

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) N/A
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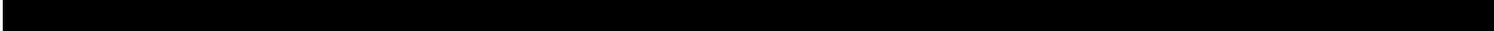
TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Real Estate Assets	DATE: 04/11/2013
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SUBJECT: Amend the existing San Diego Square Lease with San Diego Kind Corporation.

PRIMARY CONTACT (NAME, PHONE): Brock Ladewig, 619-236-6311	SECONDARY CONTACT (NAME, PHONE): Jim Barwick, 619-236-6144
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00



FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE):

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Barwick, James	4/11/2013
Financial Management	CFO		
Liaison Office	DEPUTY CHIEF		
Comptroller	COO		
	CITY ATTORNEY	Fonseca, Jeremy	
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorize the Mayor or his designee to execute and deliver an amendment to the existing San Diego Square lease with San Diego Kind Corporation to allow certain services provided at San Diego Square to be provided to all adults, and on terms and conditions deemed by the Mayor to be reasonable and in the City's best interests.

2. Determine that the lease amendment is exempt from CEQA in accordance with State CEQA Guidelines.	
STAFF RECOMMENDATIONS: Approve the Resolution.	
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	2
COMMUNITY AREA(S):	Centre City
ENVIRONMENTAL IMPACT:	This activity is not subject to CEQA in accordance with CEQA Guidelines Section 15060(c)(2) as the activity will not result in a direct or reasonably foreseeable indirect physical effect in the environment.
CITY CLERK INSTRUCTIONS:	DO NOT RECORD – please deliver documents to Real Estate Assets Department, Attn: Mary Carlson, MS 51-A for further handling.

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 04/11/2013

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Amend the existing San Diego Square Lease with San Diego Kind Corporation.

COUNCIL DISTRICT(S): 2

CONTACT/PHONE NUMBER: Brock Ladewig/619-236-6311

DESCRIPTIVE SUMMARY OF ITEM:

Authorize an amendment to the existing San Diego Square lease with San Diego Kind Corporation to (1) allow services to be provided to all adults within a portion of the premises, rather than exclusively to San Diego's elderly, as currently required; (2) require supplemental rent to be paid to the City; and (3) to incorporate the Equal Benefits ordinance into the lease.

STAFF RECOMMENDATION:

Approve the Resolution.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The City owns approximately 60,000 square feet of land, commonly known as "San Diego Square" and located at 910 C Street, San Diego, California 92101 (the "Land").

In 1979, the Land was leased (the "Existing Lease") for one dollar per year for 50 years to San Diego Kind Corporation, a California nonprofit corporation ("SD Kind"), for the purpose of providing 155 subsidized low-cost housing units, a managers unit, and a multi-service center with support facilities for San Diego's elderly. SD Kind constructed and owns the improvements on the Land.

SD Kind has entered into a sublease with Community Research Foundation, a California corporation ("CRF"), to provide certain mental health services at San Diego Square. One of CRF's programs provides services to all adults, rather than exclusively to the elderly, as currently required by the Existing Lease. SD Kind has requested an amendment to the Existing Lease to remove the "elderly-only" restriction and allow CRF to serve all adults.

City Council Policy 700-10 requires City Council approval of amendments to long-term leases.

This item requests authorization to amend the Existing Lease to:

- Allow services provided in a portion of the non-residential space at San Diego Square to be provided to all adults, rather than only to "San Diego's elderly";
- Provide for a percentage rent to be paid to the City in compliance with City Council Policy 700-10 once the existing HUD loan is retired in approximately eight years (the HUD loan does not allow such payments out of the project); and
- Comply with the Equal Benefits provisions of San Diego Municipal Code sections 22.4301-22.4308.

Housing Development Partners of San Diego, a California nonprofit public benefit corporation affiliated with the San Diego Housing Commission (“HDP”), wants to assume SD Kind’s rights and obligations under the Existing Lease and enter into a new lease ("HDP Lease") with the City for San Diego Square. The City Council's authorization of the HDP Lease is moving forward under a separate action, and was heard by the City Council's Land Use and Housing Committee on February 6, 2013.

HDP and SD Kind have entered into a purchase and sale agreement ("PSA") that contains a condition that the amendment proposed in this action be authorized by the City Council before May 30, 2013. The City Council's authorization of the HDP Lease prior to May 30 is also a condition of the PSA. The City is a third-party beneficiary of the PSA.

FISCAL CONSIDERATIONS:

The proposed amendment provides for additional rent to the City to commence in approximately eight (8) years.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

N/A - EOCP Memo of 05/03/1995.

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

The existing lease between the City and San Diego Kind Corporation for San Diego Square was approved in 1979 by San Diego Resolution RR-250195.

This matter will be heard by the Land Use & Housing Committee on April 24, 2013.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The City of San Diego; San Diego Kind Corporation; San Diego Housing Commission by and through Housing Development Partners of San Diego; Community Research Foundation. Projected impacts will be the provision of mental health services to all adults at San Diego Square.

Barwick, James

Originating Department

Deputy Chief/Chief Operating Officer

FIRST AMENDMENT TO LEASE
[SAN DIEGO SQUARE]

THIS FIRST AMENDMENT TO LEASE ("First Amendment") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and SAN DIEGO KIND CORPORATION, a California non-profit corporation ("SD KIND"), to be effective as of _____, 2013 (the "First Amendment Effective Date") when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY, as lessor, and SD KIND, as lessee, are parties to that certain LEASE AGREEMENT ("Lease") filed in the Office of the San Diego City Clerk on September 14, 1979, as Document No. RR-250195, and relating to the ground lease of the land located at 1055 9th Avenue, San Diego, California 92101, commonly known as "San Diego Square" (Assessor's Parcel Number 534-196-05-00) (the "Lease Premises"). The Lease is attached hereto as **Exhibit A to First Amendment: Lease**.
- B. In addition to constructing a 12-story apartment building, SD KIND constructed an adjacent two-story building with approximately 18,849 square feet of non-residential space (commonly referred to as the "Commercial Space") on the Lease Premises.
- C. SD KIND, as sublessor, and Community Research Foundation, Inc., a California corporation ("CRF"), as sublessee, are parties to that certain SUBLEASE dated September 26, 2012 (the "Sublease," as amended by that certain MEMORANDUM OF UNDERSTANDING ("MOU") dated as of December 20, 2012), relating to an approximately 10,262 square-foot portion of the Commercial Space (the "Sublease Premises," as more particularly defined in the Sublease).
- D. The Sublease allows CRF to provide certain services described in the Sublease (the "CRF Services") exclusively to the elderly on the Sublease Premises.
- E. SD KIND has requested this First Amendment to allow the CRF services to be provided to all adults, rather than exclusively to the elderly. The un-amended Sublease that calls for services to both adults and seniors was approved by the United States Department of Housing and Urban Development ("HUD") on December 18, 2012.
- F. San Diego City Council Policy 700-10, LEASING OF CITY-OWNED PROPERTY, section L. Subleases, requires that "Unless special circumstances exist, leases shall provide for the City to receive a minimum of fifty percent (50%) of the incremental gross rental revenues due to the lessee from subleases." However, as long as SD KIND's housing project is subject to the current HUD loan (the "HUD Loan"), SD KIND is prevented from paying such rent to CITY. It is expected that the HUD Loan will be paid off in approximately eight (8) years, after which such rent can be paid. This First Amendment provides that such rent will commence upon the retirement of the HUD Loan. It is understood and agreed that unless and until the HUD Loan is retired, no such rent will be accrued, due or payable, and at the time the HUD Loan is retired, the City will not make a request for any such accrued or back rents.

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

1. Permitted Use. Lease section I., A. PERMITTED USE, is deleted in its entirety and shall be replaced to read as follows, in its entirety:

A. PERMITTED USE. Said premises are leased to LESSEE solely and exclusively for the purpose of providing low-income elderly rental housing pursuant to the U.S. Department of Housing (H.U.D.) program for housing for elderly under Section 202 of The U.S. Housing Act of 1959 and Section 8 of the U.S. Housing Act of 1937, or other federal, state or local-assisted low-income rental housing program approved by CITY, and for the purpose of operating a multi-service center with support facilities for San Diego's elderly, at minimal cost to them, including without limitation counseling, recreation, legal, medical and other services (the "Services") and for no other use or purpose. LESSEE shall provide the Services within the lease premises and exclusively to San Diego's elderly. "Elderly" shall mean persons sixty-two (62) years of age or older [Title 42 of United States Code section 8002(3)].

