



Real Estate Assets Department  
SDC003

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**Document Type**

**LEGAL DOCUMENTS**



**Sub - Category**

**\*AMENDMENTS\***



AFTER RECORDING MAIL TO:

Dewey, Ballantine, Bushby,  
Palmer & Wood  
333 South Hope Street  
Los Angeles, California 90071  
Attention: Alan Wayte, Esq.

AGREEMENT

This Agreement is made by THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called the "City."

RECITALS:

A. In April 1980, the City and Ernest W. Hahn, Inc., a California corporation ("Hahn") entered into a written Agreement which was amended in September 1983 by a written Amendment No. 1 to Agreement and in July 1984 by a written Amendment No. 2 to Agreement (collectively referred to as the "Agreement"), respective copies of which were filed on April 2, 1980, as Document No. RR-251518-2, September 12, 1983, as Document No. RR-259200 and July 23, 1984 as Document No. RR-261220 in the Office of the City Clerk, San Diego, California. EWH Escondido Associates, L.P., a Delaware limited partnership ("Associates") succeeded to Hahn's interest in the Agreement through Amendment No. 2 to the Agreement.

B. The City understands that Associates has applied to Teachers Insurance and Annuity Association of America, a New York corporation, for a loan to provide permanent financing of certain improvements constructed on the premises described on Exhibit A attached hereto and incorporated herein by reference (the "Property").

C. By this Agreement, the City desires to confirm the compliance with certain matters by Associates and its predecessors in interest.

TERMS:

NOW, THEREFORE, in consideration of the Recitals and mutual obligations of the parties as herein expressed, and as expressed in the Agreement, the City agrees as follows:

1. Associates has complied with all of the provisions of the Agreement with respect to the construction of the Frontage Road and Fly-Over Bridge (both as defined in the Agreement) and improvements related thereto, pursuant to paragraph 6a of the Agreement, and Associates has widened

X15.7  
11/17/86

Via Rancho Parkway from two lanes to four lanes pursuant to paragraph 6b of the Agreement, and there have been no violations or defaults under any of the terms or conditions of paragraph 6 of the Agreement on the part of Associates, or any of its predecessors in interest.

2. The City confirms that all annual payments due to be paid to the City by Associates or any of its predecessors in interest pursuant to paragraph 11 of the Agreement have been made.

3. The City claims no liens, reversionary rights, rights of first refusal, or any other interest in the Property under the Agreement.

4. To the best of our knowledge, there exists no event which would constitute a default under the Agreement, nor any event which with the passage of time or the giving of notice, or both would constitute such a default. Specifically, there exists no condition which would cause the roadways and easements leading to the Property to be closed down and there exists no condition which would cause the use of the shopping center situated on the Property (the "Shopping Center") to be curtailed.

5. The City has not yet formally approved either that certain Amendment No. 2 to Ground Lease dated as of February 12, 1986 nor that certain Amendment No. 3 to Ground Lease dated as of November \_\_, 1986, both by and between the City of Escondido, as Lessor, and Associates, as Lessee; however, the only issue with respect to such approval will be whether Associates is required to pay a 5% overage in accordance with the Agreement as a result of the increase of the minimum rent payable under the major department store leases. This issue has not been resolved; however, in no event will the roadways and easements leading to the Property to be closed down, nor will the use of the Shopping Center be curtailed regardless of the resolution of such issue.

6. The City confirms that the only remedy available to it for a breach under the Agreement by Associates or any of its predecessors in interest is a suit for damages.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego acting by and through its City Manager, pursuant to Resolution No. N/A authorizing such execution.

CITY OF SAN DIEGO, a Municipal corporation

~~December~~  
Date ~~November~~ 16, 1986

By J. P. Fowler

STATE OF CALIFORNIA  
COUNTY OF San Diego ss.

On December 16, 1986

before me, the undersigned, a Notary Public in and for said State, personally appeared J. P. Fowler

personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as Assistant

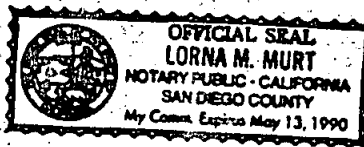
City Manager President and Secretary, on behalf of

The City of San Diego

the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature Lorna M. Murt  
Lorna M. Murt



(This area for official notarial seal)

City Attorney  
[Signature]  
City Attorney

EXHIBIT A

LEGAL DESCRIPTION

PARCELS 7 AND 8 OF ESCONDIDO MAP NO. 85-08, in the City of Escondido, County of San Diego, State of California, according to Parcel Map No. 14270, filed in the Office of the County Recorder of San Diego County, May 1, 1986.

