

No. 23-329

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**In the Supreme Court of the United States**

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CHONG and MARILYN YIM, KELLY LYLES,  
EILEEN, LLC, and RENTAL HOUSING  
ASSOCIATION OF WASHINGTON,

*Petitioners,*

v.

THE CITY OF SEATTLE,

*Respondent.*

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On Petition for Writ of Certiorari to the  
U.S. Court of Appeals for the Ninth Circuit

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**BRIEF OF *AMICUS CURIAE* GRE  
DOWNTOWNER LLC IN SUPPORT OF  
PETITIONERS**

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**QUESTION PRESENTED**

Does Seattle's restriction on private owners' right to exclude potentially dangerous tenants from their property violate the Fourteenth Amendment's Due Process Clause?

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## INTEREST OF *AMICUS CURIAE*

GRE Downtowner LLC (“GRE”) submits this *amicus curiae* brief in support of the petition for certiorari filed by Petitioners Chong and MariLyn Yim, Kelly Lyles, Eileen, LLC, and Rental Housing Association of Washington (“Petitioners”).<sup>1</sup> GRE is the owner and operator of an apartment building located in Seattle, Washington. The apartment building is known as The Addison on Fourth (the “Addison”).

GRE’s interest in this case stems from its experience managing the Addison when the City of Seattle’s Fair Chance Housing Ordinance (the “FCHO”) went into effect in February 2018. *See* Seattle Mun. Code (“SMC”) ch. 14.09, *et seq.* The FCHO prohibits a private landlord’s use of a prospective tenant’s criminal history in determining their suitability for tenancy. GRE offers this *amicus curiae* brief to describe its experience before and after the FCHO.

GRE’s experience provides additional insight into the burden on a landlord when it is unable to screen a prospective tenant’s criminal background to determine the applicant’s ability or inability to meet

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<sup>1</sup> Pursuant to Supreme Court Rule 37(2)(a), all parties received notice of the intent to file this *amicus curiae* brief 10 days prior to the due date for such brief. Pursuant to Supreme Court Rule 37(6), undersigned counsel certifies that (A) no party’s counsel authored this brief, in whole or in part; (B) no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief; and (C) no person, other than the *amicus curiae*, contributed money that was intended to fund preparing or submitting this brief.

the obligations of tenancy. GRE's experience supports Petitioners' position that the FCHO places an undue burden on private landlords, impairing their fundamental property right to exclude potentially dangerous tenants.

### **SUMMARY OF ARGUMENT**

As a landlord with legal and moral obligations to its tenants, GRE normally reviews an assortment of background information about a potential tenant before reaching a tenancy decision. That information includes the applicant's financial stability, rental history, references, and criminal history. The FCHO prohibits private landlords from inquiring into any aspect of an applicant's criminal history and from using that information if it is obtained. Little if any study has been conducted on the practical impacts of such a blanket prohibition on landlords' ability to choose their tenants and provide a safe living environment.

Given the lack of study, GRE wishes to share its experience for the two years immediately before and after the FCHO went into effect. GRE's experience post-FCHO was drastically different than its experience pre-FCHO. Unable to screen a prospective tenant's criminal history, evictions at the Addison quadrupled from 2016 to 2019 and its occupancy declined. The Addison's eviction and vacancy costs increased accordingly. Security costs also increased greatly. Among other things, GRE was compelled to hire armed security guards. The increase in crime in

and around the Addison is confirmed by data on reported crimes from the Seattle Police Department.

The FCHO took away an important risk management tool from GRE: screening for criminal activity that is a threat to the health, safety, or property of its existing tenants. The ordinance improperly burdened GRE. It forced GRE to accept tenants who were not suitable for tenancy, while GRE sought, at the same time, to fulfill its legal and moral obligations to protect existing tenants from the criminal acts of people it invited onto its property. It also jeopardized GRE's ability to maintain the Addison as viable low-income housing.

## **ARGUMENT**

### **I. Development and Management of The Addison on Fourth**

The Addison is located in Seattle's Chinatown-International District. It was built in 1911 as a hotel and was converted to low-income housing in 1969. In 2012, GRE purchased the building for \$12 million. GRE invested \$27 million more in major renovations to convert the building to 254 apartment homes, artist lofts, and musician studios. The Addison reopened in November 2013.