1. All-Adults Area. Notwithstanding the foregoing requirement that the Services be provided exclusively to San Diego's elderly, if LESSEE provides some or all of the Services within that approximately 10,262 square-foot portion of the Commercial Space (the "All-Adults Area") shown in the drawing attached hereto and incorporated herein as Exhibit B to First Amendment: All-Adults Area, such Services may be provided to all adults (i.e., persons at least eighteen (18) years old), rather than exclusively to San Diego's elderly. All Services provided outside the All-Adults Area, including without limitation the area commonly referred to as the "ballroom" or "community room," shall be provided exclusively to the elderly. "Commercial Space" shall mean the approximately 18,849 square-foot, non-residential portion of the improvements on the lease premises as shown in Exhibit C to First Amendment: Commercial Space, attached hereto and incorporated herein.

2. Supplemental Rent. Lease section III., A. RENT, shall be amended to read as follows, in its entirety:

A. RENT. Base rent for the full term of this lease shall be Fifty Dollars (\$50), receipt of which is hereby acknowledged by CITY.

1. Supplemental Rent. Upon the retirement of that certain loan to LESSEE from the United States Department of Housing and Urban Development pursuant to that certain Deed of Trust and Regulatory Agreement on file with the San Diego County Recorder's Office as

Documents 79-400962 and 79-400963, respectively (currently existing as of April 2013 and expected to be retired in 2021), in addition to the above-specified rent, which is acknowledged to be less than the fair rental value of the property, LESSEE shall pay to CITY supplemental rent in the amount of fifty percent (50%) of gross revenues derived from and payable to LESSEE or an affiliate of LESSEE's pursuant to any subleasing or licensing of all or any portion of the Commercial Space. Such supplemental rent shall be payable monthly within ten (10) days after the end of each month during the term of this agreement. "Gross Revenue" shall mean all revenue actually received and derived from all CITY-approved uses of all or any portion of the non-residential portion of the premises, including without limitation all revenue derived from subtenants and licensees. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue.

3. Required Contract Provisions. The following section 14 shall be added to Lease section IV.,
B. LESSEE COVENANTS:

14. Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this lease. LESSEE's failure to maintain equal benefits shall be a default of this lease.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

4. No Other Changes. Except as may render the terms of this First Amendment inoperable, all other terms and conditions of the Lease shall remain in full force and effect. Any conflict between the terms and conditions of the Lease and those of this First Amendment shall be resolved in favor of this First Amendment.

IN WITNESS WHEREOF this First Amendment is executed to be effective as of the First Amendment Effective Date.

Date: _____

SAN DIEGO KIND CORPORATION, a California non-profit corporation

BY: _____

Name: _____

Title: _____

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____

Name: _____

Title: _____

Approved as to form and legality (CITY):
JAN I. GOLDSMITH, San Diego City Attorney
BY: _____
Name: _____
Title: _____

Exhibit A to First Amendment: Lease

Exhibit B to First Amendment: All-Adults Area

Exhibit C to First Amendment: Commercial Space

Exhibit A to First Amendment: Lease

[TO FOLLOW BEHIND THIS PAGE]

ORIGINAL

LEASE AGREEMENT

THIS LEASE AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and SAN DIEGO KIND CORPORATION, a nonprofit California corporation, hereinafter called "LESSEE."

RECITALS

City Council authorized the City Manager to negotiate an exclusive lease agreement with San Diego Kind Corporation for the purpose of developing San Diego Square. The entire project would include 155 subsidized low cost housing units, a manager's unit, and a multi-service center with support facilities for San Diego's elderly to be financed under Section 202 of the Housing Act of 1959 supported by rental assistance payments under Section 8 of the Housing Act of 1937 and constructed on City-owned property located at 10th Avenue and "C" Street, encompassing approximately 60,000 square feet of land, and more properly described as follows:

Lots A, B, C, D, E, F, G, H, I, J, K and L in Block 31 of Horton's Addition in the City of San Diego, County of San Diego, State of California, according to the Map thereof made by L. L. Lockling on file in the office of the County Recorder of said county.

2. LESSEE as consideration for this lease has offered the nominal rent of \$1 per year to LESSOR, and as additional consideration has agreed to construct 156 housing units on the property and has agreed to make said 155 housing units available to low-income elderly persons during the entire

DOCUMENT NO. RR-250195

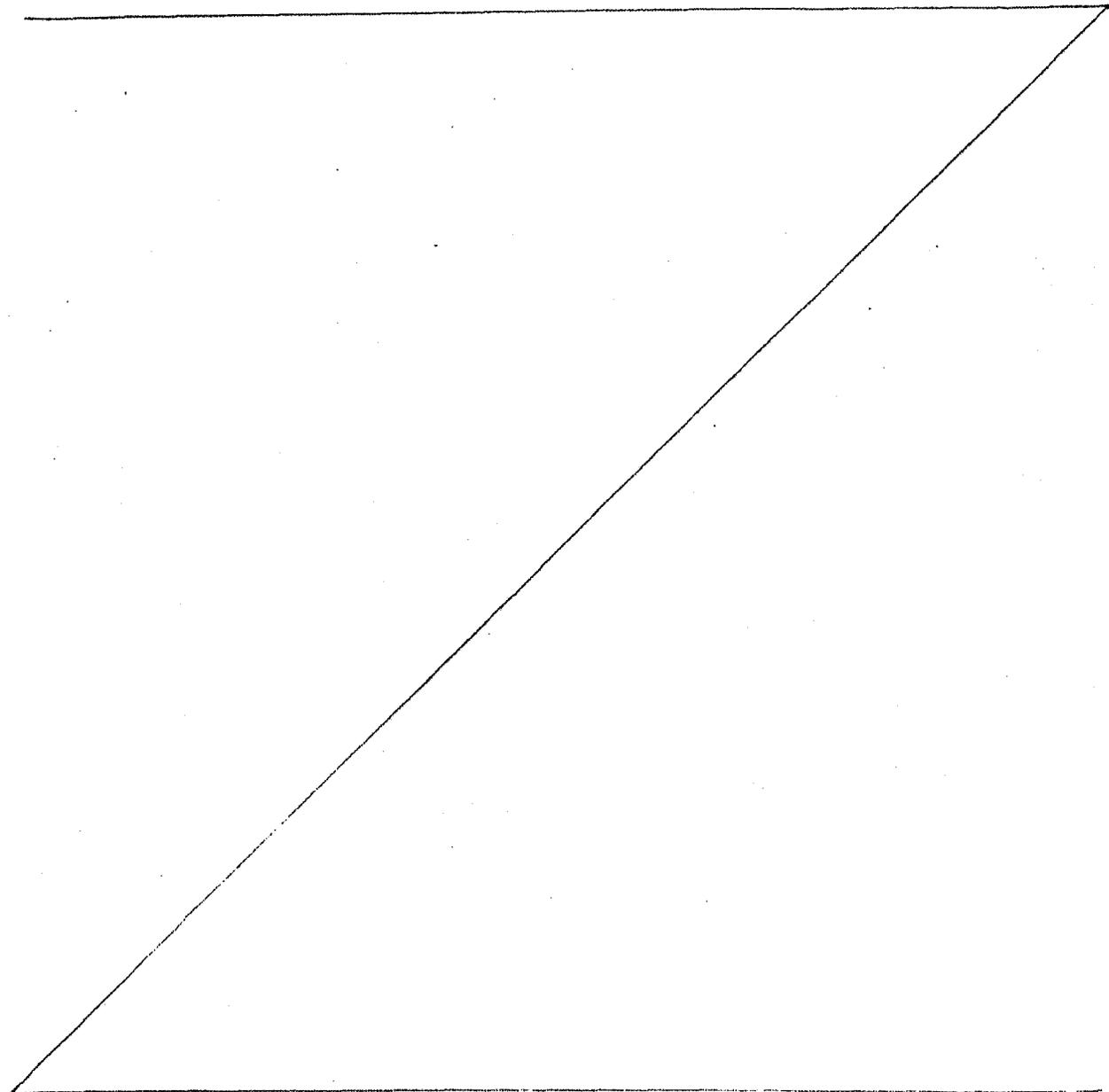
FILED SEP 14 1979

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

term of this lease, either pursuant to the HUD Section 8 Program, or pursuant to any other available local, state, or federal sponsored rent subsidy programs in effect during the term of this lease. LESSEE as further consideration, has agreed to provide to San Diego's elderly at minimal cost to them assistance and services, including but not limited to counseling, recreation, legal, medical and other services on said site. To the extent the City is empowered to do so, it shall not during this term impose any taxes or assessments on lessee's leasehold interest hereunder and at the inception of this lease, the lessee's premises shall be free and clear of all liens, encumbrances, taxes and assessments other than those shown in the title report.