CURTIS M. FITZPATRICK  
ASSISTANT CITY ATTORNEY  
RONALD L. JOHNSON  
SENIOR CHIEF DEPUTY CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

**JOHN W. WITT**  
CITY ATTORNEY

CITY ADMINISTRATION BUILDING  
SAN DIEGO, CALIFORNIA 92101-3863  
(619) 236-6220

January 27, 1987

Robert T. Pace, Esq.  
O'Melveny & Myers  
610 Newport Center Drive  
Suite 1700  
Newport Beach, CA 92660-6429

Dear Mr. Pace:

North County Fair - Amendment No.3 to Ground Lease

Enclosed please find three copies of the Estoppel Agreement which you requested, together with an acknowledgement of the January 6, 1987, letter from Mr. Doyle indicating concurrence in the City's position that "Subtenant Rentals" will include rental amounts paid by the major department stores.

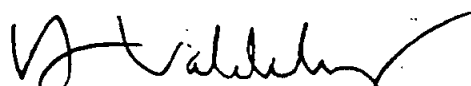
In addition, also enclosed is a letter from the City Manager indicating approval of Amendments No. 2 and No. 3 to the Ground Lease between the City of Escondido and EWH Escondido Associates, L.P.

As you know, approval of the two amendments to Ground Lease, the execution of the Estoppel Agreement and the acknowledgement of Mr. Doyle's letter are all based upon and contingent upon your concurrence in our position that "Subtenant Rentals" shall include rents received by the City of Escondido from the major department store leases and that, by executing the Estoppel Agreement, acknowledging Mr. Doyle's letter and approving Amendments No. 2 and No. 3 to the Ground Lease, the City will in no way be waiving any of its rights to percentage rent payments as required under all the provisions of the April 1980 agreement between the City of San Diego and Ernest W. Hahn, Inc.

Sincerely yours,

JOHN W. WITT, City Attorney

By

  
Harold O. Valderhaug  
Deputy City Attorney

HOV:ps:712.6  
Attachments  
cc William H.W. Doyle

OFFICE COPY



THE CITY OF

# SAN DIEGO

CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIF. 92101

OFFICE OF THE  
CITY MANAGER  
236-6363

January 27, 1987

EWB Escondido Associates, L.P.  
c/o O'Melveny & Myers  
610 Newport Center Drive  
Newport Beach, California 92660

Attention: Robert T. Pace, Esq.

Dear Mr. Pace:

## North County Fair

We have reviewed copies of that certain Amendment No. 2 to Ground Lease, dated as of February 12, 1986, and that certain Amendment No. 3 to Ground Lease, dated as of November 26, 1986, both of which have been entered into by and between the City of Escondido and EWB Escondido Associates, L.P., in connection with the North County Fair shopping center. Please be advised that the Amendments are hereby approved by the City of San Diego, subject to and contingent upon the fact as evidenced in the attached letter from Mr. William Doyle dated January 6, 1987, as well as the attached letter from the City Attorney dated January 27, 1987, that by approving Amendments No. 2 and No. 3 to the Ground Lease the City is not waiving its rights to receive all rents required under the April 1980 agreement between the City of San Diego and Ernest W. Hahn, Inc., including payments due City in the future based upon rental amounts paid by the major department stores, regardless of the entity to which the major department stores pay their rent.

Very truly yours,

THE CITY OF SAN DIEGO

By

John P. Fowler  
Assistant City Manager

JPF:HOV:ps  
Attachments 2

January 6, 1987

431  
CITY ATTORNEY (1)

THE HAHN COMPANY  
JAN 8 1 11 PM '87

Harold O. Valderhaug, Esq.  
Deputy City Attorney  
City of San Diego  
City Administration Building  
San Diego, California 92101-3863

RE: EWH Escondido Associates, L.P./North County Fair

Dear Mr. Valderhaug:

The purpose of this letter is to clarify our arrangement with respect to the ground rent being paid to the City of Escondido by certain of the Major Department Stores in the North County Fair Shopping Center under the terms of their individual ground leases with the City of Escondido (the "Leases").