GRE's acquisition and renovation of the Addison were financed primarily with tax-exempt bonds issued by the Washington State Housing Finance Commission. The project is also federally subsidized. So long as the project continues to comply with requirements of the Internal Revenue Code,

interest on the bonds is expected to remain exempt from federal income tax. The requirements include limits on the income of apartment residents and limits on the amount of rent that can be charged for an apartment.

Nearly identical restrictions on income levels and maximum rent amounts allow the project to also qualify for federal low-income housing tax credits. The Addison provides housing for Seattle residents earning up to 60 percent of the area's median income. For example, in 2020, that was \$45,600 for one person. The monthly rent for a studio apartment was capped at \$1,162, while the maximum monthly rent for a one-bedroom unit was \$1,245. Rental payments for many of the Addison's tenants are subsidized with rental assistance from nonprofits or governmental agencies.

GRE is affiliated with Goodman Real Estate, Inc. (Goodman Real Estate).<sup>2</sup> Goodman Real Estate is a privately held real estate investment company that specializes in multifamily, retail, and commercial real estate and has been headquartered in Seattle for more than 30 years. Goodman Real Estate has a primary focus in the Pacific Northwest while also having a considerable presence in a variety of cities throughout the United States. Goodman Real Estate and its

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<sup>2</sup> GRE is a Washington limited liability company. Its members include GRE Downtowner Manager LLC, also a Washington limited liability company. GRE Downtowner Manager LLC's members are individuals affiliated with Goodman Real Estate.

affiliates currently own and manage 9,232 units, with an additional 1,592 units under construction.

## II. Sources of GRE's Data

GRE is not aware of studies into the impact on private landlords from a blanket prohibition on the use of criminal history in tenancy decisions. In the absence of such studies, GRE has gathered data pre-FCHO and post-FCHO regarding the Addison's occupancy rates, evictions, and security costs, among other information. GRE keeps its records in the normal course of business, including audited financial statements. GRE compiled the data from its records for the purposes of this *amicus curiae* brief. The data is submitted in an appendix.

As noted, the FCHO went into effect in February 2018. For comparison purposes, GRE relies on two years of pre-FCHO data, using data from calendar years 2016 and 2017. For post-FCHO data, it relies on data from calendar years 2018 to 2019, as well as data from January to March 2020. In March 2020, a moratorium on residential evictions went into effect in Seattle due to the COVID-19 pandemic. So that any effects of the moratorium do not affect comparisons, GRE limits its discussion of its post-FCHO experience to data through March 2020.

GRE has also reviewed and gathered public data from the City of Seattle.<sup>3</sup> In particular, the Seattle Police Department maintains crime data from

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<sup>3</sup> See generally <https://data.seattle.gov/> (all websites last visited Nov. 10, 2023).

2008 to present, which can be downloaded.<sup>4</sup> The crime data can then be filtered based on precinct, beat, and a property's 100 block address. As explained below, there are limitations in this data, but it helps corroborate the changes the Addison experienced after the FCHO went into effect.

### III. The Undue Burden of the FCHO on GRE

GRE is legally obligated to keep the Addison's premises fit for habitation. *See* Wash. Rev. Code § 59.18.060. Washington law also imposes a duty on landlords to protect tenants from foreseeable harm caused by the criminal acts of third persons. *Brady v. Whitewater Creek, Inc.*, 521 P.3d 236, 246-47 (Wash. Ct. App. 2022). As shown below, the FCHO interfered with GRE's goals to provide safe, clean, comfortable, stable, and affordable housing for the Addison's low-income tenants and to maintain the project as a sustainable enterprise.

During the first years after the Addison reopened, those goals were met. The Addison's occupancy rate was high. For example, in 2016 and 2017, the two years before passage of the FCHO, the monthly average occupancy rate was 95.69 percent.<sup>5</sup> *See* App. 1-2. Overall, new and long-term residents

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<sup>4</sup> *See* <https://data.seattle.gov/Public-Safety/SPD-Crime-Data-2008-Present/tazs-3rd5>.

<sup>5</sup> GRE's audited financial statements include rental revenue data such as "max rents," "loss/gain to lease," and "vacancy loss." In the appendix, monthly occupancy rates are determined by comparing "vacancy loss" to "max rents" +/- "loss/gain to lease."

were happy with the renovations and respectful of the rules for occupancy. The project was economically viable.