3. LESSEE shall execute a Housing Assistance Payment Contract with HUD, which contract shall provide for rental subsidies for the units during a period of 20 years, and the execution of such contract is relied upon by CITY and is additional consideration to CITY for making the leased property available to LESSEE at a nominal rent rate.
4. The parties hereto specifically agree that the entire purpose and intent of this lease and the development on the leased property is to make housing available to low-income elderly persons during the entire term of this lease and that anything to the contrary herein notwithstanding, LESSEE and its successors and assigns shall take all reasonable and necessary actions to accomplish the said purpose and intent.

5. To the extent not in conflict with the requirements of funding assistance and rent subsidy obtained or to be obtained by Lessee from HUD or other agency, Lessee agrees to provide priority of occupancy in the developed housing to elderly people displaced by the redevelopment projects in the Centre City area.



NOW, THEREFORE, in consideration of the recitals and covenants herein, and other good and valuable consideration, it is mutually agreed as follows:

I. DEMISED 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 follows:

Lots A, B, C, D, E, F, G, H, I, J, K and L in Block 31 of Horton's Addition in the City of San Diego, County of San Diego, State of California, according to the Map thereof made by L. L. Lockling on file in the office of the County Recorder of said county.

- A. PERMITTED USE. Said premises are leased to LESSEE solely and exclusively for the purpose of providing low-income elderly rental housing pursuant to The U.S. Department of Housing (H.U.D.) program for housing for the elderly under Section 202 of The U.S. Housing Act of 1959 and Section 8 of The U.S. Housing Act of 1937, or other federal, state or local-assisted low-income rental housing program approved by CITY, and for the purpose of operating a multi-service center with support facilities for San Diego's elderly, and for no other use or purpose.
- B. OBLIGATION TO DILIGENTLY USE. LESSEE covenants to use said premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof.
- C. RELATED COUNCIL ACTIONS. By the granting of this lease, the City Council of The City of San Diego is not obligating itself with regard to any other discretionary action relating to development or operation of said premises. Such discretionary action includes, but is not limited to, rezonings, variances, environmental clearances or any other governmental agency approvals which are required, except as specified in the 207 Lease Addendum attached hereto as Exhibit A and thereby made a part hereof.

II. TERM OF AGREEMENT.

- A. COMMENCEMENT AND TERMINATION. The term of this agreement shall be fifty (50) years commencing from the date the HUD Mortgage or deed of trust is executed. A copy of such executed mortgage or deed of trust shall be

delivered to the City Manager and filed with the City Clerk. In the event said mortgage or deed of trust is not executed within one hundred fifty (150) days following the execution hereof by the City Manager, this lease shall be of no further force or effect.

B. SURRENDER OF PREMISES. At the expiration or earlier termination of this lease, LESSEE shall execute, acknowledge and deliver to CITY, a valid and recordable quitclaim deed covering all of the leasehold premises and fixtures free and clear of all liens and encumbrances, subject however, to the provisions of the Section 207 addendum hereto.

III. A. RENT. Rent for the full term of this lease shall be fifty (50) dollars receipt of which is hereby acknowledged by City.

B. ADDITIONAL CONSIDERATION. As additional consideration for this lease and in addition to the above specified rent, which is acknowledged to be less than the fair rental value of the property, during the term hereof, so long as LESSEE's leasehold interest, leasehold improvements or property used in connection therewith are subject to any encumbrance to secure a federal government loan, LESSEE shall enter into and be bound by a Housing Assistance Payments Contract with HUD and the housing units to be constructed on the premises pursuant to the HUD program for elderly housing under said Section 202 and Section 8 shall be operated strictly in accordance with the provisions of said Housing Assistance Payments Contract and applicable HUD or other federal rules, regulations and laws and shall be rented only to such persons at such rentals as may be required or allowed thereunder and all expenses and other matters pertaining to such operation, management or rental of the property shall be governed by the provisions of said Contract, the Regulatory Agreement between LESSEE and HUD and applicable federal rules and regulations and subject thereto HUD shall be the sole arbiter of all questions that may arise in connection therewith.

During the term hereof at any time that LESSEE is not bound by any such Housing Assistance Payments Contract it will seek to obtain from other available federal, state or local governmental sources similar rent assistance and be governed by the rules and regulations of any agency providing such rental assistance during the term of the lease.

Each year during the term hereof, so long as LESSEE is bound by any such rental assistance contract or the property is subject to any such encumbrance to secure a federal loan, LESSEE shall at the time required by HUD furnish the City Manager with a true copy of the budget, and income and expense statement and other information required by HUD and in the form required by HUD and during any such period HUD shall be the sole arbiter of the allowance or non-allowance of any expense item shown thereon and will determine the proper allocation of funds pursuant to the applicable federal regulations and the Regulatory Agreement between LESSEE and HUD and the City shall be bound thereby (or by the determination of any other agency furnishing rental assistance to tenants of the housing units hereunder).

At any time during the term hereof that LESSEE is not bound by a rental assistance payments contract with HUD or similar contract with another agency and the property is not subject to any encumbrance to secure federal financing, LESSEE will furnish the City Manager with a true statement of its income and expenses in performing its obligations under this lease ninety (90) days after the end of its fiscal year, prepared in accordance with good accounting practice and LESSEE's usual method of accounting, and the City Manager shall have sixty (60) days after receipt of such statement within which to object to any such item of expense and failure of the City Manager to object in writing to LESSEE within such sixty (60) day period shall constitute approval by the City. In the event of a timely objection by the City Manager to any item of expense shown on such statement, if the parties cannot resolve the matter, the dispute shall be referred to binding arbitration by the American Arbitration Association, in San Diego, California, and resolved in accordance with the rules of said Association. If any item of expense is disallowed in whole or in part by the arbitrator, the arbitrator shall also have jurisdiction to determine the disposition of the disputed item. The cost of any such arbitration shall be borne equally by LESSEE and CITY.

INSPECTION OF RECORDS. When CITY desires to inspect the records and accounts of LESSEE in order to determine LESSEE's compliance with the terms of this agreement, CITY shall have the right at all reasonable times to inspect any records pertinent to the subject under study. LESSEE agrees to cooperate in such inspection and to make the pertinent records available to CITY at LESSEE's place of business in the City of San Diego.

DEVELOPMENT AS ADDITIONAL CONSIDERATION. LESSEE agrees as additional consideration to develop the lease premises in accordance with the City-approved Development Plan described in Section IV, B5, Development of this agreement and also with all applicable HUD development requirements.

IV. COVENANTS AND CONDITIONS.

A. CITY COVENANTS.

1. Quiet Possession. LESSEE, paying the said rent and performing the covenants and agreements herein, shall and may at all times during the said term peaceably and quietly have, hold and enjoy the said premises for the term hereof. If CITY for any reason whatsoever cannot deliver possession of the said premises to LESSEE at the commencement of said 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 nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom.
2. Right to Assign and Sublet. LESSEE's right to assign this lease or sublet hereunder shall be governed by the provisions of Paragraph (7) of the Regulatory Agreement between HUD and LESSEE with respect to the premises. Lessee shall comply with such provisions and such compliance shall constitute compliance with the provisions of this Paragraph 2. Subject to the foregoing, when in the opinion of the City Manager, and subject to the approval of the City Council whenever required, if it is deemed consistent with the best interests of the CITY, LESSEE may assign this lease or any interest therein and may sublease any portion thereof to an assignee or sublessee who has, in the opinion of the City Manager, the financial capability and overall competence to successfully operate the assigned or subleased premises. LESSEE agrees to notify

the City Manager of intent to assign this lease or any interest therein and allow the City first right to acquire said interest. The acquisition cost to CITY shall be equal to the then balance owed for site improvements and CITY agrees, in the event of CITY acquisition, to assume any LESSEE obligations and rights under then existing contracts and agreements involved in LESSEE's operations on the leased premises which have had the prior approval of the City Manager, or were required by HUD.

