

ORIGINAL

**CITY OF SAN DIEGO
LEASE SURRENDER AND
TERMINATION AGREEMENT**

THIS LEASE SURRENDER AND TERMINATION AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and HARMONIUM, INC., a California 501(c)(3) nonprofit public benefit corporation ("HARMONIUM"), to be effective when executed by the parties and as of the date approved by the San Diego City Attorney (the "Effective Date"), as follows:

RECITALS

- A. CITY, as lessor, and HARMONIUM, as lessee, are parties to that certain CITY OF SAN DIEGO PUBLIC PURPOSE LEASE (the "Lease") filed in CITY's Office of the City Clerk as Document No. RR 307489 on June 12, 2012, relating to the leasing of CITY-owned improved real property located at 8450 Mira Mesa Boulevard, in the City of San Diego, California and more particularly described in the Lease (the "Premises").
- B. The term of the Lease is five (5) years, expiring April 30, 2017. The Lease required HARMONIUM to operate and provide a self-supporting teen business center, and to provide educational activities, community services and recreational programs, as more particularly specified in the Lease.
- C. Following the execution of the Lease, CITY and HARMONIUM entered into that certain FY 2013 CDBG AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND HARMONIUM, INC. INVOLVING CDBG FUNDS ALLOCATED IN FY 2012 dated August 8, 2012 ("CDBG Agreement"), by which CITY agreed to provide HARMONIUM with a \$100,000 subsidy ("CDBG Subsidy") from CITY's Community Development Block Grant ("CDBG") Program to complete tenant improvements at the Premises relative to HARMONIUM's operation of a regional teen center.
- D. Pursuant to 24 C.F.R. 570.505, the CITY, as the recipient of CDBG funds that were used to improve the Premises is prohibited from changing the use or the planned use (including the beneficiaries of the use) of the Premises until June 30, 2018, unless the CITY satisfies specific requirements. If the CITY desires to change the use of the Premises, the CITY must provide affected citizens with reasonable notice and an opportunity to comment, and either (1) the new use must meet one of the national CDBG objectives set forth in 24 C.F.R. 570.208, or (2) the CITY must reimburse the CDBG program from non-CDBG funds for the current fair market value of the Premises, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of and improvement to the Premises.
- E. Pursuant to Section 10.10 of the CDBG Agreement, HARMONIUM is liable to CITY in the amount of the current fair market value of the Premises, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of and improvement to the Premises, should HARMONIUM not use the Premises to meet one of the national objectives of the federal CDBG program for at least five years. Additionally, Section 2 of the Lease requires that HARMONIUM not default under any CDBG assistance agreement for funding of roof, sewer

and drainage repair for the Premises.

- F. HARMONIUM desires to surrender its interests in the Lease and all right to possession of the Premises, and accordingly has requested termination of the Lease.
- G. CITY is willing to accept the surrender of the Premises and termination of the Lease, subject to the terms and conditions of this Agreement. CITY has visually inspected the Premises and is satisfied with its condition.

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

- 1. Surrender and Termination. HARMONIUM surrenders all rights in, to, and under the Lease and the leasehold estate created thereunder, and agrees to vacate the Premises and, deliver all keys possessed and/or controlled by it to the Premises. CITY accepts this surrender, and the Lease is hereby terminated as of the Effective Date, subject to the conditions set forth in this Section, as well as all other conditions set forth in this Agreement:
 - a. HARMONIUM shall also be responsible for removal of all items from the Premises unless otherwise authorized in writing by CITY.
 - b. All personal property left at the Premises shall be handled according to California law.
 - c. All respective rights and responsibilities under the Lease, including HARMONIUM's obligation to pay rent and to operate and maintain the Premises, shall be of no further effect, except (1) those rights and responsibilities which by their nature shall survive such termination (e.g. indemnity, hold harmless, maintenance of records), (2) all obligations related to or arising from the CDBG Agreement, and (3) any terms or conditions specifically made a condition of acceptance of this Agreement.
- 2. HARMONIUM Representations and Warranties; Indemnity. HARMONIUM represents and warrants the following:
 - a. That it has no knowledge of any filed, pending, or potential legal claims related to the Lease or the Premises; and
 - b. That it has not made any assignment, sublease, transfer, or other disposition of the Lease or any interest in the Lease or any demand, obligation, liability, or cause of action arising out of the Lease, in any manner.
 - c. HARMONIUM shall protect, defend, indemnify, and hold CITY harmless from and against any and all claims asserted and liability established for damages or injuries to any person or property, including injury to HARMONIUM's officers, employees, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with any person or legal entity claiming to hold any right under the Lease, the Premises and the CDGB Agreement (see "Section 3. d." below), and all expenses of investigating and defending against same, including without limitation attorney fees and costs.