In February 2018, GRE began to abide by the FCHO's new prohibitions against obtaining and using criminal history information for prospective tenants.<sup>6</sup> *See* SMC § 14.09.025(A)(2). Before that change in procedure, to determine an applicant's eligibility to become a tenant, GRE used an application process that included a criminal background check by a reporting agency. If the applicant had a history of criminal convictions, the agency would look at the type of crime and length of time since the crime was committed and determine whether the applicant satisfied pre-established criteria. That criteria assessed whether the criminal conduct indicated a demonstrable risk to resident safety and/or property.

Then, without including any underlying information about the criminal history, the reporting agency would notify GRE whether an applicant was "approved" (i.e., passed the screening process), should be "declined" (did not pass the screening process), or might be "approved with conditions" (such as an increased deposit). The procedure was intended to eliminate bias and also allowed GRE protection to make decisions on the applicant's suitability for tenancy.

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<sup>6</sup> The FCHO exempts "landlords of federally assisted housing subject to federal regulations that require denial of tenancy," but does not define "federally assisted housing." SMC §§ 14.09.115(B), 14.09.010. Uncertain whether the FCHO applied to the Addison, GRE elected to abide by the new prohibitions.

With the discontinuation of that procedure in February 2018, there was a noticeable change, as living conditions at the Addison declined over time. Recall that the Addison was nearly fully occupied in the two years prior to the FCHO. For 2018, the average monthly occupancy rate remained high at 94.38 percent. App. 3. But as natural turnover occurred, the impacts of the FCHO became more pronounced. In 2019, the monthly occupancy rate dropped to an average of 90.60 percent. App. 4. From January to March 2020, the monthly occupancy rate eroded further, averaging 88.37 percent. App. 5.

Evictions also increased.<sup>7</sup> Certainly evictions are part of the rental business, necessary to deal with problem tenants who endanger others, damage property, or violate the lease agreement. But evictions at the Addison quadrupled after 2018. In 2016 and 2017, GRE was forced to initiate 14 and 17 judicial evictions, respectively. App. 1-2. In 2018, eviction proceedings began to increase, eventually totaling 34. App. 3. In 2019, GRE began 63 eviction proceedings. App. 4. Of those 63 evictions, 33 of the tenants moved in after the FCHO went into effect in February 2018 and after GRE stopped screening for criminal history. *Id.* Another 12 eviction proceedings began between January and March 2020, nine of which involved tenants who moved in after the FCHO went into effect. App. 5.

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<sup>7</sup> GRE measures evictions by the filing of eviction proceedings in Washington state courts.

As would be expected, the increase in turnover and evictions had a direct impact on GRE's ability to provide safe and affordable housing for low-income tenants and remain a viable enterprise. In 2016 and 2017, GRE spent an average of \$1,461 per month on evictions and a total of \$35,059.<sup>8</sup> App. 1-2. In 2018, that expense rose to an average of \$2,228 a month, and in 2019, it climbed to an average of \$3,785 a month, totaling \$72,157 over those two years. App. 3-4. From January to March 2020, the average eviction cost was \$3,169 a month. App. 5.

Vacancies also hit GRE's bottom line. There is a cost to vacant apartments. In 2016 and 2017, the average loss due to vacancies each month was \$8,913 and \$12,117, respectively. App. 1-2. In 2018, the average monthly loss increased slightly to \$14,724. App. 3. In 2019, it nearly doubled to \$26,381 a month. App. 4. From January to March 2020, the average loss was \$32,543 a month. App. 5.

What accounts for those considerable changes? The only explanation GRE has found is the FCHO's prohibition against obtaining and using criminal history information for prospective tenants. Anecdotally, GRE can recount the fights that broke out in the lobby of the building; the six-month resident who stabbed his guest in November 2019; the used needles, trash, and feces left in stairways and hallways; the fire alarms set off repeatedly in the middle of the night; employees who were afraid to

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<sup>8</sup> GRE's audited financial statements include eviction expenses.

work alone; and the increase in the Addison's annual assault and battery insurance deductible. GRE can also speak to its employee turnover, which increased from losing two employees in 2016 and 2017 to nine employees in 2018 and 2019. App. 1-4.

