

FIRST AMENDMENT
TO
LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY, a California nonprofit corporation (formerly known as YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO AND SAN DIEGO COUNTY), hereinafter called "LESSEE."

WHEREAS, CITY and LESSEE heretofore entered into a "Lease Agreement," executed by CITY on July 29, 1980, a copy of which is on file in the Office of the City Clerk as Document No. 764325.

WHEREAS, CITY and LESSEE intend to amend said Lease Agreement as set forth below.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, CITY and LESSEE agree as follows:

1. To Section (A) of said Lease Agreement is hereby added the following:

The premises include all buildings and other structures now or hereafter affixed to the land described in Exhibit C.

2. By the execution and delivery hereof by LESSEE, LESSEE hereby conveys and transfers to CITY the ownership of all buildings and other structures now and hereafter affixed to and as installed on said land.

3. To Section (D) 11 of said Lease Agreement is hereby added the following:

Anything above in this Section D(11) to the contrary notwithstanding, if CITY lawfully terminates LESSEE'S right of possession of the premises prior to the twentieth (20th) anniversary (September 2012) of the completion on the premises of an approximately 4,500 square-foot youth gym, the construction of which is to be funded through a grant administered by the California Department of Youth Authority, then in such event CITY shall, for the benefit of said Authority, maintain and operate said youth gym as a youth center until said twentieth anniversary, unless such termination is implemented pursuant to Section 26, Eminent Domain, in which case such provision shall prevail.

4. Section 12, Insurance, is hereby deleted in its entirety and the following substituted:

Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

- (1) Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS (\$1,000,000)

DOCUMENT NO.

SEP 14 1992

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.

- (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 20, Encumbrance hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.

b. LESSEE'S responsibility to maintain said insurance also includes the following:

- (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.
- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.

(3) Accident Reports. LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

(4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

5. Section 17, Ownership of Improvements, is hereby deleted in its entirety and the following substituted:

Ownership of Improvements and Personal Property.

- a. Any and all improvements, trade fixtures, structures, and additions to the premises by LESSEE are the property of the CITY.
- b. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
- c. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
- d. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.

6. Section 22, Nondiscrimination, is hereby deleted in its entirety and the following substituted:

Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, sexual preference, religious creed, color, ancestry, national origin, age, or physical handicap 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.

7. Section 29, Affirmative Action, is hereby deleted in its entirety and substituted with the following:

Equal Opportunity. LESSEE shall comply with the CITY'S Equal Opportunity and Minority and Women Business Enterprise Contracting Programs, approved by the City Council, and filed with the City Clerk as Document RR-262633. LESSEE shall submit a Certificate of Compliance with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations hereinafter enacted. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this agreement.

8. The following sections are hereby added to the Lease Agreement:

34. Political Activities. The leased premises shall be used exclusively for the purposes specified in Section 1, Uses, hereof. The premises shall not be used for working or campaigning for the nomination or election of any individual to any public office, be it partisan or nonpartisan. Provided, however, that LESSEE shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.
35. Religious Activities. LESSEE shall neither conduct nor permit others to conduct activities or services of a religious nature on the leased premises, nor shall the premises be used to proselytize individuals to a particular religious creed or faith. Membership in any religious organization shall not be a requirement for persons to participate in the programs and activities at the premises. For those persons wishing to use the premises, no religious test or inquiry as to religious affiliation shall be made, nor shall persons be requested to attend religious services at any location whatsoever.
36. CITY Use. The premises shall be available to CITY for civic events and special programs, free of charge, except where LESSEE has scheduled events or programs. After every CITY use, the premises shall be left in the same condition found,

and LESSEE shall not be required to incur any additional costs by reason of CITY use.

37. Hazardous/Toxic Waste. LESSEE will not allow the installation of additional underground storage tanks or release of hazardous substances in, on, or under or from the premises. For the purposes of this provision, a release shall include, but not be limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the City Clerk's Office as City Clerk Document 769704.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify and hold the CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE'S operations on the premises, including, but not limited to, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damage for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe, that any hazardous substance has been released on or beneath the premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided however, if LESSEE knows, or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the property without the prior written consent of the CITY.

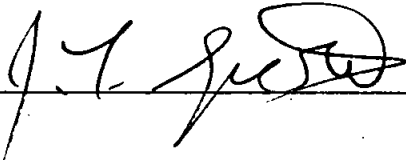
At any time within the twelve (12) months before the expiration or earlier termination of this lease, LESSEE at the CITY'S sole option shall cause an environmental assessment of the premises to be completed by a professional environmental

consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. Said environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in or under the premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, County, State, or Federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all cost and expense incurred.