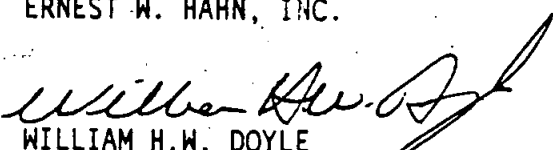
As you know, the Agreement previously executed by the City of San Diego and Ernest W. Hahn, Inc., in April, 1980, provided for certain Percentage Rent Payments to be paid to the City of San Diego based upon "Subtenant Rentals", as such term is defined in Section 11.4 of the Agreement. Please be advised that, for purposes of computing the annual five percent (5%) Percentage Payments defined in Section 11.4(a) of the Agreement, Subtenant Rentals will include the Ground Rent payments to the extent actually received by the City of Escondido from the Major Department Stores for the applicable computation period. In addition, the term "Minimum Rental Base", as defined in Section 11.4(b) of the Agreement, will include the initial ground rent under the Leases.

If the foregoing meets with your approval, please execute the acknowledgment on the enclosed copy of this letter and return it to the undersigned. In addition, we would appreciate it if you would also execute the enclosed letter, thereby acknowledging your approval of the Second and Third Amendments to the Ground Lease between the City of Escondido and EWH Escondido Associates, L.P.

If you have any questions, feel free to contact either the undersigned or Robert T. Pace at O'Melveny & Myers.

Very truly yours,

ERNEST W. HAHN, INC.

  
WILLIAM H.W. DOYLE  
Sr. Vice President, Development

RR- 251320

JUL 13 1984

CITY OF SAN DIEGO  
SAN DIEGO, CALIFORNIA

AMENDMENT NO. 2 TO AGREEMENT

THIS AMENDMENT NO. 2 TO AGREEMENT (hereinafter referred to as the "Amendment") is made by the CITY OF SAN DIEGO, a municipal corporation (herein referred to as "San Diego"), and ERNEST W. HAHN, INC., a California corporation (herein referred to as "Hahn").

RECITALS:

A. In April 1980, San Diego and Hahn entered into a written Agreement and in September 1983 amended it by a written Amendment No. 1 to Agreement (both collectively referred to as the "Agreement"), respective copies of which were filed on April 2, 1980, as Document No. RR-251518-2, and on September 12, 1983, as Document No. RR-2<sup>5</sup>9200, in the Office of the City Clerk, San Diego, California.

B. By this Amendment, the parties desire to modify certain provisions of the Agreement.

TERMS:

NOW, THEREFORE, in consideration of the Recitals and mutual obligations of the parties as herein expressed, and as expressed in the Agreement, San Diego and Hahn agree as follows:

1. Paragraph 19 of the Agreement is hereby deleted and is of no further force and effect and the following paragraphs are substituted in its place:

19. Notwithstanding any other provision contained in this Agreement, Hahn shall have the right to sell, assign or transfer its interest hereunder

without the prior consent of the City of San Diego, provided Hahn assigns its interest hereunder to another legal entity in which it owns a majority equity interest and provided the assignee agrees to undertake and perform all of the terms, conditions and covenants contained in the Agreement at the times and in the manners therein set forth.

Hahn shall have the right to sell, assign or transfer its interest in the assignee entity, subject to the prior consent of the City Manager, provided that the assignee of the interest has adequate financial worth, is of good reputation and agrees to undertake and perform all of the terms, conditions and covenants contained in the Agreement at the times and in the manners therein set forth. The approval of the City Manager shall not be unreasonably withheld. Any proposed assignee with a financial net worth of fifteen million dollars (\$15,000,000) or more (in 1984 dollars adjusted to reflect changes in the consumer price index) shall be conclusively deemed to be of "adequate financial worth" for the purposes of this paragraph. Upon a transfer of its interest, pursuant to this paragraph, Hahn shall have no further liability or obligation under this Agreement.

2. San Diego acknowledges that Hahn has assigned its interest under this Agreement to EWH 1979 Development Company, L.P. ("EWH 1979"), a California limited partnership, in which

Hahn owns a majority equity interest and that EWH 1979 has assigned its interest under this Agreement to EWH Escondido Associates, a Delaware limited partnership, in which EWH 1979 owns a majority equity interest. San Diego acknowledges that Hahn has no further obligations or liabilities to San Diego pursuant to the Agreement and this Amendment, except for any obligation or liability Hahn may have in its capacity as general partner in EWH 1979.