The consent of the City Manager and/or City Council will not be unreasonably withheld. This lease and any interest herein shall not be assignable by operation of law without the written consent of the City Manager. Any or all of the following actions will be considered trafficking in the leasehold which is not a permitted activity under this contract and will be considered as contrary to the CITY's best interests:

- a. Assignment or subleasing by LESSEE for a consideration in excess of a reasonable return on the actual value of the LESSEE's installed improvements and/or services rendered.
- b. Subleasing of the primary function of the lease or subleasing or a major portion of the leasehold.

Approval of any assignment or sublease shall be conditioned upon Assignee or Sublessee agreeing in writing that they will assume the rights and obligations thereby assigned or subleased and that they will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired.

Notwithstanding any of the above provisions, LESSEE may sublease any specific housing unit to any sublessee holding a proper HUD Section 8 certificate without CITY or City Manager's specific approval.

3. Right to Encumber. CITY does hereby consent and agree that LESSEE may encumber this lease, its leasehold estate and any improvements now existing or hereafter placed thereon in accordance with applicable HUD regulations and federal laws, by deed of trust, or mortgage to assure the payment of a promissory note or notes of the LESSEE, only for

improvements on this site. CITY further agrees that in the event said deed of trust or mortgage or other security type instrument should at any time be in default and be foreclosed, the CITY will accept the mortgagee or beneficiary thereof, as its new tenant under this lease in accordance with HUD requirements pursuant to the Regulatory Agreement, the deed of trust and applicable federal laws and regulations, with all the rights, privileges and duties granted and imposed in this lease. In the event said mortgagee or beneficiary desires to assign this lease to a nominee meeting HUD requirements, CITY will give its consent thereto upon the proposed assignee's agreement to assume all the duties and obligations under this lease agreement.

CITY understands that LESSEE is required to encumber its leasehold interest and other property and to enter into a Regulatory Agreement and other agreements with HUD in connection with the development and operation of the property and CITY agrees that LESSEE shall comply with the provisions of any such encumbrance, Regulatory Agreement or other agreement and with all HUD regulations relating thereto, all of which shall be binding upon CITY with respect to the provisions of this lease and shall supersede any contrary provisions of the foregoing Paragraph IV A or other provisions of this lease.

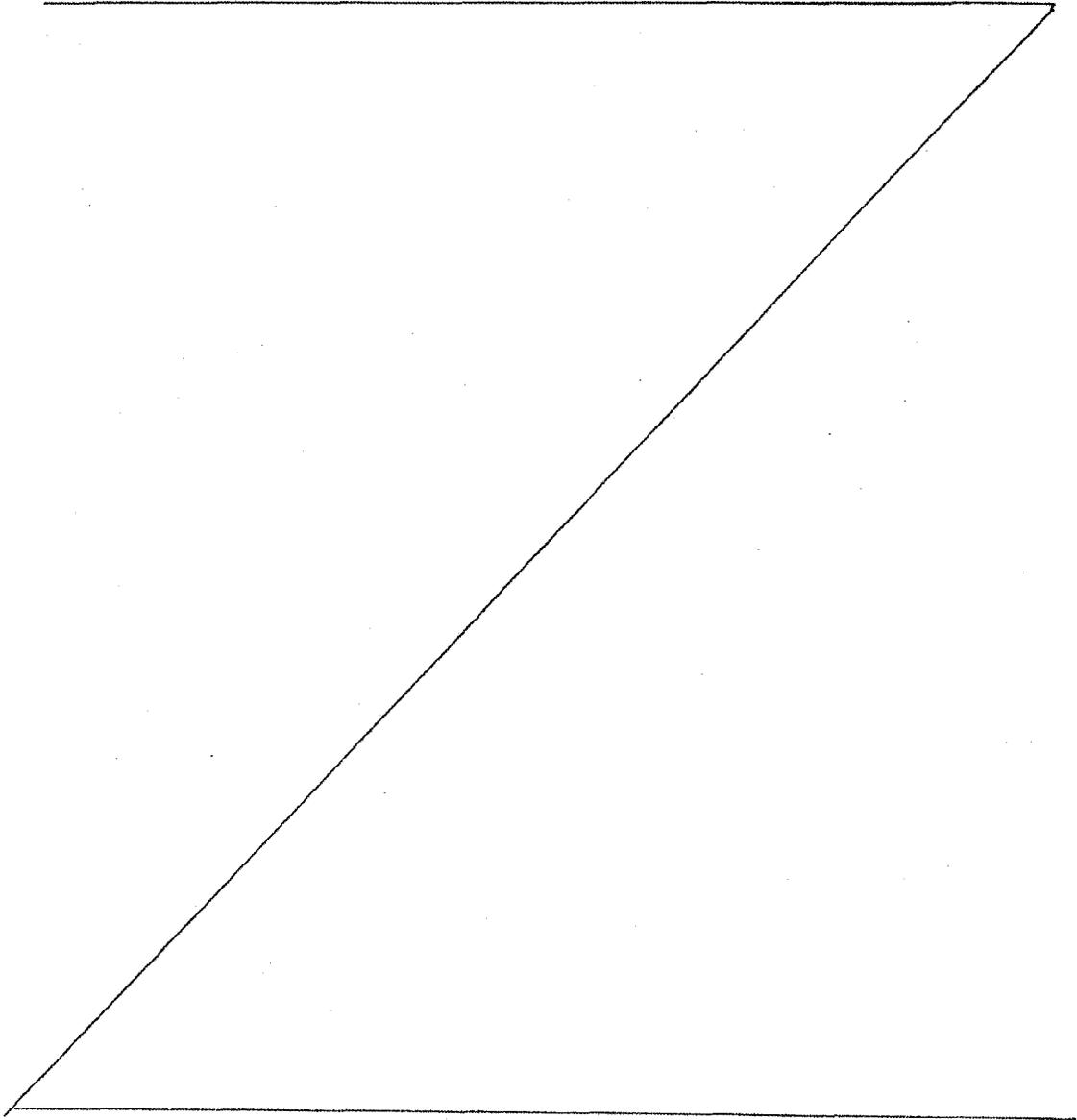
B. LESSEE COVENANTS.

1. 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.

2. 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 said premises, or the operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the premises, all applicable county and municipal ordinances and state and federal statutes now in force, or which may hereafter be in force. The judgment of any court of

competent jurisdiction, or the admission of LESSEE in any action or proceeding against it, whether CITY be a party thereto or not, that LESSEE, has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.

3. Construction/Alterations. LESSEE agrees not to construct or install any buildings or structures on said premises or otherwise improve or alter said premises in any manner except in accordance with plans and specifications previously submitted



to the City Manager and approved by him in writing. LESSEE shall not make any major structural or architectural design alterations to approved buildings, structures or improvements installed on said premises except in accordance with plans and specifications previously approved in writing by the City Manager. This provision shall not limit or set aside any obligation of LESSEE under this lease to maintain said premises in a decent, safe, healthy and sanitary condition, including structural repair and restoration of damaged or worn improvements.

4. Construction Bond. LESSEE agrees to file with CITY, prior to commencement of any construction performed upon the premises a faithful performance bond in the amount of 100% of the construction costs of the work to be performed. Said bond may be in cash or may be a corporate surety bond satisfactory to CITY or in a combination of both. Said bond shall insure that the construction commenced by LESSEE shall be completed in accordance with approved plans, or at option of the CITY, that the uncompleted construction be removed and the premises restored to a condition satisfactory to CITY. The surety bond will be filed with CITY and any cash used as a part of the bond may be deposited with CITY to be held in trust for the purpose specified above or may be placed in an escrow or other trust approved by CITY. Upon application by LESSEE, CITY may waive this requirement to file a bond. Compliance by LESSEE with HUD completion bonding requirements shall be deemed to satisfy the requirements of this Paragraph 4.

