

CITY OF SAN DIEGO

CONSENT TO ASSIGNMENT OF LEASE AGREEMENT

The City of San Diego (CITY), as LESSOR under that certain Lease Agreement (Master Lease) entered into with

LINDA VISTA VILLAGE LTD.

(LESSEE), dated October 23, 1979 and filed in the Office of the City Clerk as Document RR 250484, and amended, hereby consents to the Assignment of that Lease Agreement to

TECOLOTE INVESTORS, LLC;  
RIVER PARADISE PARTNERSHIP;  
FOX FAMILY TRUST;  
HARP FAMILY TRUST;  
AND MATTHEW FOLLET, AS THE MANAGING MEMBER

(ASSIGNEE) in accordance with the terms and conditions of the above referenced lease agreement and the Option/Sale Agreement entered into by LESSEE and said ASSIGNEE, dated April 14, 1997 and in accordance with additional conditions as follows:

This assignment in no way modifies or alters the terms and conditions as specified in the original lease as amended.

The existing terms of the above referenced lease will remain in full force and effect.

THE CITY OF SAN DIEGO

Dated July 31, 1997

By Jose E. Veckera  
City Manager

APPROVED AS TO FORM:

CASEY GWINN, City Attorney

Dated 7/31/97

By [Signature]  
Deputy City Attorney

DOC # 1997-0388583  
AUG 13, 1997 2:40 PM

RECORDING REQUESTED BY:  
RECORDED BY CHICAGO TITLE  
SUBDIVISION MAPPING DEPT.

904

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 28.00

WHEN RECORDED MAIL TO:

Matthew N. Follett  
Follett Investment Properties  
11344 Coloma Road, Suite 480  
Gold River, CA 95670

Fg  
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7333066-USD

### ASSIGNMENT OF LEASE

This Assignment is made as of August 13, 1997, by and between LINDA VISTA VILLAGE, LTD., a California limited partnership ("Assignor"), and TECOLOTE INVESTORS, LLC, a California Limited Liability Company, C.H. HARP and JOAN E. HARP, TRUSTEES OF THE HARP FAMILY TRUST DATED MAY 5, 1989, RIVER PARADISE PARTNERSHIP, a California general partnership and STEPHEN LEONARD FOX and LYNDIA K. FOX, AS TRUSTEES OF THE FOX REVOCABLE TRUST (collectively, "Assignees"). AKA LINDA RUTH \*C.H. \*\*DATED JULY 18, 1977 FOX

#### RECITALS

A. THE CITY OF SAN DIEGO, a municipal corporation ("Lessor"), and J. GEORGE HARRISON dba CAL-WEST DIVERSIFIED and LINDA VISTA VILLAGE, a general partnership (collectively, the "Original Lessees"), executed a lease (the "Lease") dated October 24, 1979, with respect to certain real property situated in the City of San Diego, California;

B. The Lease was recorded as File No. 79-532974 of the Official Records of the County Recorder of San Diego County, California, and subsequently amended by two unrecorded Amendments dated January 25, 1983, and September 2, 1986, respectively;

C. The Lease, as so amended (referred to herein as the "Amended Lease"), was assigned to Linda Vista Village, Ltd., a California limited partnership ("Assignor"), by an Assignment of Lessee's Interest which assigned the Original Lessees' interest under the Lease to Assignor and which was subsequently recorded on September 19, 1986 as File No. 86-414802 of the Official Records of the County Recorder of San Diego County, California;

D. Assignor's leasehold created by the Lease and the Amended Lease (the "Leasehold") is more particularly described on Exhibit "A" to this Assignment;

E. Assignor now desires to assign the Leasehold and its entire interest as the Lessee under the Amended Lease to Assignees, and Assignees desire to accept the assignment thereof; and

F. Assignees desire to hold undivided interests as Lessees in the Leasehold in the following percentages: TECOLOTE INVESTORS, LLC, a California Limited Liability Company- 27%; C.H. HARP and JOAN E. HARP, TRUSTEES OF THE HARP FAMILY TRUST DATED MAY 5, 1989- 23%; RIVER PARADISE PARTNERSHIP, a California general partnership- 18%; and STEPHEN LEONARD FOX and LYNDIA K. FOX, AS TRUSTEES OF THE FOX REVOCABLE TRUST- 32%. AKA LINDA RUTH FOX

\*C.H. DATED JULY 18, 1977

NOW, THEREFORE, Assignor and Assignees agree as follows:

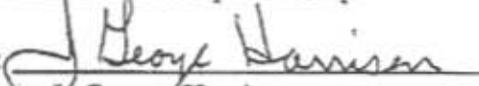
1. Assignor hereby assigns and transfers to Assignees, in the undivided percentage interests set forth in Recital F above, all of Assignor's right, title, and interest in and to the Leasehold as amended by the Amended Lease.

2. Assignees hereby agree, jointly and severally, to and do accept the assignment of the Leasehold from Assignor, and Assignees expressly assume and agree to keep, perform, and fulfill all the terms, covenants, conditions, and obligations, required to be kept, performed, and fulfilled by Assignor under the Amended Lease, including the making of all payments due to or payable on behalf of the Lessor under the Amended Lease when due and payable. If Assignees default in the performance of any obligation under the Amended Lease and, within twenty (20) days after any notice is given by Lessor of the default as required by the Amended Lease, fail to cure the default or (to the extent a longer cure period is permitted by the Amended Lease) fail to proceed diligently to cure the default, Assignor shall, in addition to all other rights and remedies available to Assignor under law, have the right to reenter and retake possession of the premises from Assignees and to cure any default so noticed by Lessor which is then uncured. Assignor's rights hereunder shall at all times, however, be subordinate and inferior to the rights or interests of any bona fide lender then holding a recorded lien upon the Leasehold. If Assignees shall hereafter obtain Lessor's full and unconditional release of Assignor and Assignor's partners from further liability under the Amended Lease, the rights reserved herein by Assignor to reenter and retake possession of the premises shall automatically terminate.

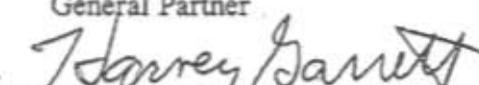
3. This Assignment may be executed in counterparts, and all counterparts together shall be construed as one document.

**ASSIGNOR:**

LINDA VISTA VILLAGE, LTD.  
a California limited partnership

By: 

J. George Harrison,  
General Partner

By: 

Harvey Garrett,  
General Partner

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURE CONTINUATION PAGE TO  
ASSIGNMENT OF LEASE]

ASSIGNEES:

TECOLOTE INVESTORS, LLC,  
a California Limited Liability Company

By: *Matthew N. Follett*  
Matthew N. Follett, Manager

C.H.  
THE HARP FAMILY TRUST  
DATED MAY 5, 1989

*C.H. Harp* Trustee

C.H. HARP, Trustee

*Joan E. Harp*  
JOAN E. HARP, Trustee

RIVER PARADISE PARTNERSHIP,  
a California general partnership

By: STEVEN V. DAVIES FAMILY 1989  
TRUST, Its General Partner

*Stephen V. Davies, Trustee*

By: *by Charles A. Lee, his attorney in fact*  
STEVEN V. DAVIES, Trustee  
BY CHARLES A. LEE,  
Attorney-in-Fact

THE FOX REVOCABLE TRUST DATED JULY 18, 1977

By: *Stephen Leonard Fox*  
Stephen Leonard Fox, Trustee

By: *Lynda K. Fox*  
Lynda K. Fox, Trustee AKA LINDA RUTH FOX

## EXHIBIT "A"

## DESCRIPTION OF LEASEHOLD

A LEASEHOLD ESTATE as created by that certain Lease dated October 24, 1979 made by and between City of San Diego, as lessor and J. George Harrison, dba Cal-West Diversified and Linda Vista Village, a general partnership, as lessee for the term of 55 years and upon the terms and conditions contained in said Lease Agreement recorded on December 21, 1979 as File No. 79-532974 of Official Records, as amended by an unrecorded Amendment to Lease dated January 25, 1983, and an unrecorded Second Amendment to Lease dated September 2, 1986. The Lessee's interest under the Lease was assigned to Linda Vista Village, Ltd., a California limited partnership by an Assignment of Lease recorded on September 19, 1986 as File No. 86-414802 of Official Records.