But more directly, the Addison's security costs greatly increased. Between 2016 and 2018, security costs averaged \$2,335 a month and totaled \$84,059.<sup>9</sup> App. 1-3. Compare those costs to what occurred between January 2019 and March 2020. Over that 15-month period, security costs averaged \$14,786 a month and totaled \$221,786. App. 4-5. GRE hired armed security guards, installed cameras in the hallways on every floor and in other public areas, upgraded door hardware, installed a controlled access system for the elevator, and gave residents fobs that allowed them access only to their respective floors.

Data from the Seattle Police Department confirms the increasing crime in and around the Addison after the FCHO went into effect. GRE recognizes that this data has limitations. For example, it documents crimes reported and is not specific to the Addison alone. Using the Seattle Police Department public dataset, GRE isolated violent crimes (e.g., homicide, rape, robbery, and aggravated assault), property crimes (e.g., arson, burglary, larceny-theft, and motor vehicle theft) and societal crimes (e.g., drug/narcotic offenses and weapon law violations) to the Addison's block within the Chinatown-

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<sup>9</sup> The Addison's security costs were compiled as a summation of various expense categories (and in some cases partial amounts) from GRE's audited financial statements.

International District.<sup>10</sup> This data shows there were 31 crimes reported in and around the Addison in 2016, 57 crimes reported in 2017, 105 crimes reported in 2018, and 145 crimes reported in 2019.

As documented above, the impact and burden to GRE and the Addison was measurable. The FCHO inhibited GRE's ability to provide habitable, safe, and affordable housing for low-income tenants, which is its legal obligation. *See generally* Wash. Rev. Code § 59.18.060; *Brady*, 521 P.3d at 246-47. Unable to ensure that new tenants would not threaten the health, safety, or right to peaceful enjoyment of other tenants, evictions and vacancies increased. And GRE's costs increased, jeopardizing the Addison as an economically viable project. In the end, the City of Seattle's refusal to let private landlords screen applicants for criminal history imposed an unduly oppressive and irrational burden on GRE.

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<sup>10</sup> The Seattle Police Department's public dataset can be downloaded and isolated by year, type of crime, precinct (the Addison's is West), beat (the Addison's is K3), and address location blurred to the 100 block (the Addison's is 3XX block of 4th Avenue South). *See* <https://data.seattle.gov/Public-Safety/SPD-Crime-Data-2008-Present/tazs-3rd5> (identifying the fields under the heading "Columns in this Dataset"). The Addison sits on the block bounded by 4th Avenue South, South Jackson Street, 5th Avenue South, and South Main Street. The Addison has two neighbors on the block: a modern apartment building completed in 2016 and an office building.

**CONCLUSION**

The right to exclude is a fundamental right, and the FCHO unduly burdened GRE to accept tenants with criminal histories who were not suitable for tenancy. GRE respectfully urges the Court to grant the petition for writ of certiorari.

Respectfully submitted,

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2016 Data from The Addison on Fourth

	Jan 2016	Feb 2016	Mar 2016	Apr 2016	May 2016	Jun 2016	Jul 2016	Aug 2016	Sep 2016	Oct 2016	Nov 2016	Dec 2016
<b>4000-000 REVENUE:</b>												
<b>4005-000 RENTAL REVENUE</b>												
<b>4005-100 Max Rents</b>	243,558.00	243,558.00	243,558.00	243,558.00	243,558.00	243,558.00	243,558.00	243,558.00	243,558.00	243,558.00	243,558.00	243,558.00
<b>4005-200 Loss/Gain to Lease</b>	-8,313.00	-7,455.00	-6,624.00	-6,193.00	-4,704.00	-5,224.00	-4,343.00	-3,355.00	-2,416.00	-2,272.00	-1,265.00	-459.00
<b>4050-020 Vacancy Loss</b>	-3,435.17	-2,956.13	-6,856.01	-12,025.28	-11,885.97	-4,178.58	-4,332.36	-7,130.80	-17,689.87	-12,151.43	-12,668.30	-11,643.81
<b>Occupancy Based on Vacancy Loss</b>	98.54%	98.75%	97.11%	94.93%	95.02%	98.25%	98.19%	97.03%	92.66%	94.96%	94.77%	95.21%
<b>5001-169 ADMINISTRATION EXPENSES</b>												
<b>5001-290 Evictions</b>	1,479.98	125.00	2,118.96	2,302.94	2,128.47	125.00	125.00	954.98	1,358.98	0.00	1,099.98	3,128.45
<b>Evictions of tenant(s) screened for criminal history (before FCHO)</b>	1	0	2	3	1	0	1	2	1	0	2	1
<b>Evictions of tenant(s) not screened for criminal history (after FCHO)</b>												
<b>Total Evictions</b>	1	0	2	3	1	0	1	2	1	0	2	1
<b>Empl. Turnover</b>							1					
<b>Security Cost</b>	2,000.00	2,000.00	2,000.00	2,000.00	2,375.00	2,165.00	1,655.00	2,710.00	1,240.00	2,000.00	2,855.00	4,180.00