3. CDBG Reimbursement Requirement. CITY and HARMONIUM acknowledge and agree to the following:
 - a. The CDBG Agreement sets forth a continuing obligation on HARMONIUM to use the Premises to meet one of the national objectives in 24 C.F.R. 570.208 for at least five years after the expiration of the CDBG Agreement.
 - b. Harmonium has failed to meet the obligation related to use of the Premises as set forth above, and is required pursuant to Section 10.10 of the CDBG Agreement to make a payment to CITY in an amount equal to the current market value of the Premises less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the Premises.
 - c. CITY agrees not to enforce Section 10.10 of the CDBG Agreement, unless CITY incurs liability arising from a failure to use the property for a national objective as set forth in 24 C.F.R. 570.208 for the required time period.
 - d. HARMONIUM shall, to the extent CITY incurs financial liability as a direct or indirect result of HARMONIUM's failure to perform all obligations pursuant to the CDBG Agreement, make a payment to CITY in accordance with Section 10.10 of the CDBG Agreement.
4. Construction. The provisions of this Agreement, or this Agreement as a whole, shall not be construed against the drafting party.
5. Waiver. No breach of any provision of this Agreement shall be waived unless in writing. Waiver of any one breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of the same or any other provision.
6. Quitclaim. Pursuant to Section 17 of the Lease, within five (5) days after the Effective Date, HARMONIUM shall execute, acknowledge, and deliver to CITY a valid and recordable quitclaim deed in the form and content as attached hereto as **Exhibit A: Quitclaim Deed.**
7. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between the parties pertaining to this termination.
8. Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representative, successors and assigns.
9. Governing Law. This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of California.
10. Authority. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles,

charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms.

IN WITNESS WHEREOF, this Agreement is executed by the legally authorized representative of the parties as follows.

Date: April 7, 2016

HARMONIUM, INC., a California 501(c) (3)
Nonprofit Corporation

BY: [Signature]
Name: Rory Ann Loyda
Title: Chief Executive Officer

Date: 5/23/16

THE CITY OF SAN DIEGO, a California
municipal corporation

BY: [Signature]
Name: CAROL THOMPSON
Title: Officer, Non-Asset Issues

APPROVED AS TO FORM:

Date: 5/24/16

JAN I. GOLDSMITH, City Attorney

BY: [Signature]
Name: Melissa Ables
Title: Deputy City Attorney



PLEASE SEE ATTACHED CH. ALL. RECORD
CERTIFICATE OF ACKNOWLEDGMENT.

[Signature]

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

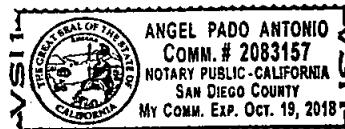
County of SAN DIEGO }

On April 7, 2016 before me, ANGEL PADO ANTONIO, Notary Public
(Here insert name and title of the officer)

personally appeared ROSA ANA LOZADA
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



[Signature]
Notary Public Signature

(Notary Public Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

TERMINATION AGREEMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

After recording mail to:

Real Estate Assets Dept.
City of San Diego
Mail Station 51 - A
1200 Third Ave Ste 1700
San Diego, CA 92101

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EXHIBIT A – QUITCLAIM DEED

"FORM OF"

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged,
HARMONIUM INC.,

A California 501(c) (3) nonprofit public benefit corporation hereby quitclaims, releases, and remises to

THE CITY OF SAN DIEGO,
A California municipal corporation

All its Right, Title and Interest in and to the following described Real Property, along with all improvements thereon and appurtenances thereto, situated in the City of San Diego, County of San Diego, State of California, described as follows: See "Exhibit A – Legal Description", attached hereto.

IN WITNESS WHEREOF, this Quitclaim Deed is executed to be effective upon this 7 day of April, 2015. 2016 val



HARMONIUM, INC.

BY: Rosa Ana Lozada
Name: Rosa Ana Lozada
Title: Chief Executive Officer
Date: April 7, 2016

PLEASE SEE ATTACHED
OF ALL-PURPOSE
CERTIFICATE OF RECONCILIATION.