The real property covered by the Lease Agreement, as amended, is more particularly described as follows:

LOTS 1, 2, 3 AND 4, INCLUSIVE, OF LINDA VISTA VILLAGE, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 9640, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 2, 1980.



ACKNOWLEDGEMENT

STATE OF CALIFORNIA )  
COUNTY OF Contra Costa ) ss.

On August 7, 1997, before me, Aldo P. Guidotti a Notary Public in and for said County and State, personally appeared, **C.H. HARP** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



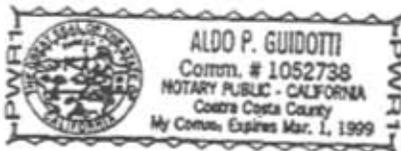
Aldo P. Guidotti  
Notary's Signature

ACKNOWLEDGEMENT

STATE OF CALIFORNIA )  
COUNTY OF Contra Costa ) ss.

On August 7, 1997, before me, Aldo P. Guidotti, a Notary Public in and for said County and State, personally appeared, **JOAN E. HARP** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



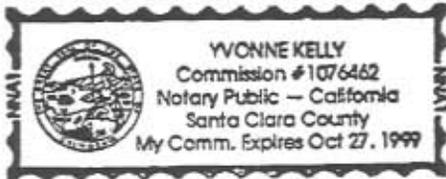
Aldo P. Guidotti  
Notary's Signature

ACKNOWLEDGEMENT

STATE OF CALIFORNIA )  
COUNTY OF Santa Clara ) ss.

On August 7, 1997, before me, Yvonne Kelly, a Notary Public in and for said County and State, personally appeared, STEPHEN LEONARD FOX personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Yvonne Kelly  
Notary's Signature

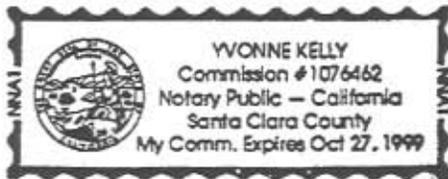
ACKNOWLEDGEMENT

STATE OF CALIFORNIA )  
COUNTY OF Santa Clara ) ss.

On August 7, 1997, before me, Yvonne Kelly, a Notary Public in and for said County and State, personally appeared, LYNDA K. FOX personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

\* LINDA RUTH FOX

WITNESS my hand and official seal.



Yvonne Kelly  
Notary's Signature



RECORDING REQUESTED BY:

WHEN RECORDED RETURN TO:

Linda Vista Village, Ltd.  
a California general partnership  
4452 Park Boulevard, Suite 314  
San Diego, California 92116

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (this "Amendment") is made effective as of September 2, 1986, between THE CITY OF SAN DIEGO, a municipal corporation ("City"), and LINDA VISTA VILLAGE, LTD., a California limited partnership ("Lessee").

R E C I T A L S:

A. City, as lessor, and Linda Vista Village, a California general partnership, and J. GEORGE HARRISON, DBA CAL-WEST DIVERSIFIED ("Harrison"), cumulatively as lessee, have entered into that certain Lease Agreement executed by Lessee on October 16, 1979, and by City on October 24, 1979, and recorded on December 21, 1979 as Instrument No. 79-532974, Book 1979, Page 276, Official Records, San Diego, California (the "Lease Agreement"), pursuant to which City leased to Linda Vista Village and Harrison certain real property situated in the City of San Diego, County of San Diego, State of California described and delineated on Exhibit "1" attached to the Lease (the "Premises").

B. All right, title and interest in the Lease has been assigned to Linda Vista Village, Ltd., a California limited partnership and Linda Vista Village, Ltd. is now the sole Lessee under the Lease. Harrison is the sole general partner of Linda Vista Village, Ltd.

DOCUMENT NO. 769446

FILED 007 28  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

C. The Lease has been amended by that certain Amendment to Lease (the "First Amendment") by and between the City and Lessee and made effective as of January 25, 1983. The Lease Agreement and the First Amendment to Lease are hereinafter collectively referred to as the "Lease".

D. Lessee has applied to COAST SAVINGS AND LOAN ASSOCIATION ("Lender") for a \$3,000,000 loan (the "Loan") to be secured by Lessee's leasehold estate under and pursuant to the Lease. As a condition to making the Loan, Lender has required that certain modifications be made to the Lease to protect the interests of a beneficiary or mortgagee (collectively the "Mortgagee") under a first deed of trust or mortgage (collectively the "Mortgage") encumbering the Lessee's leasehold estate under and pursuant to the Lease. To induce Lender to make the Loan, City and Lessee have agreed to make such modifications.

NOW, THEREFORE, in consideration of the above recitals and the mutual obligations and provisions contained herein, the parties hereto agree as follows:

1. Anything contained in Section IV.C.6 of the Lease to the contrary notwithstanding, there shall be no merger of this Lease, nor of the leasehold estate created by this Lease, with the fee estate in the demised premises, and no existing subleases or subtenancies shall be terminated, without the prior written consent of any Mortgagee under any Mortgage then in effect.

2. Anything contained in the Lease to the contrary notwithstanding, and in addition to any and all rights, remedies and privileges provided to a Mortgagee under the Lease:

(a) At the same time City provides any notice of default to Lessee under Section IV.C.9.a(1), City shall provide a duplicate copy of such notice to the Mortgagee provided City has notice in writing of such Mortgagee's address for the delivery of such notices.

(b) Prior to exercising any of its rights or remedies under the Lease on account of any default of the Lessee, City shall allow the Mortgagee the opportunity to cure or remedy such default for a period of time equal to thirty (30) days after the later of the date any cure period available to the Lessee has expired or the date the Mortgagee receives written notice of such default; provided, however, that in the event any such default is not curable within such thirty (30) days, City shall not exercise any right or remedy on account of such default if the Mortgagee has commenced to cure said default and diligently pursues such cure to completion.

(c) In the event the Lease is terminated by reason of any event described in Section IV.C.9.a(2), (3) or (4) of the Lease or on account of any default by Lessee which is not cured by Lessee or the Mortgagee within the time periods provided, or in the event of a rejection or disaffirmance of the Lease pursuant to bankruptcy law or other law affecting creditors' rights, City shall give prompt written notice thereof to the Mortgagee and City, upon written request of the Mortgagee, made at any time within sixty (60) days after the giving of such notice by City, shall enter into a new lease of the leased premises with the Mortgagee within thirty (30) days after receipt of such request, which new lease shall be effective as of the date of such termination of the Lease for the remainder of the term of the Lease, at the rent provided for in the Lease and upon the same terms, covenants, conditions and agreements as are contained in the Lease; provided the Mortgagee shall:

(1) Pay to City at the time of the execution and delivery of said new lease any and all unpaid sums for rent and other charges payable by Lessee under the Lease to and including the date thereof, less the net amount of all sums

received by City from any subtenants in occupancy of any part or parts of the leased Premises or improvements thereof up to the date of commencement of such new lease; and

(ii) On or prior to the execution and delivery of said new lease, agree in writing that promptly following the delivery of such new lease, the Mortgagee will perform or cause to be performed all of the other covenants and agreements contained in the Lease on the Lessee's part to be performed to the extent that Lessee shall have failed to perform the same to the date of delivery of such new lease, except such covenants and agreements which are not reasonably susceptible of performance by the Mortgagee.