5. Development. LESSEE agrees to develop the leased premises in accordance with the General Development Plan approved by the City Manager and filed in the Office of the City Clerk as Document No. R.R. - 250080 and the Building Loan Agreement entered into between LESSEE and HUD and the plans and specifications therein referred to, the provisions of which shall supersede any conflicting provisions of said General Development Plan or of this lease. All changes shall be made strictly in accordance with the provisions of said Building Loan Agreement and HUD regulations and LESSEE agrees to furnish the City Manager with copies of any changes approved by HUD.

6. Indemnity. LESSEE agrees that CITY, its agents, officers and employees, shall not be liable for any claims, alleged liabilities, penalties, fines or for any damage to the goods, properties or effects of LESSEE, its sublessees or representatives, agents, employees, guests, licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether alleged to have been caused by or resulting from any acts or omission of LESSEE or its sublessees in or about the leased premises. LESSEE agrees to indemnify and save free and harmless CITY and its authorized agents, officers, and employees against any of the foregoing alleged liabilities and any costs and expenses incurred by CITY on account of any claim or claims therefor.
7. Insurance Coverage. During the entire term of this lease, LESSEE agrees to procure and maintain public liability 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 imposed by law for damages on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of CITY or LESSEE, its sublessees or any person acting for CITY or LESSEE or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property or any person caused directly or indirectly by or from acts or activities of CITY, or LESSEE, or its sublessees, or any person acting for CITY or LESSEE, or under its control or direction. Such PD and PL 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 one million dollars (\$1,000,000) COMBINED. SINGLE LIMIT LIABILITY. LESSEE agrees to submit a policy of said insurance to the CITY on or before the effective date of this agreement indicating full coverage of the contractual liability imposed by this agreement 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. If the operation under this agreement results in an increased or decreased risk in the opinion of the City Manager,

then LESSEE agrees that the minimum limits herein-
above designated shall be changed accordingly
upon request by the City Manager. LESSEE agrees
that provisions of this paragraph as to maintenance
of insurance shall not be construed as limiting
in any way the extent to which the LESSEE may be
responsible for the payment of damages to persons
or property resulting from LESSEE's activities,
the activities of its sublessees or the activities
of any person or persons for which LESSEE is
otherwise responsible.

LESSEE also agrees to procure and maintain during
the entire term of this lease, a policy of fire,
extended coverage and vandalism insurance on all
permanent property of an insurable nature located
upon the leased 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 90% of the replacement costs of
said property. LESSEE agrees to submit a certifi-
cate of said policy to the CITY on or before the
effective date of this lease. Said policy shall
contain a condition that it is not to be terminated
or cancelled without at least thirty (30) days
prior written notice to CITY by the insurance
company. LESSEE agrees to pay the premium for
such insurance and shall require that any insur-
ance proceeds resulting from a loss under said
policy are payable jointly to CITY and LESSEE
and said proceeds shall constitute a trust fund
to be reinvested in rebuilding or repairing
the damaged property or said proceeds may be

disposed of as specified in Section IV, 16, Waste, Damage or Destruction, hereof; provided, however that within the period during which there is in existence a mortgage or deed of trust upon the leasehold, then and for that period all policies of fire insurance, extended coverage and vandalism shall be made payable jointly to the mortgagee or beneficiary, the name insured, and CITY, and shall be disposed of jointly by the parties for the following purposes:

- a. As a trust fund to be retained by said mortgagee or beneficiary and applied in reduction of the debt secured by such mortgage or deed of trust with the excess remaining after full payment of said debt to be paid over to LESSEE and CITY to pay for reconstruction, repair, or replacement of the damaged or destroyed improvements in progress payments as the work is performed. The balance of said proceeds shall be paid into the reserve for replacements account as required by HUD.

Provided, further however, nothing herein shall prevent LESSEE, at its option and with the approval of said mortgagee or beneficiary, from filing a faithful performance bond in favor of said mortgagee or beneficiary and CITY in an amount equivalent to said insurance proceeds in lieu of surrendering said insurance proceeds to said mortgagee or beneficiary; and CITY.

- b. In the event that this lease is terminated by mutual agreement and said improvements are not reconstructed, repaired or replaced, the insurance proceeds shall be jointly retained by CITY and said mortgagee or beneficiary to the extent necessary to first discharge the debt secured by said mortgage or deed of trust and then to restore the premises in a neat and clean condition. Said mortgagee or beneficiary shall hold the balance of said proceeds for CITY and LESSEE as their interests may appear.

LESSEE agrees to increase the limits of liability when, in

the opinion of CITY, the value of the improvements covered is increased, subject to the availability of such insurance at the increased limits. LESSEE agrees, at his sole expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering said premises, buildings and appurtenances.

CITY agrees that compliance by LESSEE with the insurance provisions of the Section 207 Lease Addendum attached hereto and with any other HUD insurance requirements shall constitute compliance with all of the provisions of this Paragraph IV B 7 and that all such insurance and the proceeds thereof shall be used and governed by HUD requirements and regulations.

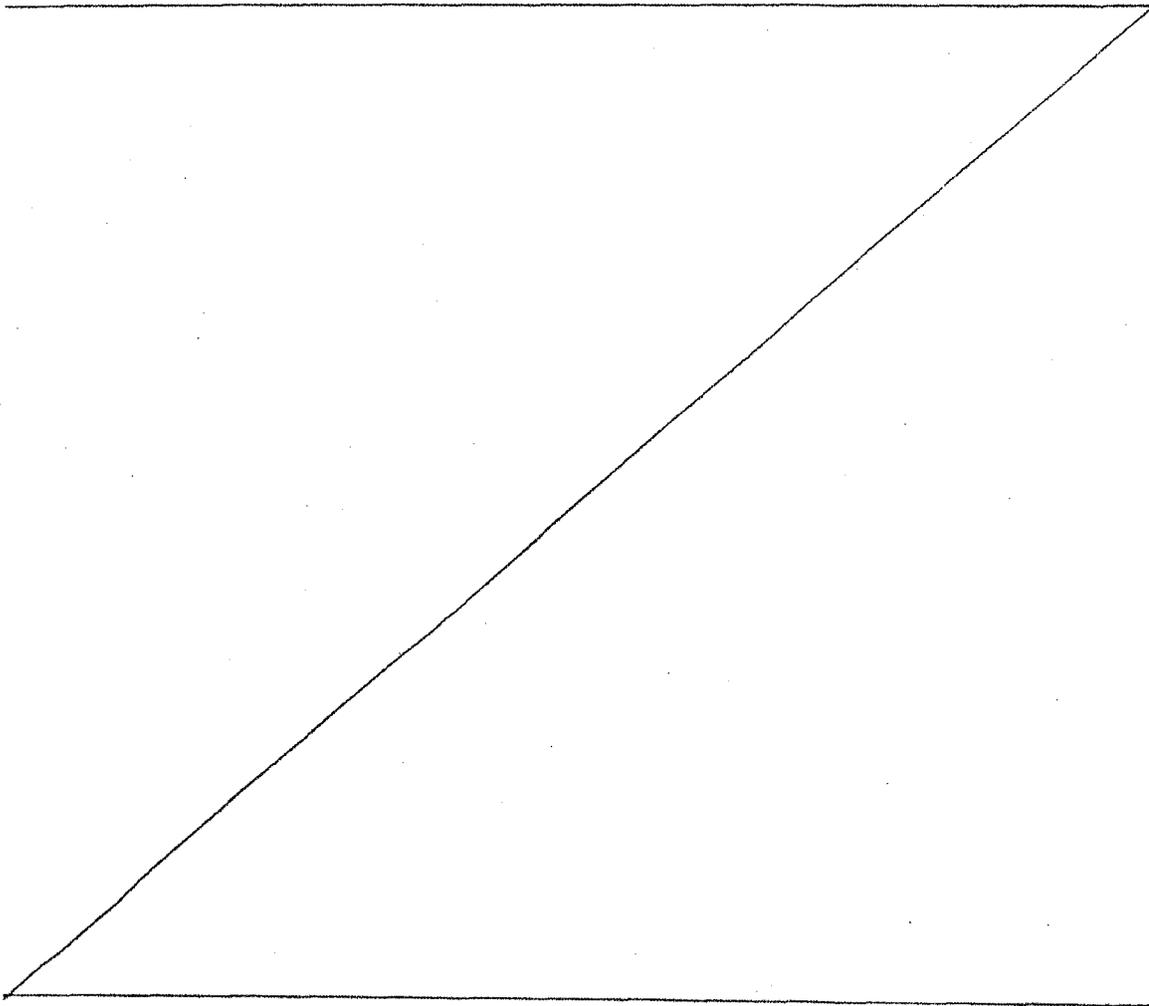
8. Labor and Materialmen's Bond. LESSEE agrees to save CITY free and harmless, indemnify it against all claims for labor and materials in connection with improvements, repairs or alterations to the premises, and the cost of defending against such claims, including reasonable attorney's fees.

