articles of Incorporation; and,
- (b) most nearly approximate, in the good faith opinion of the Board, the original purpose of the Fund.

8. NOT A SEPARATE TRUST

All money and property in the Fund shall be assets of SDCF and not a separate trust.

9. ACCOUNTING

This Fund shall be accounted for separately and apart from other gifts to SDCF.

10. COSTS OF THE FUND

It is understood and agreed that the Fund shall share a fair portion of the total administrative costs of SDCF. The administrative cost annually charged against the Fund shall be determined in accordance with the then current Fee Agreement identified by SDCF as the fee structure applicable to Funds of this type. Any costs to SDCF in accepting, transferring or managing property donated to SDCF for the Fund shall also be paid from the Fund.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers on _____.

By _____

Approved by the Board of Governors of San Diego Community Foundation on _____
_____.

SAN DIEGO COMMUNITY FOUNDATION

By _____
President

DOCUMENT NO. RR-274120-2

FILED JUL 31 1989

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CITY OF SAN DIEGO
NONPROFIT LEASE

THIS LEASE AGREEMENT is executed between the CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and PRO*TECH, a California not-for-profit corporation, hereinafter called "LESSEE."

SECTION 1: USES

1.01 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described as the property commonly known as 6811 La Jolla Boulevard and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises."

1.02 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of the operation and maintenance of a multi-purpose senior citizens center and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

LESSEE covenants and agrees to use the premises throughout the term hereof for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.03 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to rezonings, variances, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.04 Quiet Possession. LESSEE shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there

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shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.05 Easements and Reservations.

- a. CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

1.06 Competent Management. Throughout the term of this Lease Agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of multi-purpose senior citizen center and related activities in a fiscally responsible manner.

1.07 Operation of Facilities. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public as set forth in Section 9.01, Schedule of Days & Hours of Operation, hereof. Any changes in this schedule shall be subject to the prior written approval of the City Manager or his authorized representative. LESSEE shall diligently and in a creditable manner furnish services to the public in conformity with all applicable rules and regulations of the City of San Diego.

1.08 Rates and Charges. All charges for merchandise and services or facilities on said premises shall be in accordance with the

schedule set forth in Section 9.02, Schedule of Rates & Charges, hereof. Any changes in said schedule are subject to prior written approval by the City Manager or his authorized representative.

- 1.09 CITY Use. The premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, the premises shall be left in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use. CITY shall provide LESSEE with 48 hours prior notice of CITY'S intent to use said premises.
- 1.10 Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1, USES, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
- 1.11 Public Use. The general public shall not be wholly or permanently excluded from any portion of the premises. LESSEE may develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public, and are designed to allow LESSEE to use the premises for the purposes specified herein. LESSEE agrees that all activities conducted on the premises will be as stated in Section 1.02, Uses, hereof.

SECTION 2: TERM

- 2.01 Commencement. The term of this agreement shall be twenty (20) years commencing on the first day of the calendar month following execution by the City Manager or authorized designee. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager.
- 2.02 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect.
- 2.03 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a quitclaim deed in

recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

- 2.04 Right to Extend. Provided that LESSEE is not in default of this lease, LESSEE has the right to extend this lease once for an additional term of five (5) years, subject to all original agreements, considerations, covenants and conditions, except that the rent, maintenance and utilities clauses shall be adjusted by negotiation.

To exercise this right, LESSEE must give CITY nine (9) months written notice before the date on which this lease expires.

- 2.05 This agreement may be terminated by either party without a necessity of cause by a six-month prior written notice given to the other party of intent to so terminate.

SECTION 3: CONSIDERATION

- 3.01 Consideration. The consideration for this agreement shall be the sum of Three Hundred Thousand Dollars (\$300,000) paid on execution hereof for the entire term. Said sum shall be considered as payment to CITY at the rate of \$15,000 per annum. This payment is to be deducted from the principal amount at the end of the first year of the commencement of this lease and annually thereafter. The CITY shall maintain records of the amount of interest generated by the \$300,000 payment and pay that interest quarterly to LESSEE.
- 3.02 In the event that LESSEE ceases to lease the Florence Riford Senior Center or a comparable CITY-owned building, any and all remaining funds of the initial \$300,000 shall revert to the State of California after payment to the CITY of any lease payment due.
- 3.03 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable

times. LESSEE'S failure to keep and maintain such records and make them available for inspection by CITY is a breach of this lease and cause for termination. LESSEE shall maintain all such records and accounts for a minimum period of five (5) years.

SECTION 4: ASSIGNMENT

- 4.01 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.
- 4.02 Assignment and Subletting. LESSEE shall not assign this lease, or any interest therein, and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law, without the written consent of the City Manager.
- 4.03 Defaults and Remedies.
- a. Default. In the event that:
- 1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
 - 2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
 - 3) LESSEE shall be adjudicated a bankrupt; or

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

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section a.(1) Default and Remedies, hereof, is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

4.05 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of CITY, the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.01 Indemnity. LESSEE shall at all times relieve, indemnify, protect, and save CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgments, civil fines, and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including but not limited to expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:
 - a. any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises;
 - b. any operation, use, or occupation conducted on the premises;
 - c. any act, omission, or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or
 - d. any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.
- 5.02 Insurance. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:
 - a. Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.