3. The following additional provisions are hereby added to Section IV.C of the Lease:

13. Modification or Amendment. No amendment or modification of the Lease shall be effective nor shall Landlord accept a voluntary termination of the Lease without the prior written consent of any Mortgagee, which consent shall not be unreasonably withheld.

14. Estoppel Certificates. City shall, without charge, and from time to time at the reasonable request of Lessee or any Mortgagee, within thirty (30) after written request therefor, certify by written instrument any information reasonably requested with respect to the status of the Lease and the Lessee's performance of its obligations thereunder. The form of any such certificate shall be provided to City by such Mortgagee or Lessee.

15. Performance by Mortgagees. Any Mortgagee shall have the right, but not the obligation, to make any payment, performance or cause to be paid or performed any act, or otherwise comply or cause compliance with any and all terms, covenants and provisions of the Lease to be complied with by Lessee, and City shall accept any such payment, performance or compliance as if such payment, performance or compliance had been made by Lessee. City shall allow any such Mortgagee reasonable access to the leased Premises in order to render such payment, performance or compliance.

16. Limitation on Liability. Any Mortgagee who shall acquire title to this Lease and the leasehold estate of Lessee by foreclosure, by deed in lieu of foreclosure or otherwise, or who shall obtain a new lease pursuant to the provisions of this Lease, as amended, shall have no duty to perform the obligations of the Lessee under the Lease or such new lease arising or accruing after reassigning its interest therein in accordance with Section IV.A.3 of the Lease.

Except as specifically amended by this Second Amendment, the Lease shall remain in full force and effect.

THE CITY OF SAN DIEGO,

By: *J. P. Fowler*  
Deputy City Manager  
(Print Name and Title)

Dated: 9-4-86

LINDA VISTA VILLAGE, LTD., a  
California limited partnership,

By: *J. George Harrison*  
General Partner  
S. George Harrison  
(Print Name)

Approved as to form and  
legality, this 2 day of  
Sept, 1986

JOHN W. WITT, City Attorney

By: *W. H. Huddley*  
Deputy  
(Print Name and Title)

COPY

File Dept -  
Cal West Div.  
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AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT is entered into by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter "CITY", and J. GEORGE HARRISON, DBA, CAL-WEST DIVERSIFIED and LINDA VISTA VILLAGE, a general partnership, hereinafter cumulatively "LESSEE".

RECITALS

1. The CITY entered into a Lease Agreement with LESSEE dated October 23, 1979, which required the completion of a mobilehome park on City-owned land by July 1, 1980.

2. Because LESSEE was unable to procur, through no fault of its own, a conditional use permit for the project until January, 1980, and because of unusually wet weather which has delayed completion of grading for the mobilehome park, LESSEE is unable to complete the park improvements by July 1, 1980, and has requested an extension of time to September 1, 1980, to complete the project and begin paying rent; and

WHEREAS, CITY agrees that such an extension is reasonable and necessary, NOW, THEREFORE,

In consideration of the above recitals and the mutual obligations and provisions contained in the lease, the parties hereto agree as follows:

Sections 3-A-1, 3-A-2 and 4-D-9 of the Lease Agreement are hereby amended to replace the date July 1, 1980 with the

DOCUMENT NO RR-251515  
FILED APR 3 1980  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

date September 1, 1980. All other terms and conditions of the Lease shall be and remain unchanged.

IN WITNESS WHEREOF, this Amendment to 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 3/31/80

BY [Signature]  
ASSISTANT TO THE City Manager

LESSEE

Date 3/17/80

BY Cal West Diversified  
by J. George Harris, owner  
BY J. George Harris, General Partner

BY \_\_\_\_\_

BY \_\_\_\_\_

Approved as to form and legality this 8 day of April, 1980.

JOHN W. WITT, City Attorney

By [Signature]  
Harold O. Valderhaug, Deputy

# DUPLICATE

## AMENDMENT TO LEASE (LINDA VISTA VILLAGE)

This AMENDMENT TO LEASE is made effective as of JAN 25 1983, between the City of San Diego ("City") and Linda Vista Village, a partnership, ("Lessee") who agree as follows:

1. This Amendment is made in contemplation of and with reference to the following facts:

a. City and Lessee entered into that certain "Lease Agreement" dated October 24, 1979, by which City leased to Lessee the real property commonly known as the Linda Vista Village Mobile Home Park and described as the "Premises" in the Lease Agreement. The Premises are described on Exhibit 1, attached hereto and incorporated herein by this reference.

b. Lessee has constructed a mobile home park in conformance with the plans and specifications submitted to and approved by the City. The mobile home park consists of 220 mobile home spaces and appurtenant facilities.

c. Disputes and issues as to interpretation of certain provisions of the Lease Agreement have arisen. By this Amendment, City and Lessee intend to resolve certain disputes and issues regarding interpretation of the Lease Agreement as described in this Amendment and to make other substantive and procedural changes in the Lease Agreement.

d. This Amendment is the result of a number of task force meetings among representatives of City, Lessee, the San Diego Housing Commission ("Housing Commission"), and the Linda Vista Village Homeowners Executive Committee ("Homeowners Executive Committee"). The

DOCUMENT NO. RR-257857

FILED JAN 25 1983  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

Homeowners Executive Committee has represented to City and Lessee that the Committee is the spokesman for the tenants in the Linda Vista Village Mobile Home Park. Only City and Lessee, however, are parties to and have any rights under this Amendment and the Lease.

2. Paragraph III.A.4. is hereby deleted in its entirety and the following language is hereby substituted in its place:

"4. Lessee Rent Reduction. Notwithstanding anything to the contrary in this Amendment or the Lease Agreement, the rent otherwise payable by Lessee to City (a) during the period from February 1, 1983 through January 31, 1984, shall be reduced by the sum of \$4,272.44 each month during said period and (b) during the period from February 1, 1984, through February 29, 1984, shall be reduced by the additional sum of \$3,322.44 each month during said period."

3. Paragraph III.A.5. is hereby deleted in its entirety.

4. Paragraph IV.D.1. is hereby deleted in its entirety and the following is substituted in its place:

"1. Base Rent Payable by Tenants.

a. Base Rent - 1983. For the period beginning March 1, 1983, and ending February 29, 1984, the base rent for each space in the park shall be \$200.00 per month as reduced as provided in this Amendment.

b. Base Rent - 1984. For the period beginning March 1, 1984, and ending February 28, 1985, the base rent for each space in the park shall be \$218.00 per month as reduced as provided in this Amendment.

c. Annual Adjustment of Base Rent. Beginning March 1, 1985, and continuing every March 1 during the term thereafter ("adjustment date"), Lessee may adjust the base monthly rent payable by tenants by an amount not exceeding 75% of the percentage increase during the twelve month period ending on November 30 of the year preceeding the adjustment date in the residential rent component of the San Diego - All Urban Consumers Index published by the United States Department of Labor, Bureau of Labor Statistics; provided, however, that the increase in rent shall not be less than 5% nor more than 9% of the base rent for the previous lease year in any lease year. If the residential rental component or

the Index is changed from that used as of the date of this Amendment, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the residential rental component or the Index is discontinued or revised during the term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

d. Use of Park Facilities. Any rights which the tenants may have had to use all park facilities shall remain the same as such rights existed before the effective date of this Amendment.