In the event that improvements, repairs or alterations are constructed on the leased premises by other than the CITY, and a lien is filed, LESSEE agrees to file with CITY within five days a bond sufficient to pay in full all claims of all persons seeking relief under the lien. The bond shall be acknowledged by LESSEE as principal and by a corporation satisfactory to CITY licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.

LESSEE's compliance with the release of lien requirements of Paragraph 10 of the Regulatory Agreement shall constitute compliance with the requirements of this paragraph.

9. Legal Proceedings. LESSEE and CITY agree that should it become necessary for CITY or LESSEE to commence legal proceedings to collect rent, recover possession, or enforce any other provision of this lease, the prevailing party will be entitled to legal costs in connection therewith, including reasonable attorney's fees as determined by the court. The parties agree that the law of the State of California shall be used in interpreting this lease agreement and will govern all disputes under this lease agreement and will determine all rights and obligations hereunder. California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this lease agreement.

10. Maintenance. LESSEE agrees to assume full responsibility for the operation and maintenance of said premises throughout the term hereof without expense to CITY unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve said premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to CITY and in compliance with all applicable alws. 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 said 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.



11. 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, physical handicap or medical condition in LESSEE'S use of the premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.
12. Utility Costs. LESSEE agrees to order, obtain and pay for all utilities and service and installation charges in connection therewith. All utilities installed by LESSEE shall be installed underground, if practical.
13. Waste, Damage or Destruction. LESSEE agrees to give notice to the CITY of any fire or other damage that may occur on the leased premises within ten days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to the CITY. If the leased premises shall be damaged by any cause which puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE 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 LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to the CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

C. RESTRICTIVE CONDITIONS

1. Administration and Notices. Control and administration of this lease is under the jurisdiction of the City Manager of CITY 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 to be given or served upon CITY may be given or served by registered letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, Attention Property Director, City Administration Building, 202 "C" Street, San Diego, California 92101. Any notice or notices provided for by this lease or by law to be given or served upon LESSEE, Mortgagee, Trustee or Beneficiary may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to said LESSEE at the leased premises or at such other address designated in writing by LESSEE, Mortgagee, Trustee or Beneficiary or may be personally served upon them or any person hereafter authorized by them to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served upon personal service or forty-eight hours after mailing in the manner required herein.

Notwithstanding the provisions of this Paragraph IV C 1 the LESSEE shall comply with the provisions of Paragraph 9 of the Section 207 Lease Addendum attached hereto which shall supersede any contrary provisions of this paragraph.

2. City Approval and Consent. The approval or consent of the CITY, wherever required in this agreement, shall mean the approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.
3. Eminent Domain. In the event the leased 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 or Mortgagee then in effect), in the award and the effect of the taking upon this lease agreement shall be as follows:
 - a. In the event of such taking of only a part of the leased premises, leaving the remainder of said 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 leased 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 leased premises not so taken and from and after such date the contract rent, or in the event there is a minimum rent specified herein, then the minimum rental required by this lease to be paid by LESSEE to CITY shall be reduced in the proportion to which the value of the leased premises so taken bears to the total value of the demised premises; provided, however, CITY shall have the right, with the consent of LESSEE, to substitute like adjacent property and maintain the rent schedule without diminution.

- b. In the event of the taking of only a part of the leased premises, leaving the remainder of said 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 said premises or the portion thereof so taken vests in the condemning authority.
- c. In the event the entire leased premises are so taken, this lease and all of the right, title and interest thereunder shall cease on the date title to said premises so taken vests in the condemning authority.
- d. In the event of any taking under Subparagraphs a, b, or c, hereinabove, the only portion of any award of compensation which shall be paid to LESSEE shall be the fair market value of LESSEE'S interest in the improvements placed upon that portion of the leased premises which are taken by the condemning agency. It is the intention of this provision that LESSEE shall not in any condemnation receive any bonus or penalty by reason of LESSEE'S contractual rights in connection with the property condemned.
- e. Notwithstanding the foregoing provisions of this section, CITY may, in its discretion and without affecting the validity and existence of this lease, transfer the CITY'S interests in said premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by CITY, LESSEE shall retain whatever rights it may have to recover from the said authority the fair market

value of LESSEE's interest in the improvements taken by the authority and which LESSEE has placed upon the leased premises in accordance with the provisions of this lease.

The provisions of Section 5 of the Section 207 lease addendum attached hereto shall supersede any conflicting provisions of the foregoing Paragraph 4 C 3 specifically including, but not limited to the provisions of Section IV C 3 a, relating to CITY's right to substitute like adjacent property in the event of condemnation of any portion of the leased premises and such substitution shall be subject to HUD approval in writing.

4. 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. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy and sanitary condition, CITY shall have the right, after ten days written notice to LESSEE, to have any necessary maintenance work done for and at the expense of LESSEE and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done in order to keep said premises in a decent, safe, healthy and sanitary condition. Further, if at any time the CITY determines that said premises are not in a decent, safe, healthy and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy and sanitary. Said bond shall be in an amount adequate in the opinion of the CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

LESSEE shall comply with the provisions of Paragraph 8 of the Regulatory Agreement between LESSEE and HUD, and such compliance shall constitute compliance by LESSEE with the provision of this Paragraph IV C 4 and shall supersede the provisions of this paragraph while said Regulatory Agreement is in force.

5. Holding Over. The occupancy of the demised premises after the expiration of the term of this agreement shall be construed to be a tenancy from month to month, and all other terms and conditions of this agreement shall continue in full force and effect.
6. Merger. The voluntary or other surrender of this lease by LESSEE, or a mutual cancellation thereof, shall not work a merger and shall, at the option of CITY, terminate all or any existing subleases or subtenancies or may, at the option of CITY, operate as an assignment to it of any or all such subleases or subtenancies.
7. Oral Representation. It is specifically understood and agreed hereby that this lease contains the complete expression of the whole agreement between the parties hereto, and that there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied by the said parties, except as are fully set forth herein; and further, that this lease cannot be enlarged, modified or changed in any respect except by written agreement duly executed by and between the said parties.
8. Ownership of Improvements. All improvements, except such fixtures as are hereinafter described on the attached addendum, which have been installed by LESSEE in accordance with the provisions of this agreement, shall at the option of CITY become the property of CITY upon expiration or sooner termination of this agreement. LESSEE shall have the right to remove from the demised premises only those fixtures described on the attached addendum at any time prior to the expiration or earlier termination of the agreement, provided that such removal would not, in the opinion of CITY, restrict the operation of the demised premises to the extent that the rent paid to CITY is reduced as a direct result therefrom. LESSEE'S removal of any said fixtures shall be at LESSEE'S own expense and shall be conditioned upon LESSEE'S repairing any damage to the remaining improvements and upon LESSEE leaving the demised premises in good order and condition. In the event LESSEE does not so remove said fixtures prior to the expiration of this agreement, CITY may remove, sell or destroy the same at

the expense of LESSEE, and if the proceeds of the sale are not adequate, LESSEE shall promptly pay to CITY its reasonable cost of any such removal, sale or destruction together with the reasonable cost of repair of damages to CITY's property resulting from such removal, sale or destruction. At the option of CITY, any such fixtures not removed by LESSEE may be deemed abandoned and may be removed and sold by CITY and all income received by CITY therefrom shall be the property of CITY exclusively. Said addendum may be changed from time to time upon approval of the City Manager, without further resolution by the City Council.

CITY understands and agrees that in connection with financing the construction and operation of the property LESSEE shall have the right to encumber its leasehold interest and all improvements, fixtures, equipment and personal property constructed thereon or used in connection therewith, acquired with the proceeds of loans made by HUD and that the provisions of any deed of trust, mortgage, chattel mortgage, security agreement or other encumbrance in favor of HUD, and the regulations of HUD in connection therewith, shall supersede all of the provisions of this Paragraph IV C 8.