3. San Diego and Hahn agree that all obligations, liabilities, and covenants of the parties pursuant to the Agreement and this Amendment shall terminate at midnight on June 30, 2033.

4. All terms and conditions of the Agreement remain in full force and effect, except as amended herein.

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IN WITNESS WHEREOF, this Amendment No. 2 to Agreement is executed by the City of San Diego, acting by and through its City Manager, pursuant to Resolution No. R-261220 authorizing such execution, and by Ernest W. Hahn, Inc., acting through its authorized representatives.

CITY OF SAN DIEGO,  
a Municipal corporation

Date 7/23/84

By

[Signature]  
Assistant City Manager

Date \_\_\_\_\_

By \_\_\_\_\_

ERNEST W. HAHN, INC.,  
a California corporation

Date 6/11/84

By

[Signature]  
William H. W. Doyle  
Vice President, Predevelopment

Date 6/11/84

By

[Signature]  
Archie T. Wright III  
Vice President, Corporate Counsel

I hereby approve the form and legality of the foregoing Agreement, this 3 day of August, 1984.

THE CITY OF SAN DIEGO,  
a Municipal corporation

By

[Signature]  
John W. Witt,  
City Attorney

(R-84-2367)

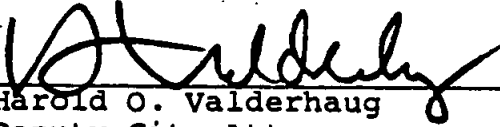
RESOLUTION NUMBER R- 261220

Adopted on JUL 28 1984

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, Amendment No. 2 to Agreement with ERNEST W. HAHN, INC., a California corporation, which Amendment authorizes certain assignments by Ernest W. Hahn, Inc., and specifies a termination date of June 30, 2033, under the terms and conditions set forth in that Amendment No. 2 to Agreement on file in the office of the City Clerk as Document No. RR- 261220 .

APPROVED: John W. Witt, City Attorney

By

  
Harold O. Valderhaug  
Deputy City Attorney

HOV:ps  
6/29/84  
Or.Dept:Prop.  
Job: 916608  
Form=r.none

Passed and adopted by the Council of The City of San Diego on

July 23, 1984

by the following votes:

YEAS: Mitchell, Cleator, McColl, Jones, Gotch,

Murphy, Martinez, Hedgecock.

NAYS: None.

NOT PRESENT: Struiksma.

AUTHENTICATED BY:

ROGER HEDGECOCK

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

By BARBARA BAXTER

Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 261220 passed and adopted by the Council of The City of San Diego, California, on July 23, 1984.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By

Barbara Baxter

Deputy

DUPLICATE

DOCUMENT NO. RR-259200

FILED SEP 12 1983  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

AMENDMENT NO. 1 TO AGREEMENT

THIS AMENDMENT NO. 1 TO AGREEMENT (herein referred to as the "Amendment") is made by THE CITY OF SAN DIEGO, a municipal corporation (herein referred to as "San Diego"), and ERNEST W. HAHN, INC., a California corporation (herein referred to as "Hahn").

RECITALS:

A. In April of 1980 San Diego and Hahn entered into a written Agreement (herein referred to as the "Agreement"), a copy of which was filed on April 2, 1980, as Document No. RR-251518-2 in the Office of the City Clerk, San Diego, California.

B. The Parties desire by this Amendment to modify certain provisions of the Agreement and to acknowledge that certain conditions provided for in the Agreement have been satisfied or waived by the Parties.

TERMS:

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties as herein expressed and as expressed in the Agreement, San Diego and Hahn agree as follows:

1. In compliance with Section 1, at page 6 of the Agreement, the Parties have opened an escrow with Title Insurance and Trust Company, San Diego, California, Escrow No. K1108382.

2. The Parties acknowledge that: (a) in compliance with Section 2, at page 7 of the Agreement, Hahn has pursued and has worked diligently with the City of Escondido in order to obtain such approvals and permits as are necessary for Hahn to construct and operate the shopping center; (b) the City of Escondido has either granted, or is ready to grant upon receiving further

application from Hahn, all approvals and permits which the City of Escondido is required to issue in order for Hahn to commence construction of and to operate the shopping center; and (c) Hahn and the City of Escondido have heretofore entered into that certain Ground Lease dated February 2, 1981, as amended by Amendment No. 1 to Ground Lease dated August 24, 1982, the terms and conditions of which have been reviewed and approved by San Diego.