5. Paragraph IV.D.2. is hereby deleted in its entirety and the following is substituted in its place:

"2. Reduction of Rent for Subsidized Tenants. Beginning March 1, 1983, and continuing throughout the term of the Lease tenants qualifying as "lower and very low income families" as such terms are defined by the United States Department of Housing and Urban Development ("HUD"), shall be entitled to a reduction from the base rent, as adjusted from time to time, during the term of this Lease; provided, however, that at no time shall the number of tenant households receiving the reduction in rent exceed 66 tenant households. The tenants (not to exceed 66 tenant households) receiving the reduction in rent shall be referred to herein as the "subsidized tenants." The reduction in rent for the subsidized tenants shall equal 7.5% of the then applicable base rent."

6. Paragraph IV.D.3. is hereby deleted in its entirety and the following language is substituted in its place:

"3. Year Operation Defined. For purposes of this Lease, the year of operation shall be deemed to begin on March 1 and end on the last day of February of the succeeding year."

7. The following language shall be added to paragraph IV.D.4.:

"City hereby agrees to indemnify, defend and hold Lessee, its agents, employees, officers, partners, and each of them harmless from any claim, demand or liability arising out of or in connection with the imposition by City of the restrictions on the right to sell coaches and transfer spaces contained in this Amendment.

8. Paragraph IV.D.5. is hereby deleted in its entirety and the following language is substituted in its place:

"5. Certification of Subsidized Tenants. As provided in this Amendment, Lessee shall provide for the reduction by an amount equal to 7.5% of the base rent to not to exceed 66 tenant households who qualify as "lower and very low income families" as such terms are defined by HUD. City shall cause the Housing Commission to establish and maintain a list of tenants and prospective tenants who qualify as "lower and very low income families". Lessee shall have no obligation or responsibility to establish or maintain the list or to provide or obtain financial information from the tenants in connection with the list. Nothing in this Amendment or the Lease, however, shall preclude the Lessee from obtaining financial information in connection with its normal rental application procedures. City, shall be responsible for the costs of the establishment and maintenance of the list and related costs. It is anticipated that the costs will be borne as follows:

a. The costs of the initial screening of tenants residing in the park on the effective date of the Amendment who have made application for determination of qualification by the close of business on February 11, 1983, shall be borne by the Housing Commission.

b. The costs of initial screening of tenants who first reside in the park after the effective date of the Amendment and the costs of initial screening of any tenants who fail to apply for a determination before February 11, 1983, shall be borne by the tenant.

c. The costs of annual recertification of any tenants shall be borne by the Housing Commission. Such recertification will be accomplished through tenants provision to the Housing Commission of copies of the previous years federal income tax returns and any other documentation requested by the Housing Commission.

City shall cause the Housing Commission to provide Lessee with the list of tenants (not to exceed 66 tenant households) entitled to receive the subsidized rent no later than February 25, 1983, for the lease year beginning March 1, 1983 and, every year thereafter during the term of the lease far enough in advance of the beginning of the following lease year (but in any event before December 15 of the year preceding said lease year) so as to allow Lessee to provide any required notices of rental increases."

9. Paragraph IV.D.6. is hereby deleted in its entirety and the following language is substituted in its place:

"6. Coach Sale Restriction. Lessee shall provide notice within 30 days of the effective date of this Amendment to the tenants of an amendment to the rules and regulations of the park regarding sales of coaches (without removal from the park). Such amendment shall be effective 190 days after Lessee gives notice of the amendment and shall incorporate the requirements of subparagraphs a. and b. of this paragraph IV.D.6.

a. Restriction Relating to Income Requirements. If a tenant ("selling tenant") desires to sell its coach without removal of the coach from the park, the tenant shall comply with the requirements of this subparagraph a. if either of the following conditions exist:

(1) Fewer than 66 tenant households in the park are receiving the reduced rent for subsidized tenants; or

(2) There are 66 subsidized tenant households in the park and the selling tenant is one of the 66.

The selling tenant shall provide written notice to the Housing Commission on a form to be provided by the Housing Commission to Lessee and made available to all tenants at appropriate locations in the park common areas and in the park business office. The notice shall provide that the Housing Commission has 30 days from receipt of the notice to produce a qualified lower or very low income person or family to purchase the coach. During said 30-day period, the selling tenant shall offer to sell the coach to any prospective tenant referred by the Housing Commission on the same terms and conditions as the selling tenant proposes to sell the coach to the general public. In the event the Housing Commission refers a person or family who is qualified to purchase the coach under the selling tenant's terms, the tenant shall negotiate in good faith with such person or family for the purpose of consummating the sale. If a binding sales agreement or escrow is not entered into within 15 days following said 30-day period, the selling tenant shall have the absolute right to sell the coach to any person or family who otherwise qualifies to be a tenant under the park rules and regulations.

b. Coach Sale and Space Transfer Restriction Relating to Senior Citizen Area. In addition to the restrictions set forth in the subparagraph a. of this paragraph IV.D.6., the restrictions set forth in this subparagraph b. shall be applicable to any selling tenant whose coach is located on spaces 18

through 104 and 144 through 220 ("Senior Citizen Area"). If the selling tenant's coach is located in the Senior Citizen Area, the selling tenant shall, for a minimum period of 30 days, offer to sell the coach solely to prospective tenants whose household contains no person under the age of 55. If no binding sales agreement is entered into during said 30-day period or during the 15-day period immediately after said 30-day period with such a tenant, the selling tenant shall be free to sell the coach to any person or family who otherwise qualifies to be a tenant under the park rules and regulations.

c. Restriction Relating to Income Requirements and to the Senior Citizen Area in Connection with a Vacancy Other Than as a Result of a Proposed Sale. In the event that during the term of the Lease Agreement a space should become vacant (and under the control of Lessee) for any reason other than the sale of a coach in place by an existing tenant, Lessee, during a 45-day period beginning on the date the Lessee provides written notice to the Housing Commission of the vacancy, shall offer to rent the space to any prospective tenant who otherwise qualifies to be a tenant under the park rules and regulations referred to Lessee by the Housing Commission if at the time of such vacancy fewer than 66 tenant households within the lease area are receiving a reduction of rent for subsidized tenants. If the Housing Commission does not provide the name of a qualified prospective tenant during said 45-day period, Lessee shall have no further obligations under this paragraph. Furthermore, if during the term of the Lease Agreement, such a space should become vacant (and under the control of Lessee) in the Senior Citizen Area for any reason other than the sale of the coach by the existing tenant, Lessee, during a 45-day period beginning on the date Lessee notifies City of the vacancy, shall offer to rent the space to any prospective tenant who otherwise qualifies whose household includes only persons 55 years of age or older.

d. Additional Obligations of Selling Tenant. In the event the selling tenant has complied with the above provisions as contained in subparagraphs a. and b. but neither a low income tenant (if applicable) nor an elderly tenant (Senior Citizen Area) has met the terms and conditions of the sale as required by the selling tenant, the selling tenant shall not sell the coach under any substantially different terms or conditions to any person or family without again making the coach available for sale as applicable and as provided above for low income and/or elderly purchasers.

It is the purpose and intent of coach sale restrictions to serve what has been determined by City to be a valuable public purpose, i.e., to provide housing opportunities to both low-income persons and families and to elderly persons and families. Nothing in this Amendment shall preclude the imposition by Lessee of otherwise applicable rules and regulations on any tenant or prospective tenant. So long as Lessee performs its obligations under this paragraph IV.D.6., to amend the rules and regulations and to make Housing Commission notice forms available, Lessee shall not be deemed in default of the Lease if any tenant or tenants refuse or fail to comply with the requirements of this paragraph IV.D.6. City reserves the right at any time during the term of the Lease to elect unilaterally by written notice of such election to Lessee to waive any or all the coach sale restrictions.