9. Remedies of City.

a. Default by Lessee. In the event that:

- (1) LESSEE shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by LESSEE and shall fail to cure said default within thirty (30) days following the service on LESSEE of a written notice from CITY specifying the default complained of; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against him 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 through

LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE in or to the said premises and expel LESSEE and all persons so claiming rights thereto. Provided, however, in the event that any default described in Part a, (1) of this section is not curable within thirty (30) days after the service of a written notice upon LESSEE, CITY shall not terminate this lease pursuant to said default if LESSEE immediately commences to cure said default and diligently pursues such cure to completion.

Provided, further, in the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall not terminate this lease until it first shall have served upon the mortgagee or beneficiary written notice of the default or defaults complained of, and the mortgagee or beneficiary shall have thirty (30) days from service of such notice within which to commence such cure as may be necessary and this lease shall not terminate if said mortgagee or beneficiary shall prosecute said cure with reasonable diligence thereafter, and said thirty-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.

- b. City Recourse. If the mortgagee or beneficiary shall be required to perfect its right to cure said default or defaults through litigation or through foreclosure, then CITY shall have the option of the following courses of action in order that such default or defaults may be expeditiously corrected:
- (1) CITY may correct or cause to be corrected 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 on the date that the rent is next due after presentation by CITY of a statement of all or part of said costs.
 - (2) CITY may correct or cause to be corrected 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 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 correct said default or defaults or to pay the costs of such correction performed by or at the direction of CITY.

- (3) CITY may terminate this lease as to the rights of LESSEE herein by assuming liability for any trust deed or mortgage. LESSEE will assume and agrees to pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related notes by CITY. CITY may, as an alternative, substitute for said terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary.

Should said default or defaults be noncurable by LESSEE, then any lender holding a beneficial interest in said leasehold whose qualifications have been approved by CITY for assignment of the leasehold interest shall have the absolute right to substitute itself to the estate of the LESSEE hereunder and to commence performance of this lease and this lease shall not terminate if such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself and commence performance within said thirty-day period after service upon it of said written notice by CITY of the default. In the event of the election by the mortgagee or beneficiary to so substitute itself to LESSEE'S estate hereunder, the CITY expressly consents to said substitution and authorizes said mortgagee or beneficiary to perform under this lease with all the rights, privileges and obligations of the original LESSEE hereunder, subject to cure of the default if possible by mortgagee or beneficiary, and LESSEE expressly agrees to assign all its interest in and to its leasehold estate in that event.

- c. Abandonment by Lessee. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate LESSEE'S right to possession, and CITY may enforce all its rights and remedies under said lease, including, but not limited to, the right to recover the rent as it becomes due under the lease. For purposes of this section, the following do not constitute a termination of LESSEE'S right to possession:

- (1) Acts by CITY of maintenance, or preservation, or efforts to relet the property.
- (2) The appointment of a receiver upon initiative of CITY to protect the CITY'S interest under the lease.

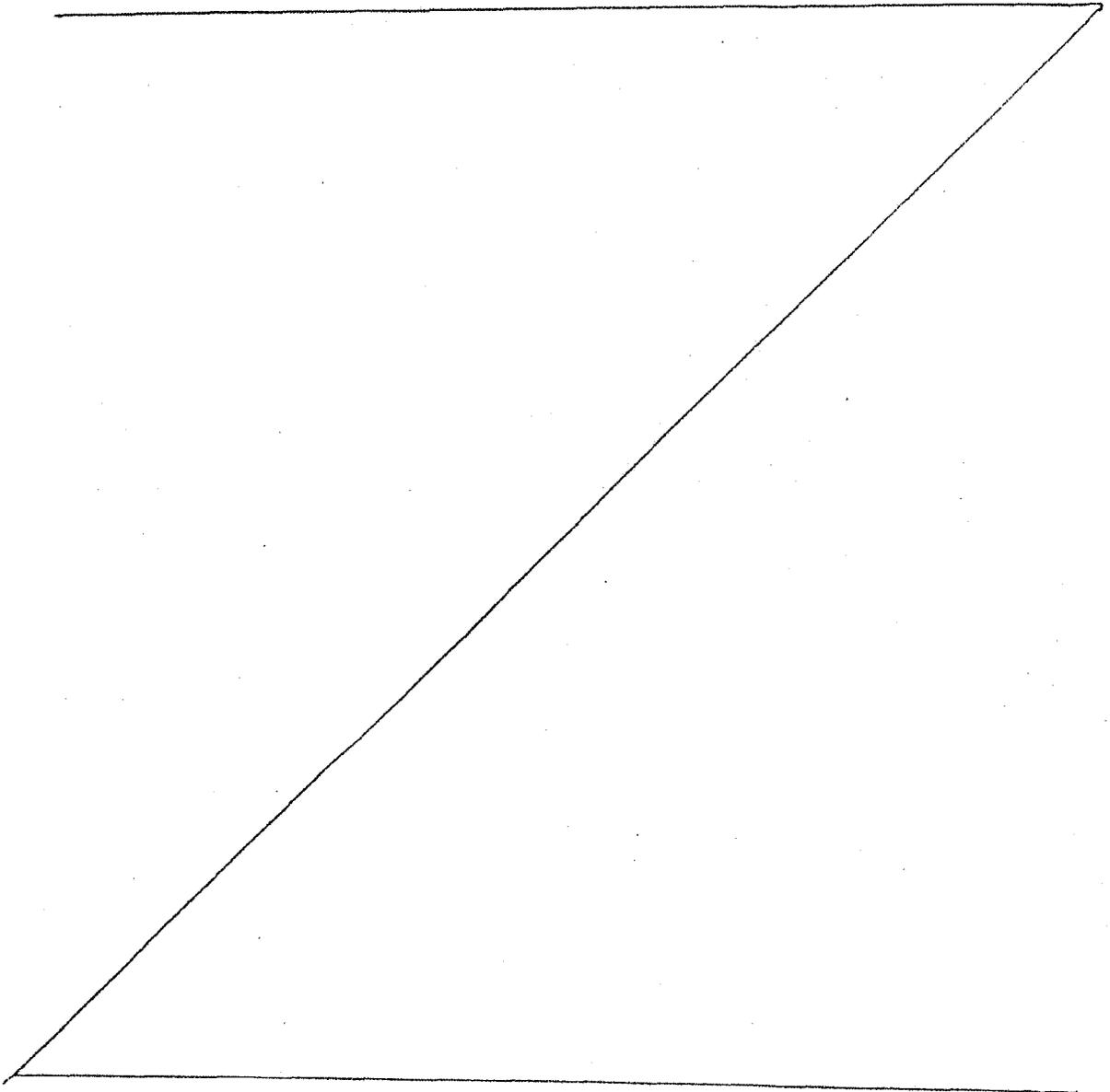
- d. Damages. Damages which CITY may recover in the event of default under this lease include the worth, at the time of award, of the amount by which the unpaid rent for the balance of the term after the date of award, or for any shorter period of time specified in this lease, exceeds the amount of such rental loss for the same period that the LESSEE proves could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

The foregoing provisions of Paragraph IV C 9. are hereby specifically made subject to the provisions of Paragraph 8 of the Section 207 lease addendum attached hereto and to the provisions of the deed of trust, chattel mortgage, security agreement or other encumbrance executed by LESSEE in favor of HUD and the provisions of the Regulatory Agreement between LESSEE and HUD all of which shall supersede any contrary provisions of this paragraph.

10. Preservation of City Rights. CITY hereby reserves all rights, title and interest in any and all gas, oil, minerals and water beneath said leased premises. CITY shall have the right to enter said leased 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 said leased 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 leased 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.

The CITY's rights under the foregoing Paragraph IV C 10 shall be subject to the provisions of the deed of trust in favor of HUD the Regulatory Agreement between LESSEE and HUD and HUD's interests thereunder and CITY will make no improvements and will take no action under this paragraph without prior written approval of HUD.

11. Time is of the Essence. Time is of the essence of each and all of the terms and provisions of this lease and this lease shall inure to the benefit of and be binding upon the parties hereto and any successor of LESSEE as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this lease shall extend to and bind any assigns or sublessees of LESSEE.