3. The Parties acknowledge that: (a) in compliance with Section 3, at page 7 of the Agreement, San Diego, Hahn and the City of Escondido have been working with CAL TRANS and other appropriate governmental agencies to obtain approval of the final configuration and design of the frontage road, fly-over bridge, and appurtenances thereto; (b) San Diego and Hahn shall continue to cooperate with each other and with the other governmental agencies, including but not limited to the City of Escondido and CAL TRANS, to expedite the obtaining of such required approvals; (c) at this time they do not have adequate information and data available to them for preparation of the easements or other property interests to be granted by San Diego pursuant to the Agreement; and (d) in compliance with Sections 4 and 5, at pages 9 and 10 of the Agreement, San Diego will convey and transfer to the City of Escondido the quitclaim deeds referred to in said Sections 4 and 5 of the Agreement.

4. San Diego and Hahn acknowledge that pursuant to Amendment No. 1 to Ground Lease, Hahn's obligations under the Ground Lease to commence making Fixed Annual Payments to the City of Escondido was extended from January 1, 1983 to July 1, 1983. San Diego and Hahn hereby agree that anything to the contrary notwithstanding contained in Article 11 of the Agreement, Hahn's obligation to make the Fixed Annual Payments required under Section 11.1 shall commence on July 1, 1983.

5. San Diego hereby acknowledges having received a copy of Amendment No. 1 to Ground Lease between Hahn and the City of Escondido and San Diego hereby approves said Amendment No. 1 to Ground Lease.

6. San Diego and Hahn agree that for purposes of both the Agreement and the Ground Lease with the City of Escondido, as amended, the term "commencement of construction" shall mean the act of setting the footings for the improvements to be placed on the shopping center site by Hahn.

IN WITNESS WHEREOF, this Amendment No. 1 to Agreement is executed by the City of San Diego, acting by and through its City Manager, pursuant to Resolution No. R-259200 authorizing such execution, and by Ernest W. Hahn, Inc., acting through its authorized representatives.

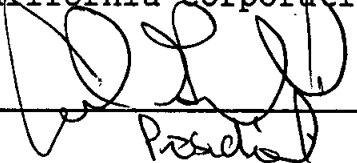
THE CITY OF SAN DIEGO,  
a Municipal Corporation

DATE OF EXECUTION: SEP 12 1983

By   
ASSISTANT TO THE City Manager

ERNEST W. HAHN, INC.,  
a California corporation

DATE OF EXECUTION: \_\_\_\_\_

By   
President

DATE OF EXECUTION: 6/20/83

By   
J.P. Predevelopment

I hereby approve the form and legality of the foregoing agreement, this 19 day of September, 1983.

THE CITY OF SAN DIEGO

By   
for John W. Witt, City Attorney

(R-84-271)

RESOLUTION NUMBER R- 259200

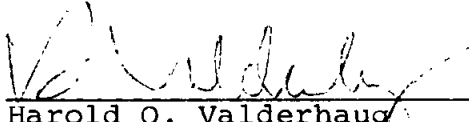
Adopted on SEP 12 1983

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

That the City Manager is hereby empowered to execute Amendment No. 1 to the City's agreement with ERNEST W. HAHN, INC., involving the construction of a shopping center in the City of Escondido on lands formerly owned by the City of San Diego, and which agreement provides for the payment of \$100,000 per year plus five (5) percent of defined overages to the City of San Diego, and which Amendment No. 1 specifies that said \$100,000 per year payments shall commence July 1, 1983, under the terms and conditions set forth in that Amendment No. 1 to Agreement on file in the office of the City Clerk as Document No. RR- 259200.

APPROVED: John W. Witt, City Attorney

By

  
Harold O. Valderhaug  
Deputy City Attorney

HOV:ps  
8/16/83  
Or.Dept:Prop.  
Job:916608  
Form=r.none

Passed and adopted by the Council of The City of San Diego  
on SEP 12 1983, by the following vote:

YEAS: Mitchell, Cleator, McColl, Jones, Struiksma, Gotch, Murphy,  
Martinez, Hedgecock.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

ROGER HEDGECOCK  
Mayor of The City of San Diego, California.

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

(SEAL)

By JUNE A. BLACKNELL, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full,  
true and correct copy of RESOLUTION NO. R-259200  
passed and adopted by the Council of The City of San Diego,  
California, on SEP 12 1983.

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

(SEAL)

By June A. Blacknell, Deputy.