10. Except as specifically amended by this Amendment the Lease shall remain in full force and effect. As used in this Amendment, Lessee shall be deemed to mean, as appropriate, both Linda Vista Village, a general partnership (as presently constituted) and any predecessor-in-interest.

THE CITY OF SAN DIEGO

BY: *Aimee Hoover*  
ASSISTANT TO THE CITY MANAGER  
Date: 1/27/83

LINDA VISTA VILLAGE

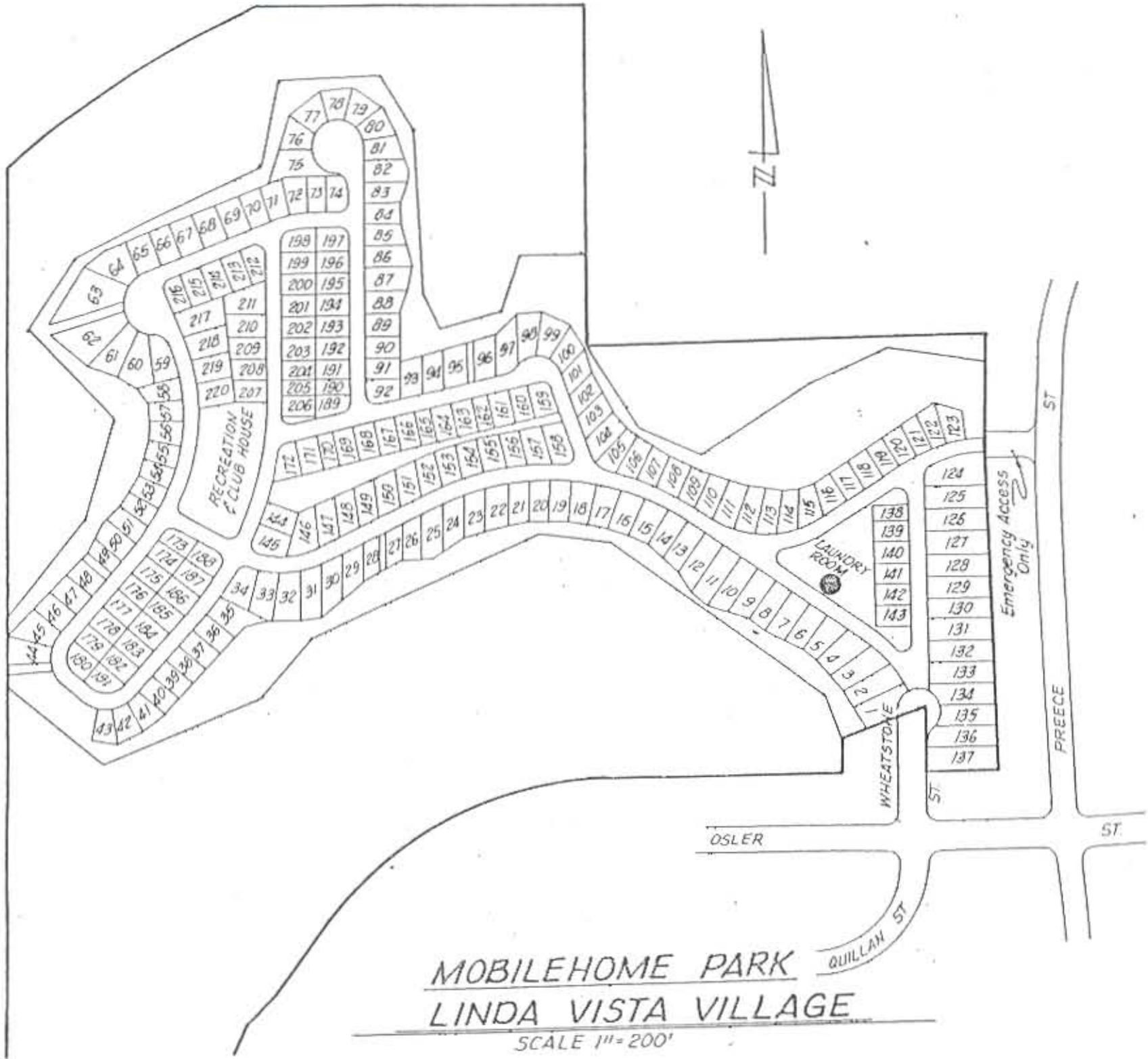
BY: *J. George Hamlin*  
Date: 1/21/83

APPROVED: JOHN W. WITT, CITY ATTORNEY

BY: *W. Stubbly*  
DEPUTY CITY ATTORNEY

The premises are further described in Document No. RR-250484-1, filed October 23, 1979 in the Office of the City Clerk, San Diego, California.

EXHIBIT "1"



LEASE AGREEMENT

COPY

Approved by Council Resolution No.  
R-250484 Dated OCT 2 1979

THIS LEASE AGREEMENT is entered into by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter "CITY," and CAL-WEST DIVERSIFIED and LINDA VISTA VILLAGE, a general partnership, hereinafter "LESSEE."

RECITALS

1. The CITY owns certain parcels of property which by RESOLUTION NO. 218060 adopted by the CITY COUNCIL on April 5, 1977, were specified as being available to developers who would agree to develop and maintain housing units which would be made available to low-income citizens during the term of the lease.

2. LESSEE in consideration of this lease, has agreed to construct a mobilehome park, consisting of 220 mobilehome spaces on the property and has agreed to make a minimum of 66 spaces, representing thirty percent (30%) of the total spaces, available to low and moderate income persons and families, as said terms are defined by the UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (hereinafter "HUD").

3. LESSEE has further agreed to make said 220 spaces available on a priority basis to persons and families who have been required to relocate from mobilehome parks within the City of San Diego as a result of the closing of such mobilehome parks and to give second priority to such persons and families who have been required to relocate from mobilehome parks in the County which have been or are in the process of being closed. Priority to relocate is subject to the requirement that at least 66 spaces be available to low and moderate income persons and families.

4. In connection with the initial occupants of the mobilehome park, LESSEE shall not require any relocatees from an existing park to purchase or provide a new mobilehome. Furthermore, LESSEE with regard to initial occupants and with regard to proposed occupants during the entire term of this lease, shall not reject any mobilehome merely on the basis of age of the mobilehome but LESSEE may, subject to the following condition, reject mobilehomes which are in a run-down condition or in disrepair. LESSEE subject to the following condition may also refuse to allow resale of mobilehomes which are in a run-down condition or in disrepair. In the event the mobilehome owners within the park have formed a mobilehome owners association, LESSEE shall not refuse to accept a mobilehome on the basis of its condition or disrepair and shall not refuse to allow resale of such a mobilehome unless and until the association or designated subcommittee thereof has approved such rejection and supports LESSEE's determination that the mobilehome in question is in fact in a run-down condition or in disrepair.

NOW, THEREFORE, in consideration of the above recitals and the mutual obligations and provisions contained in this lease, the parties hereto agree as follows:

1. 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 and delineated on Exhibit "1" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "Premises."

DOCUMENT NO. RR-250484 - 1

FILED OCT 2 1979  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

- A. PERMITTED USE. Said premises are leased to LESSEE solely for the purpose of constructing and operating a mobilehome park in accordance with the conditions and requirements contained in this lease and the above recitals and for such related or incidental purposes as may first be approved in writing by the City Manager and for no other purpose.
- B. OBLIGATED 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.