12. Waiver. The waiver by CITY of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by CITY shall not be deemed to be a waiver of any preceding breach by LESSEE of any term, covenant or condition of this lease, regardless of CITY's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of CITY to require or exact conditions or agreements of this lease shall not be construed as in any manner changing the terms hereof and shall not prevent CITY from enforcing any provision hereof.
13. The 207 Lease Addendum (Exhibit A), the Regulatory Agreement Housing for the Elderly Nonprofit, the Housing Assistance Payments Contracts and all other contracts and agreements entered into or required to be entered into by Lessee with the Secretary of Housing and Urban Development (HUD) or the United States Government or other Federal agency in connection with financing the development of the leased premises and obtaining housing assistance payments under Section 202 of the Housing Act of 1959, Section 8 of the U.S. Housing Act of 1937 or other federal laws and the regulations issued thereunder from time to time, if inconsistent with or in conflict with any provision of this lease, shall supersede such lease provision and shall in all respects control and govern Lessee's rights and obligations hereunder.
14. The provisions of Paragraph A of Article II are amended to provide that in the event Lessee has not commenced development of the subject property as contemplated by this Lease on or before October 31, 1980, the Lease shall be of no further force or effect, provided, however, Lessee shall have the option to purchase the leased property at its fair market value as determined by Lessor at any time prior to October 31, 1980, upon giving Lessor written notice of its intent to exercise this option at least three (3) months prior to that date. The purchase price shall be paid in cash through escrow, which shall close no more than sixty (60) days after October 31, 1980, and on opening of escrow Lessee shall deposit therein an amount not less than ten percent (10%) of the purchase price or the estimated purchase price at that date.

If Lessee is unable to commence development of low-cost senior housing on the leased property on or before October 31, 1980, if the foregoing option is not exercised, Lessor will attempt to develop senior housing itself or through other sponsors or developers which will include a senior center facility to be operated by San Diego Kind Corporation and located on the leased premises on terms and conditions satisfactory to Lessor. Should Lessor fail to develop the property as contemplated by this Lease

and desire to sell the property, Lessee shall have the right of first refusal to purchase the property until October 31, 1983. In any event, the existing Lease between Lessor and Lessee covering Lots J, K and L of the leased premises, pursuant to which Lessee presently operates a senior center, will be renewed or extended to October 31, 1988, subject, however, to the foregoing provision of this lease relating to development of the property by Lessee or Lessor.

Furthermore, Lessee in consideration for this Agreement and Civitas Fund hereby agree to, in any event, continue the senior citizen center operation for a minimum of ten (10) years from the date of this lease and will undertake to provide all funds necessary for its operation up to a maximum of one million dollars (\$1,000,000).

IN WITNESS WHEREOF, this lease agreement is executed 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

Date 9/14/79

By [Signature]
City Manager

LESSEE

SAN DIEGO KIND CORPORATION

Date 9/7/79

By [Signature]
President

CIVITAS FUND

Date 9/7/79

By [Signature]
President

APPROVED as to form and legality this 14 day of Sept, 1979.

JOHN W. WITT, City Attorney

By [Signature]
Hal Valderhaug, Deputy

R- 250195

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

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)
)

ss.

On the 14th day of September, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared Ray T. Blair, Jr., known to me to be the City Manager of the City of San Diego, the municipal corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its Bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



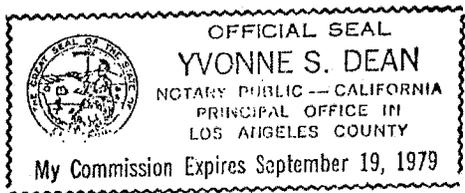
Rita Andrews

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss.

On the 7th day of September, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared MAVOURNEEN O'CONNOR, known to me to be the President of SAN DIEGO KIND CORPORATION, the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its Bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



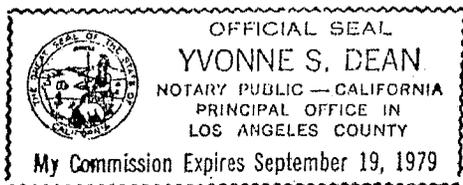
Yvonne S. Dean

Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss.

On the 7th day of September, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT B. BALLANTYNE, known to me to be the President of CIVITAS FUND, the corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its Bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



Yvonne S. Dean

Notary Public

THIS ADDENDUM IS ATTACHED TO AND MADE A PART OF THAT CERTAIN
LEASE BY AND BETWEEN THE CITY OF SAN DIEGO, A MUNICIPAL
CORPORATION, AND SAN DIEGO KIND CORPORATION

_____, LESSEE,
DATED September 14, 1979.

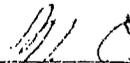
SECTION IV PARAGRAPH C _____, OWNERSHIP OF IMPROVEMENTS (continued)

The Lessee, in accordance with this section hereof, has the
right to remove from the demised premises only those fixtures
as described below: (if none, write none)

NONE



City Manager's Initials



LESSEE'S Initials

207 LEASE ADDENDUM

Notwithstanding any other provision 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, of 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 fo acquiring the leasehold interest, for the sum of \$1,200,000 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.

Exhibit "A"

6. The Landlord agrees that it will cooperate with Tenant and will not unreasonably refuse to approve any applications for permits or licenses or unreasonably withhold any other landlord required approval, and Landlord agrees that it will cooperate in the acquisition of 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.
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.

SEP 11 1979

WHEREAS, on August 20, 1979, by Council Resolution No. 250079, the Council authorized the City Manager to execute a lease agreement with San Diego Kind Corporation involving certain property generally known as Lots A through L, Block 31 of Horton's Addition, for the purpose of providing low-income elderly housing and a multi-service center for San Diego's elderly; and

WHEREAS, the project is being financed under Section 202 of the Housing Act of 1959 and is being supported by rental assistance payments under Section 8 of the Housing Act of 1937, and the U. S. Department of Housing and Urban Development (HUD) has requested that several changes be made in the lease agreement; and

WHEREAS, the changes generally refer to the 207 Lease Addendum and provide that the provisions of said Addendum and the HUD Regulatory Agreement pursuant to Section 202 of the Housing Act of 1959 take precedence over any inconsistent provisions of the lease; and

WHEREAS, a proposed substantive change provides the Housing Assistance Payments Contract with HUD which provide rental subsidies during a 20 year period as opposed to the 40 year period specified in the lease approved on August 20, 1979; and

WHEREAS, it is anticipated that the actual period of rental subsidies provided by HUD will extend well beyond

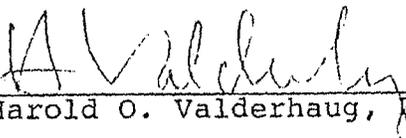
20 years; NOW, THEREFORE,

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

That the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, a Lease Agreement with SAN DIEGO KIND CORPORATION, as Lessee, of certain property generally known as Lots A through L, Block 31 of Horton's Addition, which has an estimated fair market value of \$1,200,000, for the purpose of providing low-income elderly housing, and for the purpose of operating a multi-service center with support facilities for San Diego's elderly, to be financed under Section 202 of the Housing Act of 1959 and supported by rental assistance payments under Section 8 of the Housing Act of 1937, and for no other use or purpose, for a term of 50 years, at a rental of \$1 per year and other valuable consideration, under the terms and conditions set forth in that Lease Agreement on file in the office of the City Clerk as Document No. RR-250195.

BE IT FURTHER RESOLVED, that Council Resolution No. 250079, adopted August 20, 1979, be and is hereby rescinded.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug, Deputy

HOV:dm
8/30/79
Or.Dept.: Hsg. Auth./Comm.

Passed and adopted by the Council of The City of San Diego
on SEP 11 1979, by the following vote:

YEAS: Mitchell, Lowery, Williams, Gade, and Killea

NAYS: Schnaubelt

NOT PRESENT: Stirling and Mayor Wilson

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 KATHI BLOXHAM, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,
true and correct copy of RESOLUTION NO. R- 250195
passed and adopted by the Council of The City of San Diego,
California, on SEP 11 1979.

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

(SEAL)

By Kathi Bloxham, Deputy.

DOCUMENT NO: RR-250195 ✓ *td*

FILED 9/14/79

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Lease agree w/San Diego Kind
Corp. for developing San Diego
Square, a low cost housing
project located at 10th Ave. and
"C" Streets.

R-250195 9/11/79

cc: ✓ Auditor - 7c
✓ County Assessor A4
✓ Attorney's Office - 3A

td
9-19-79

Exhibit C to First Amendment: Commercial Space