Quitclaim Deed

Exhibit A – Legal Description

LEGAL DESCRIPTION

All that portion of Lot 4 of Mira Mesa Shopping Center Unit No. 4, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 7213, filed in the Office of County Recorder, February 22, 1972, more particularly described as follows:

Beginning at the Northeast corner of said Mira Mesa Shopping Center Unit No. 4, according to Map No. 7213; thence Southerly along the Easterly line of said Map 7213, South $0^{\circ}01'35''$ East, 333.15 feet; thence leaving said Easterly line, South $89^{\circ}58'25''$ West, 150.00 feet; thence North $0^{\circ}01'35''$ West, 330.01 feet to an intersection with the Northerly line of said Map No. 7213; thence Easterly along said Northerly line, North $88^{\circ}46'25''$ East, 150.03 returning to the Point of Beginning.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of SAN DIEGO }

On April 7, 2016 before me, ANGEL PADO ANTONIO, NOTARY PUBLIC
(Here insert name and title of the officer)

personally appeared ROSA ANA LOZADA,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]
Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Guarantee Deed
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

☐ Individual (s)

☐ Corporate Officer

(Title)

☐ Partner(s)

☐ Attorney-in-Fact

☐ Trustee(s)

☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

RESOLUTION NUMBER R- 310353

DATE OF FINAL PASSAGE APR 14 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO TO APPROVE THE LEASE SURRENDER AND TERMINATION AGREEMENT WITH HARMONIUM, INC. FOR THE PROPERTY LOCATED AT 8450 MIRA MESA BOULEVARD AND TO APPROVE THE CLOSURE OF THE MIRA MESA TEEN FUND AND THE TRANSFER OF ALL FUNDS THEREIN TO THE MIRA MESA COMMUNITY FUND.

WHEREAS, the City of San Diego (City) is the owner of improved real property located at 8450 Mira Mesa Boulevard (Property); and

WHEREAS, Harmonium, Inc., a non-profit California corporation (Harmonium) leases the Property and has been operating the Property as a teen business center providing educational activities, community services and recreational programs at the Property since 1998. The current lease with Harmonium commenced May 1, 2012, and would expire on April 30, 2017; and

WHEREAS, on December 2, 1997, San Diego City Council, by Resolution No. R-289498, created the Mira Mesa Teen Center Fund to provide financial assistance to a teen center to be operated at the Property. The Mira Mesa Teen Center Fund was funded by a transfer of \$500,000.00 from the Mira Mesa Community Fund; and

WHEREAS, Harmonium and the City entered into that certain FY 2013 CDBG Agreement Between the City of San Diego and Harmonium, Inc. Involving CDBG Funds Allocated in FY 2012 dated August 8, 2012, (CDBG Agreement) that provided \$100,000.00 of Community Development Block Grant (CDBG) funds to Harmonium to be used for roof, flooring, and sewer line repairs at the Property. The repairs were completed and the CDBG project was closed; and

WHEREAS, the use of CDBG funds to repair the Property requires that the Property be used for a national CDBG objective until June 6, 2018, or in the alternative, that the CDBG program be reimbursed with non-CDBG funds for the current fair market value of the Property, less any portion of the Property value attributable to expenditure of non-CDBG funds for acquisition of and improvement to the Property; and

WHEREAS, Harmonium has requested to surrender the Property to City and terminate the lease early due to financial difficulties and a lack of interest in the facility and programs by the target community; and

WHEREAS, Harmonium has agreed to be responsible for any repayment required to the City's CDBG program if the City incurs financial liability as a result of Harmonium's failure to perform all obligations pursuant to the CDBG Agreement; and

WHEREAS, if the City Council approves the early surrender and termination of the lease by Harmonium, it is further requested that the City Council also authorize the Chief Financial Officer to transfer all funds in the Mira Mesa Teen Center Fund to the Mira Mesa Community Fund; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Lease Surrender and Early Termination Agreement between the City of San Diego and Harmonium, Inc. for the property located at 8450 Mira Mesa Boulevard, San Diego, CA, is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is authorized to sign the Lease Surrender and Early Termination Agreement, and any other documents necessary to effectuate the surrender and early termination of said lease.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is hereby authorized to transfer all funds in the Mira Mesa Teen Center Fund 400183 to the Mira Mesa Community Fund 400182, and to thereafter close the Mira Mesa Teen Center Fund 400183.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Melissa D. Ables
Melissa D. Ables
Deputy City Attorney

MDA:mcm
March 10, 2016
Or.Dept:Real Estate Assets Dept.
Doc. No.: 1245665

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 12 2016.

ELIZABETH S. MALAND
City Clerk

By Atg. Crady
Deputy City Clerk
Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Approved: 4/14/16
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on APR 12 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Todd Gloria	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Marti Emerald	☐	☐	☒	☐

Date of final passage APR 14 2016

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Stacy Green*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 310353

Passed by the Council of The City of San Diego on April 12, 2016, by the following vote:

YEAS: LIGHTNER, ZAPF, GLORIA, COLE, KERSEY, CATE,
SHERMAN, ALVAREZ.

NAYS: NONE.

NOT PRESENT: EMERALD.

RECUSED: NONE.

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Jeannette I. Santos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-310353, approved on April 14, 2016. The date of final passage
is April 14, 2016.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: , Deputy