II. TERM OF AGREEMENT

- A. COMMENCEMENT AND TERMINATION. The term of this agreement shall be fifty-five (55) years commencing on the date of execution hereof by CITY.
- B. SURRENDER OF PREMISES. At the expiration or earlier termination of this lease, LESSEE shall execute, acknowledge and deliver to CITY, within five (5) days after written demand by CITY, a valid and recordable quitclaim deed covering all of the leasehold premises. The leasehold premises shall be delivered free and clear of all liens and encumbrances.

III. CONSIDERATION

- A. RENT. The rent shall be paid by LESSEE to CITY at the office of the City Treasurer, City Operations Building, 1222 First Avenue, San Diego, California, 92101, and shall be as follows:
  - 1. Construction Period. Beginning upon the effective date of this agreement and ending on the date of issuance of a final Certificate of Occupancy for the Project by CITY or on July 1, 1980, whichever date or event first occurs, LESSEE shall pay the total sum of TEN THOUSAND AND NO HUNDRETH DOLLARS (\$10,000). Said amount shall be paid upon issuance of the Certificate of Occupancy or on July 1, 1980, whichever date or event first occurs.
  - 2. Rent Up Period. Upon the issuance of a Certificate of Occupancy for any portion of the project by CITY or on July 1, 1980, whichever occurs first and ending when fifty percent (50%) of the spaces are rented, or for a period not to exceed six (6) months, whichever event occurs first, LESSEE shall pay monthly in arrears ONE THOUSAND SIX HUNDRED SIXTY-SEVEN AND NO HUNDRETH DOLLARS (\$1,667) per month. Said monthly payment shall be made no later than the 20th day of the month following the month in which it

*See Change by 1st Amend. to 9-1-80*

becomes due.

3. Operations Period. Beginning when fifty percent (50%) of the units are rented, or from the six (6) month maximum rent-up period, LESSEE shall pay monthly in arrears, during the entire term of this Lease Agreement a minimum rent of THREE THOUSAND THREE HUNDRED THIRTY-THREE AND THIRTY-THREE HUNDRETHS DOLLARS (\$3,333.33) per month or an amount equal to ten percent (10%) of the gross income received for the prior month whichever is greater. Said payments shall be made by the 20th day of the month following the month in which they become due.
4. Percentage Rent Adjustment. Prior to the end of the tenth year of the term of this agreement and prior to the end of each tenth year thereafter, the parties hereto, by mutual consent or through arbitration as hereinafter set forth, will adjust the percentage rates of LESSEE'S gross income to be paid CITY effective upon the first day of the succeeding ten-year period. Said adjustment will be made to the degree necessary to provide a fair rental to CITY as determined by CITY. At least six (6) months prior to the end of each ten (10) year period, CITY will meet with LESSEE to attempt to agree upon a fair and equitable adjustment. In the event that such adjustment is not made by mutual consent prior to sixty (60) days before the end of said ten-year periods, then the parties hereto will refer the matter to arbitration under the terms hereinafter set forth.
5. Arbitration of Percentage Rent Adjustment. In the event the parties do not agree upon the amount of adjustment to said percentage rates as provided for in the previous paragraph, then the adjustment shall be determined by a qualified professional independent real estate appraiser selected by mutual consent of the parties to this agreement from the list of appraisers approved by the City Council of CITY. In the event the parties do not reach agreement as to selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select an appraiser from said list of appraisers and said two appraisers shall in turn select a third qualified professional independent real estate appraiser who will be employed to set the percentage rates to be applied to LESSEE'S gross income for the ensuing period until the next percentage rent adjustment. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten days, then the two se-

lected appraisers will be discharged and the process repeated until mutuality is achieved and an appraiser to complete the assignment. Each party shall pay the cost of its own selected appraiser and both CITY and LESSEE agree to equally share the cost of the third mutually appointed appraiser. CITY and LESSEE agree to accept and be bound by the percentage rates determined by the appraiser selected to complete the assignment.

In establishing the percentage rates for the items under controversy, the appraiser shall consider the CITY'S property as a fee simple absolute estate, as vacant and available for a full lease term on the open market for its highest and best use or, if this lease has a restricted purpose, then for uses consistent with the authorized purposes of this lease at the commencement of the rental period under arbitration. The appraiser will be guided by prevailing published market percentage rates for similar operations primarily (if available) within the Southern California area.

The date of value of the appraisal shall be on the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the percentage adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then existing lease rates and the adjustment, when determined, will be retroactive to said effective date of rental adjustment as herein above established. Any deficiency or overage shall be paid by LESSEE or refunded as applicable by CITY within sixty (60) days after determination of the new percentage rate(s).

It is specifically agreed that any increase in the percentage rent adjustment may be reflected in immediate tenant rental increases to the extent such increase results in an increase in the cost of operation.

- B. GROSS INCOME. Gross income, as used in this lease, shall include all income resulting from occupancy of the leased premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by LESSEE to a governmental law. The amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained. The aforesaid percentage rent shall be calculated and paid by LESSEE on the basis of said gross income whether the income is received by LESSEE or by any sublessee or other party as a result of occupancy of said premises or the operation thereof shall be regarded as gross income of LESSEE for the purpose of calculating the percentage rent hereunder required to be paid by LESSEE to CITY.
- C. FINANCIAL RECORDS MAINTENANCE.

1. LESSEE shall keep true, accurate and complete records in a manner and form satisfactory to CITY from which CITY can at all reasonable times determine the nature and amounts of income subject to rental from the operation of the leased premises. Such records shall show all transactions relative to the conduct of the operation, and such transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices and tickets issued, or other means satisfactory to CITY. Together with each rental payment, LESSEE shall render to CITY a detailed statement as to the source of the receipts showing all gross income of the preceding calendar month together with the amount payable to CITY as hereinabove provided and shall accompany same with a remittance of the amount so shown to be due CITY. After the end of each lease year, LESSEE shall cause an audit of the business of LESSEE, its agents, sublessees, concessionaires or licensees operating on said premises to be made by a licensed public accountant or certified public accountant, and shall, within sixty (60) days after the end of each lease year, furnish a copy thereof to CITY without any cost or expense to CITY. In the event such audit discloses that the percentage rental required for the preceding lease year exceeds the amount of monthly percentage rental paid to CITY by LESSEE during said period, LESSEE shall immediately pay to CITY the amount of such deficiency. Also, in the event said audit discloses that the percentage rental on the annual gross sales for the preceding lease year is less than the amount of minimum annual rent required therefore, LESSEE shall also immediately pay to CITY the amount of such deficiency. In the event that such audit discloses that the percentage rental required for the preceding lease year is less than the amounts of monthly percentage rents paid to CITY during said period, then upon confirmation of said audit findings by CITY through means provided in Subparagraph 3 hereof, the amount of overpayment shall be credited against equal amounts of monthly rents due CITY during the succeeding payments until said overpayment is fully credited. Any such overpayment occurring in the last lease year shall be refunded by CITY within thirty days of confirmation by CITY of said audit findings.
2. LESSEE shall also maintain accurate records of actual and projected operating expenses and revenue, and such other operating information as CITY from time to time deems necessary and LESSEE shall submit such information to CITY upon request.
3. Said records and accounts shall be maintained separate from all other accounts not relating to the operation of the leased premises and shall be made available to CITY at one location within the limits of the City of San Diego. CITY shall have, through its duly authorized agents or representatives, the right to examine and audit said records and accounts at any and all reasonable times. In the event of discrepancies between the audit furnished to CITY in behalf of LESSEE and the CITY'S audit, the latter shall prevail. Any additional sums due CITY as determined by CITY'S audit are due and payable within thirty (30) days of notification thereof by CITY.