2017 Data from The Addison on Fourth

	Jan 2017	Feb 2017	Mar 2017	Apr 2017	May 2017	Jun 2017	Jul 2017	Aug 2017	Sep 2017	Oct 2017	Nov 2017	Dec 2017
<b>4000-000 REVENUE:</b>												
<b>4005-000 RENTAL REVENUE</b>												
<b>4005-100 Max Rents</b>	243,558.00	243,558.00	243,558.00	243,558.00	245,466.00	245,466.00	241,244.67	245,466.00	245,466.00	245,466.00	245,466.00	245,466.00
<b>4005-200 Loss/Gain to Lease</b>	-263.00	225.52	746.26	903.01	-824.00	-216.00	295.00	1,444.00	4,058.00	5,094.00	6,522.00	7,683.00
<b>4050-020 Vacancy Loss</b>	-11,547.04	-10,593.58	-15,099.62	-11,557.84	-11,524.21	-7,783.87	-11,966.86	-17,561.95	-9,537.62	-12,340.52	-9,935.12	-15,952.09
<b>Occupancy Based on Vacancy Loss</b>	95.25%	95.65%	93.82%	95.27%	95.29%	96.83%	95.05%	92.89%	96.18%	95.07%	96.06%	93.70%
<b>5001-169 ADMINISTRATION EXPENSES</b>												
<b>5001-290 Evictions</b>	3,579.90	420.00	1,048.49	2,690.94	1,200.00	2,165.92	2,709.96	350.00	437.49	3,114.43	1,371.49	1,023.00
<b>Evictions of tenant(s) screened for criminal history (before FCHO)</b>	3	3	1	0	0	3	3	1	0	3	0	0
<b>Evictions of tenant(s) not screened for criminal history (after FCHO)</b>												
<b>Total Evictions</b>	3	3	1	0	0	3	3	1	0	3	0	0
<b>Empl. Turnover</b>							1					
<b>Security Cost</b>	1,805.75	1,622.00	2,000.00	5,344.00	2,000.00	2,025.00	1,975.00	4,000.00	2,000.00	2,000.00	2,000.00	2,000.00

2018 Data from The Addison on Fourth

	Jan 2018	Feb 2018	Mar 2018	Apr 2018	May 2018	Jun 2018	Jul 2018	Aug 2018	Sep 2018	Oct 2018	Nov 2018	Dec 2018
<b>4000-000 REVENUE:</b>												
<b>4005-000 RENTAL REVENUE</b>												
<b>4005-100 Max Rents</b>	260,712.00	260,712.00	260,712.01	260,712.02	260,712.00	260,712.00	260,712.00	260,712.00	260,712.00	260,712.00	260,712.00	260,712.00
<b>4005-200 Loss/Gain to Lease</b>	-6,288.00	-4,828.00	-4,401.00	-3,809.00	-2,966.00	-1,385.00	583.00	4,352.00	7,265.00	10,490.00	12,659.00	13,959.00
<b>4050-020 Vacancy Loss</b>	-23,514.52	-26,521.03	-20,105.45	-13,632.89	-4,749.80	-6,225.36	-9,241.28	-18,199.34	-9,151.96	-12,181.56	-15,620.87	-17,540.09
<b>Occupancy Based on Vacancy Loss</b>	90.76%	89.64%	92.16%	94.69%	98.16%	97.60%	96.46%	93.13%	96.58%	95.51%	94.29%	93.61%
<b>5001-169 ADMINISTRATION EXPENSES</b>												
<b>5001-290 Evictions</b>	1,018.00	3,763.06	1,231.00	4,788.00	-415.00	1,965.00	4,911.41	467.00	1,638.00	3,016.00	1,838.00	2,520.00
<b>Evictions of tenant(s) screened for criminal history (before FCHO)</b>	4	5	1	2	2	1	6	0	3	2	1	3
<b>Evictions of tenant(s) not screened for criminal history (after FCHO)</b>									1	1	0	2
<b>Total Evictions</b>	4	5	1	2	2	1	6	0	4	3	1	5
<b>Empl. Turnover</b>							4					
<b>Security Cost</b>	2,100.00	2,100.00	4,441.31	1,240.30	2,914.20	1,746.28	3,265.00	2,100.00	2,000.00	2,000.00	2,100.00	2,100.00