- b. Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property.
- c. Conditions. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- d. Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises and may reflect increases in coverage necessitated by inflationary factors during the lease term. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- e. Accident Reports. LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- f. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of

premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection f., if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.03 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, CITY agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, CITY agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.01 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, and that LESSEE does not hold CITY responsible for any defects in the premises.
- 6.02 Entry and Inspection. CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon.

- 6.03 Maintenance. LESSEE agrees to assume full responsibility for interior minor repairs to plumbing and electrical fixtures, janitorial and exterior landscape maintenance of the premises throughout the term. CITY will provide such maintenance of the exterior portion of the premises including major plumbing, roof repair and exterior painting. On each anniversary date of this agreement, LESSEE will submit a list of major maintenance needs to the CITY. No such maintenance cost shall exceed \$10,000 in any single year based on CITY'S estimate at cost. LESSEE may require major maintenance at other times of the year on an emergency or as-needed basis subject to the above monetary limit.
- 6.04 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.05 Utilities. Except as hereinafter provided, CITY agrees to pay for all utilities necessary for operation of the premises except telephone which shall be paid by LESSEE.
- 6.06 Construction Bond. Whenever there is any construction to be performed on the premises, LESSEE shall deposit with CITY, prior to commencement of said construction, a faithful performance bond in the amount of 100 percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction shall be removed and the premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.
- 6.07 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.08 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.09 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.10 Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property, free of all liens and claims except as otherwise provided in this lease.
- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or One Hundred Eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or

before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.

- c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
- f. LESSEE shall prepare and file with CITY a complete inventory of all furniture, fixtures, equipment and appliances that are part of the premises and shall promptly notify the City Manager of any changes in such inventory. Such inventory shall be attached to and made a part of this lease agreement.

6.11 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

SECTION 7: GENERAL PROVISIONS

7.01 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United

States mail, postage prepaid, addressed to LESSEE at the leased premises or at such other address designated in writing by LESSEE; and to CITY as follows:

City Manager
Attention Property Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.
- 7.02 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, County, State, and Federal Governments, at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.
- 7.03 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
- 7.04 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in LESSEE'S use of the premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 7.05 Equal Opportunity. LESSEE agrees to abide by CITY'S Affirmative Action Program for LESSEES as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof. The program's goal is the attainment of employment for minorities and women in all areas of employment, in a total percentage as established by CITY for its Affirmative Action Program each year.
- 7.06 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

- 7.07 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.
- 7.08 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.09 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.
- The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.
- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who within the twelve months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- 7.12 Bylaws. Membership in the Senior Center shall be open to anyone meeting the requirements of its rules and bylaws. All

restrictions, rules, bylaws, and fees, if any, and changes thereto proposed by the Senior Center membership shall, before being put into effect, be submitted to and receive the written approval of the City Manager. Bylaws shall be on file in the office of the Property Department prior to CITY execution of this lease.

- 7.13 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the leased premises in a creditable manner.

SECTION 8: SIGNATURES

8.01 Signature Page

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

THE CITY OF SAN DIEGO

Date _____

By _____
Supervisor, Property Mgmt. Division

LESSEE: PRO*TECH, a California not-for-profit corporation

Date 6/23/89

By *John Hodik*
John Hodik, President
Board of Directors

APPROVED as to form and legality this _____ day of _____, 19____.

JOHN W. WITT, City Attorney

By _____
Deputy City Attorney *CA*

GRR:st(61-4)
6-22-89

9.01 Schedule of Days & Hours of Operation

Tuesday through Friday 11 a.m. to 4 p.m., except for holidays as established by LESSEE.

9.02 Schedule of Rates & Charges

Rental of Meeting Rooms:

Small Room \$25 for 3 hours
\$10 per hour after 3 hours

Large Room \$75 for 3 hours
\$15 per hour after 3 hours

#116

JUL 31 1989

Passed and adopted by the Council of The City of San Diego on.....
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Wes Pratt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksmma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Bruce Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

(Seal)

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

By *Jana Martin*, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number 274120 Adopted JUL 31 1989

89 JUN 13 11:00 AM
CITY MAIL SERVICE
SAN DIEGO, CA

POSTAGE WILL BE PAID BY ADDRESSEE

Handwritten signature

CHARLES J. VILCINSKI

1000 GARDEN CITY DRIVE
SAN DIEGO, CA 92103

UNRECORDED COPY

Mr. Charles J. Vilcinski
1000 Garden City Drive
San Diego, CA 92103
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San Diego, CA 92103
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San Diego, CA 92103
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1000 GARDEN CITY DRIVE

SAN DIEGO, CA 92103

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