4. In the event that such audit discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then LESSEE shall pay CITY ten percent (10%) of the amount by which said rent was underpaid in addition to the unpaid rents so shown to be due CITY as compensation to CITY for administrative cost and loss of interest.

D. MINIMUM RENT.

Minimum Rent Adjustment. Prior to the end of the third year of this agreement and prior to the end of each third year thereafter, the minimum monthly rent for the ensuing three year period shall be set at eighty percent (80%) of one twelfth (1/12) of the average annual rent paid CITY during the three years preceding the rental review date.

E. DELINQUENT RENT.

In the event LESSEE fails to pay the applicable rents due, then LESSEE shall pay CITY, in addition to the delinquent rent, a sum of money equal to five percent (5%) of said delinquent rent; provided, however, in the event said delinquent rent is still unpaid after fifteen (15) days of becoming delinquent, then LESSEE shall pay CITY, instead of said five percent (5%), a sum of money equal to ten percent (10%) of said delinquent rent. It is the intent of this provision that CITY shall be compensated by such additional sums for loss resulting from rental delinquency including costs to CITY of servicing the delinquent account. The City Manager, at his option, may for good cause waive any such delinquency compensation required herein, upon written application of LESSEE.

F. DEVELOPMENT AS ADDITIONAL CONSIDERATION.

LESSEE agrees that a consideration for granting this lease is LESSEE'S obligation to develop the leased premises in accordance with the City-approved Development Plan identified in Section IV, 8, DEVELOPMENT of this agreement.

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, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the rent covering the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the demised premises.

2. Right to Assign and Sublet. 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 interest 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 City Manager, the financial capability and overall competence to successfully operate the assigned or subleased premises. The consent of the City Manager and/or City Council will not be unreasonably withheld. Subject to compliance with the provision hereof related to spaces for low and moderate income persons and families, the LESSEE may sublease spaces to mobilehome owners without the necessity of City Manager approval. 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 of a major portion of the leasehold.

If CITY has been notified in writing of the existence of a trust deed or mortgage secured by the leasehold, CITY agrees to give the trustee or beneficiary notice of any sublease or assignment prior to CITY'S approval thereof.

Approval of any assignment of 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.

3. Right to Encumber. CITY does hereby consent and agree that LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security type instrument to assure the payment of a promissory note or notes of the LESSEE. 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 or transferred in lieu of foreclosure, the CITY will accept the mortgagee or beneficiary thereof, if reputable, qualified and financially responsible, such as a State or Federal regulated financial institution, as its new tenant under this lease with all the rights, privileges and duties granted and imposed in this lease contract. In the event said mortgagee or beneficiary desires to assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY, CITY hereby agrees that upon the filing of an application for consent to such assignment, CITY will give its consent thereto.

B. LESSEE CONVENANTS

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 effective as of the date of this agreement, is on file in the Office of the City Clerk and by this reference is incorporated herein. Minorities are presently defined as Mexican-American, Black, Filipino, American Indian and Asian/Oriental. The goal of this program shall be the attainment of the employment in a total percentage of employment approximately equal to the total level of minority and women employment as established by the CITY for its Affirmative Action Program each year.
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, and to pay before delinquency all taxes, assessments, and fees assessed or levied upon the LESSEE or the leased premises including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected installed or maintained by LESSEE or by reason of the business or other activities of LESSEE upon or in connection with the leased premises. LESSEE recognizes and understands that this lease may create a possessory interest subject to property taxation and that the LESSEE may be subject to the payment of property taxes levied on such interest. LESSEE further agrees that such tax payment shall not reduce any rent due CITY hereunder and that any such tax shall be paid by the LESSEE before becoming delinquent. The judgment of any court of competent jurisdiction, or the admission of LESSEE or any sublessee or permittee in any action or proceeding against them, or any of

them, whether CITY be a party thereto or not, that LESSEE, sub-lessee or permittee has violated any such ordinance or statute in the use of the premises shall be conclusive of that fact as between CITY and LESSEE.

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. CITY shall not be obligated by this lease to make any improvements or alterations to said premises or to assume any expense therefor.
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. In the event that LESSEE fails to file any such required bond, this lease may be terminated by CITY.
5. Development. LESSEE agrees to develop and lease premises in accordance with the General Development Plan approved by the City Manager and on file in the office of the City Clerk as Document No. ~~RR-250484-2~~. To the extent applicable to the proposed development, said plan shows the design, materials of construction, elevations and colors of all structures, the plot plan of all structures and aboveground improvements, the uses of all facilities, the schedule of development, the estimated construction costs and financing plan and such other factors as are necessary or desirable in the opinion of the City Manager. The City Manager or his designee shall have the authority to authorize changes to the plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the

Office of the City Clerk.

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, invitee, 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, or any act or omission of any person or from any defect in any part of the leased premises or from any other cause or reason whatsoever. 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 of 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 \$1,000,000.00 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 hereinabove 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 held 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 the 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 100% of the replacement costs of said property. LESSEE agrees to submit a certificate 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 insurance 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, 13, 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 named 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 to LESSEE.

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.

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 leased 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.
9. Legal Proceedings. LESSEE agrees that should it become necessary for CITY 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 determine all rights and obligations hereunder. Personal service either within or without the State of 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 laws. 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.  
  
The LESSEE agrees to assume full responsibility for the maintenance of the open space shown on the Development Plan throughout the term hereof without expense to the CITY. The open space is to be left in its natural state and maintenance provided through the development, thus augmenting Tecolote Canyon Park which lies north and west of the property.
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

*making it his liability  
as dedicated as  
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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.
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 approved in writing in order to replace in kind and scope the operation which existed prior to such damage.

LESSEE agrees that preliminary steps toward performing repairs, restoration or replacement of the premises shall be commenced by LESSEE within thirty (30) days and the required repairs, restoration or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum monthly 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.

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 con-

demning 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.
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.
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'S 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.

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 pre-

mises or in or to further possession thereof and CITY may thereupon enter and take possession of 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 however, that in the event rent paid to CITY is calculated on the basis of a percentage or percentages of LESSEE'S gross income, and during said period required for mortgagee or beneficiary to perfect a cure of any default or defaults which have been caused by LESSEE'S failure to pay said rent; then in those events if CITY is paid the minimum rent due under this agreement, CITY will not prosecute its right to terminate the mortgagee's or beneficiary's interest. Provided further, that when the mortgagee or beneficiary has secured control of said premises, and before an assignment to a new LESSEE, mortgagee or beneficiary shall cause to be paid to CITY, any amounts due CITY as a result of the gross income of the said premises exceeding that amount necessary for payment of the minimum rent. In computing the gross rent upon which the computation of the CITY rent is based, reasonable administrative expenses of a court appointed receiver may first be deducted.

- 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 therefore (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 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.

10. Reservation 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. Such reimbursement shall include a reduction in the monthly rent proportionate to the amount of said physical damage as determined by the City Manager. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to the rights reserved herein.

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 subleasees 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 full and complete compliance with any of the covenants, 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.

#### D. OPERATING CONDITIONS

1. Rents Payable by Tenants. LESSEE agrees that the initial rents payable by tenants of the 220 spaces in the park shall range from ONE HUNDRED SIXTY-FOUR DOLLARS (\$164) to not more than ONE HUNDRED EIGHTY-FOUR DOLLARS (\$184) per month, which rents shall include the right to use all of the park facilities. With regard to those tenants who qualify as low and moderate income persons and families as defined by HUD, the initial rent shall be within the above specified range and the average initial rent to such persons and families shall not exceed ONE HUNDRED SEVENTY-FOUR DOLLARS (\$174).

Beginning after the second year of operation, LESSEE may, but not more frequently than once a year, raise the monthly rent for all

spaces in the project occupied by low and moderate income persons and families in an amount necessary to offset the actual increase in costs of operating the park during the previous year. After the initial year of operation, the rents may be increased in an amount not to exceed TEN DOLLARS (\$10) per space, subject to written approval by the City Manager, which approval shall be based upon estimated increases in costs of operation due to inflation during the initial year of operations. The actual costs of operating the park for the purposes of computation of rental increases after the initial two years of operations means total professional and on-site management costs (not to exceed eight percent (8%) of gross revenues), lost gross revenues from vacancies in excess of five percent (5%), possessory interest and other taxes and impositions, insurance, minimum and percentage rent payable to CITY, water, gas, electricity, trash removal, landscaping maintenance and supplies, repairs, replacements and reasonable reserves for replacement. In no event shall the computations with respect to the adjustment of monthly rents permit any increase in the profit to LESSEE by reason of its operation of the project. LESSEE shall furnish to the City Manager and the tenants written data showing increases in costs of operation for the preceding year. The City Manager shall have thirty (30) days after receipt of such data within which to object to any costs shown therein and failure of City Manager to object in writing to LESSEE within such thirty (30) day period shall constitute approval by CITY of the cost and of the rental increase proposed by LESSEE. The above adjustment shall be based upon the percentage of total spaces occupied by low and moderate income persons and families so that in the event exactly thirty percent (30%) of the spaces are occupied by such persons and families the rental increase shall be based upon thirty percent (30%) of the actual increase in cost of operations.

2. Rental Adjustment for Tenants Other than Those of Low and Moderate Income. The initial rent as specified above for tenants other than those of low and moderate income shall be not more than ONE HUNDRED EIGHTY-FOUR DOLLARS (\$184). After the initial year of operation as defined below and each year thereafter, the rents for all spaces not occupied by low and moderate income persons and families may be increased to a level comparable to the rental charged for similar mobilehome park spaces in the San Diego area. In the event LESSEE proposes to increase the rent by an amount greater than eight percent (8%), such proposed increase must first be approved by the City Manager. LESSEE may carry over any unused portion of the eight percent (8%) to the following year, however, no increase in excess of fifteen percent (15%) including such carry over will be allowed without the prior written approval of the City Manager.
3. Year of Operations Defined. The first year of operation for the sole purpose of determining when rental adjustments can be made shall commence January 1, 1981 and shall terminate December 31, 1981.

4. Compliance with the Law. LESSEE shall comply with all the provisions of State law and specifically those provisions relating to operations of mobilehome parks during the entire term of this lease.
5. Financial Information from Tenants. As provided in the recitals hereto, LESSEE has agreed to provide at least sixty-six (66) spaces in the park for persons and families of low and moderate income as defined by HUD. In connection with the initial lease of spaces and in connection with resale of units in the mobilehome park, LESSEE shall acquire financial information from those persons and families who fall within the definition of low and moderate income persons and families. The lease agreements with such persons and families shall contain a provision requiring a disclosure of any information involving change in financial circumstances which may affect the persons' or families' financial status. Furthermore, each low and moderate income person and family shall be required to annually submit a copy of their Federal income tax return to LESSEE and in the event income exceeds HUD specified levels for low and moderate income families, such persons and families will be required to pay the rent charged to the owners of spaces occupied by other than low and moderate persons and families effective ninety (90) days following the determination that such person and family no longer qualifies under the HUD definition. In the event any such person or family no longer qualifies within the HUD definitions of low and moderate income families, LESSEE agrees to notify CITY of the next available space or spaces for lease within the park and to make such space or spaces available to CITY for fifteen (15) days following receipt of written notice by the City Manager of the availability of such space or spaces to allow CITY to identify and provide to LESSEE a low and moderate income person or family to occupy said space or spaces. In the event CITY does not identify a prospective tenant to LESSEE or in the event such prospective tenant does not occupy the space within thirty (30) days following notice by CITY to LESSEE, LESSEE may lease the space to any person or family. In the case of resales, when less than 66 spaces are occupied by low and moderate income persons or families, LESSEE agrees to follow the above provisions regarding notice to CITY of the proposed resale and LESSEE agrees to attempt to work with the seller and CITY to help locate a low or moderate income person or family who can qualify for the purchase of the unit. The intent of this paragraph is to insure that at least 66 spaces within the park are available to and used by low and moderate income persons or families during the entire term of this lease.
6. Resale of Mobilehomes on Spaces. LESSEE shall require all tenants prior to occupancy of park space to sign an appropriate and legally effective agreement to, in the event the tenant determines to resell the mobilehome on the park space, sell the mobilehome at its appraised fair market value as defined below. All owners of units shall agree to obtain at their own cost an appraisal of the fair market value of their mobilehome prior to offering the mobilehome for sale on a park space. The appraisal shall be made by a person chosen from a list of appraisers prepared by CITY which list shall include not less than five (5) appraisers. Such appraisers need not have any specific State license but shall be those persons as

determined by CITY to be best able to determine the actual fair market value of the unit in place. Such appraisers may include mobilehome dealers. The agreement with the tenant shall specify that the appraisers shall be directed to appraise the unit as though full fair market rent is being paid for the space. The appraiser shall be directed not to take into consideration the actual space rental paid whether it be the rental paid by the low and moderate income persons and families or the rental paid by other persons and families in the park. The intent of this provision is to allow all mobilehome owners to sell their units for full fair market value but not to allow them to receive any "wind-fall profit" in the event the space rental is less than fair market rental.

7. Park Operating Conditions. LESSEE shall develop proposed regulations applicable to all tenants in the park and shall submit such regulations to the City Manager for approval. No regulations shall be enforced except those approved by the City Manager, which approval shall not be unreasonably withheld. All such regulations shall conform to applicable State law.
8. Closed Park Prohibited. The mobilehome park cannot be operated as a closed park, i.e., one that rents spaces only to persons who have purchased or rented their mobilehome from a specific dealer or dealers or manufacturer or manufacturers.
9. Construction Schedule. LESSEE agrees to apply for and obtain all permits necessary for construction of the mobilehome park facilities in an expeditious manner. LESSEE further agrees to commence construction of the park improvements within sixty (60) days following approval of this lease by the City Council and to diligently pursue construction on those improvements to completion. It is the specific intention of the parties hereto that the park be available for occupancy on or before July 1, 1980.
10. Family Area. LESSEE agrees to construct the improvements in accordance with the General Development Plan and to provide at least fifty-five (55) sites in the southeasterly portion of the park for owners of mobilehomes who have children or other dependents. It is the intention that said area be available for families with children. However, if there is insufficient demand for such spaces to expeditiously rent all of the sites, LESSEE may lease such sites to any person or family. The 66 spaces required for lease to low and moderate income persons in the park shall be distributed throughout the park area and shall be scattered and not concentrated in any particular portion of the park.

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: 10-24-79

BY: [Signature]  
ASSISTANT TO THE CITY MANAGER

LESSEE

DATE: Oct 16, 1979

BY: Cal-West Development  
by George Hearn, President  
BY: George Hearn

BY: \_\_\_\_\_

BY: \_\_\_\_\_

APPROVED as to form and legality this 24 day of October, 1979.

JOHN W. WITT, City Attorney

BY: [Signature]  
Deputy

Property Department  
Development Division

R-250484

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 Carl West Demingfield, LESSEE, DATED 10/24/79.

SECTION IV PARAGRAPH C NO. 8, 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*

*[Handwritten Signature]*

ASSISTANT TO THE City Manager's Initials

*[Handwritten Signature]*

LESSEE'S Initials