2019 Data from The Addison on Fourth

	Jan 2019	Feb 2019	Mar 2019	Apr 2019	May 2019	Jun 2019	Jul 2019	Aug 2019	Sep 2019	Oct 2019	Nov 2019	Dec 2019
<b>4000-000 REVENUE:</b>												
<b>4005-000 RENTAL REVENUE</b>												
<b>4005-100 Max Rents</b>	284,740.00	284,740.00	284,740.00	284,740.00	283,697.22	284,740.00	284,740.00	284,740.00	284,740.00	284,740.00	284,740.00	284,740.00
<b>4005-200 Loss/Gain to Lease</b>	-8,128.00	-6,472.99	-5,971.00	-4,247.00	-2,906.99	-3,687.00	-2,257.00	-2,258.00	-1,751.00	-3,201.00	-2,556.00	-4,344.00
<b>4050-020 Vacancy Loss</b>	-21,346.94	-30,877.80	-23,993.93	-24,334.25	-17,657.13	-14,968.78	-24,186.29	-31,153.61	-31,411.94	-33,025.05	-29,723.19	-33,897.34
<b>Occupancy Based on Vacancy Los</b>	92.28%	88.90%	91.39%	91.32%	93.71%	94.67%	91.44%	88.97%	88.90%	88.27%	89.47%	87.91%
<b>5001-169 ADMINISTRATION EXPENSES</b>												
<b>5001-290 Evictions</b>	3,010.00	4,780.00	8,015.00	3,089.00	-802.36	1,723.00	4,199.00	6,383.60	1,052.40	1,949.00	3,773.00	8,245.00
<b>Evictions of tenant(s) screened for criminal history (before FCHO)</b>	5	4	9	2	3	1	0	2	0	1	2	1
<b>Evictions of tenant(s) not screened for criminal history (after FCHO)</b>	2	2	5	0	2	2	5	0	4	4	2	5
<b>Total Evictions</b>	7	6	14	2	5	3	5	2	4	5	4	6
<b>Empl. Turnover</b>	5											
<b>Security Cost</b>	3,300.00	3,300.00	32,050.00	34,398.00	33,720.00	30,348.00	20,920.00	0.00	4,664.76	4,891.71	4,891.71	23,484.15

2020 Data from The Addison on Fourth

	Jan 2020	Feb 2020	Mar 2020
<b>4000-000 REVENUE:</b>			
<b>4005-000 RENTAL REVENUE</b>			
<b>4005-100 Max Rents</b>	290,209.00	290,209.00	290,209.00
<b>4005-200 Loss/Gain to Lease</b>	-10,012.00	-10,187.00	-11,171.00
<b>4050-020 Vacancy Loss</b>	-28,362.76	-33,749.23	-35,516.11
<b>Occupancy Based on Vacancy Loss</b>	89.88%	87.95%	87.27%
<b>5001-169 ADMINISTRATION EXPENSES</b>			
<b>5001-290 Evictions</b>	2,082.00	2,140.00	5,286.00
<b>Evictions of tenant(s) screened for criminal history (before FCHO)</b>	0	0	3
<b>Evictions of tenant(s) not screened for criminal history (after FCHO)</b>	5	2	2
<b>Total Evictions</b>	5	2	5
<b>Empl. Turnover</b>		2	
<b>Security Cost</b>	0.00	10,062.29	15,755.77