Said Lease Agreement, as amended hereby, is hereby agreed to.

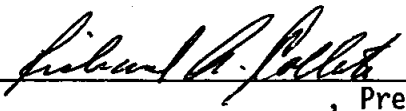
THE CITY OF SAN DIEGO

Date SEP 14 1992

By 

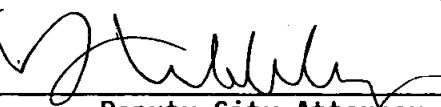
YOUNG MEN'S CHRISTIAN ASSOCIATION OF
SAN DIEGO COUNTY

Date 6/25/92

By , President

APPROVED as to form and legality this 22 day of Sept., 1992.

JOHN W. WITT, City Attorney

By 
Deputy City Attorney

CEBK:st(6)
6-23-92

(R-93-201)

RESOLUTION NUMBER R-280640

ADOPTED ON SEP 14 1992

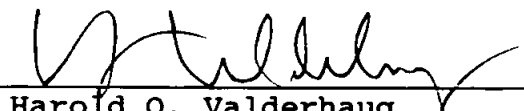
BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager is hereby authorized to execute, for and on behalf of the City of San Diego, a First Amendment to Lease Agreement with YOUNG MEN'S CHRISTIAN ASSOCIATION OF SAN DIEGO COUNTY, a California nonprofit corporation, (YMCA) which amendment transfers ownership of the improvements of the Mission Valley YMCA property to the City, and updates the lease agreement with current lease language and conditions, under the terms and conditions set forth in that First Amendment to Lease Agreement on file in the office of the City Clerk as Document No.

RR- 280640 - 1

BE IT FURTHER RESOLVED, that an amendment to the Mission Valley Interim Public Facilities Financing Plan and Development Impact Fee, dated January 1988, and filed in the office of the City Clerk as Document No. RR- 280640 - 2, showing the Mission Valley YMCA as a City-owned project, is hereby approved.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
07/29/92
Or.Dept:Prop.
Job:220363
R-93-201

Passed and adopted by the Council of The City of San Diego on **SEP 14 1992** by the following vote:

YEAS: Wolfsheimer, Roberts, Hartley, Stevens, Behr, Stallings, McCarty,
Filner.

NAYS: None.

NOT PRESENT: Mayor O'Connor.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

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

(SEAL)

By: MAYDELL L. PONTECORVO, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION
NO. R- **280640**, passed and adopted by the Council of The City of San Diego, California
on **SEP 14 1992**.

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

(SEAL)

By: *Maydell L. Pontecorvo*, Deputy

Kodama 51A
(R-93-201)

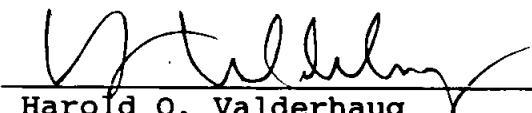
RESOLUTION NUMBER R- 280640
ADOPTED ON SEP 14 1992

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RR- 280640 ✓!

BE IT FURTHER RESOLVED, that an amendment to the Mission Valley Interim Public Facilities Financing Plan and Development Impact Fee, dated January 1988, and filed in the office of the City Clerk as Document No. RR- 280640 ⁻², showing the Mission Valley YMCA as a City-owned project, is hereby approved.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
07/29/92
Or.Dept:Prop.
Job:220363
R-93-201

AMENDMENT TO THE MISSION VALLEY INTERIM PUBLIC FACILITIES
FINANCING PLAN AND DEVELOPMENT IMPACT FEE

(Proposed addition is underlined)

EXISTING PUBLIC FACILITIES

Park and Recreation

Mission Valley is primarily an urbanized commercial center. As such, there are no public parks currently located within the community. Two resource-based parks border the community and are readily accessible by automobile and bicycle. These are Presidio Park, located in Old San Diego at the western end of the Valley, and Mission Bay Park, also located just west of the Valley. A third resource-based park, Mission Trails Regional Park, is located northeast of the Valley, accessible through Mission Gorge.

The Mission Valley YMCA provides both indoor and outdoor recreational opportunities. The facility is owned by the City of San Diego and operated, through a lease agreement, by the YMCA of San Diego County. Funding for the improvements, both existing and proposed, is provided by the YMCA.

The City of San Diego leases out land for two recreational facilities. One is Sefton Little League Field, located 2505 Hotel Circle Place. The other is the outdoor sports facility abutting the San Diego Jack Murphy Stadium parking lot. The latter facility is used exclusively by the San Diego Chargers football team during football season, but is made available to other sports organizations during the rest of the year.

CEBK:st(1)
6/10/92

RR
DOCUMENT NO. 280640-2
FILED SEP 14 1992
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA