

First Amendment to Agreement to Sublease

*Trend
Furniture*

This Amendment is executed by and between The City of San Diego, a municipal corporation hereinafter called "CITY" as lessor (as successor-in-interest to Union-Breitbard Joint Venture) and Trend Furniture of San Diego, Inc. (as successor-in-interest to Victor J. Schulman) hereinafter called LESSEE under that certain Agreement to Sublease dated February 7, 1969.

In consideration of the mutual covenants herein, the parties agree as follows:

I. Section 2(a) is hereby modified by adding the following sentence:

"Lease year" as used in this Lease shall mean the 12-month period commencing each November 1.

II. Section 3 is hereby deleted in its entirety and the following substituted therefor:

SECTION 3: CONSIDERATION

3.01 Time and Place of Payment. All rents required herein must be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California, 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

DOCUMENT NO. C-04674
FILED MAR 29 1993
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

The place of payment may be changed at any time by CITY upon thirty (30) days written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss if payments are made by mail.

3.02 Rent.

- a. Minimum Rent. The minimum rent for each lease year during the period of November 8 1990 through November 7, 2000 is fifty thousand dollars (\$50,000) which is four thousand one hundred sixty-six dollars and sixty-seven cents (\$4,166.67) on a monthly installment basis. (Minimum rent shall be prorated the first partial lease year, that is November 8, 1990 through October 31, 1991, and for the last lease year during this 10-year period, that is November 1, 2000 through November 7, 2000. Minimum rents are to be paid in advance in monthly installments on or before the first day of the calendar month. It is the intent of this Section 3.02 that LESSEE pay monthly installments of minimum rent as a guarantee against the percentage rent requirement hereinafter set forth and that the greater of the requirements, minimum or percentage shall prevail on a lease year basis.
- b. Payment of Retroactive Rent. Upon signing of this amendment by both CITY and LESSEE, rent will be due from November 8, 1990 to

the date of signing. Such retroactive rent shall be paid by LESSEE in twenty-four (24) equal monthly installments beginning on or before the first day of the calendar month following execution of this amendment by CITY and LESSEE and shall be in addition to the then current minimum monthly rent or annual percentage rent payments due.

- c. Percentage Rents. Percentage rents will be calculated on a lease year basis commencing November 8, 1990 and thereafter commencing on November 1 of each lease year. Percentage rents will consist of the following percentages of gross income resulting from the use of the leased premises:

Three percent (3%) of actual gross income or receipts from the sale of furniture, household items, and related accessories, delivery, installation, repair, or alteration charges to customers or other uses authorized in Section 7, Use of Premises.

- 3.03 Payment Procedure. On or before each January 31 following each lease year in which the gross income subject to rents was earned, LESSEE shall ~~provide CITY with a correct statement together with a payment of rent on all applicable gross receipts in a form selected~~ by CITY. The statement will be signed by LESSEE or its authorized agent attesting to the accuracy thereof, which shall be legally binding upon LESSEE. Each statement will indicate or include:

- a. Total gross receipts for the subject lease year, itemized as to business categories.
- b. The percentage rental due CITY, computed and totaled.
- c. The accumulated total of minimum rents previously paid for the preceding lease year.
- d. Payment of the balance, if any, of percentage rent due in excess of minimum rent paid for the previous lease year.

Any rents due CITY from sublease activities or operations will begin with the earliest of the following dates (whether or not prior approval was given by CITY as required by this sublease:

(1) Sublease commencement date.

(2) Physical occupancy date.

(3) Earliest activity date (i.e., sale of goods, solicitation of business, construction or alterations, etc.).

3.04 Gross Income. "Gross income" or "gross receipts", as used in this Lease, shall include all income received from occupancy of the leased premises from whatever source derived. 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 agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by LESSEE in computing gross income. Gross income shall not include refunds for goods returned for resale on the leased premises or refunds of deposits. Gross income shall not include a bulk sale as defined in California Civil Code Section 6102, that is, income resulting from a sale of substantially all furniture in connection with a sale of the business. The amount of such taxes, refunds and bulk sales shall be clearly shown on the books and records of LESSEE. The 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, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said leased 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, except as may be otherwise specified by or pursuant to this Lease.

3.05 Inspection of Records.

- a. Records. LESSEE shall, at all times during the Lease term, keep or cause to be kept true and complete books, records, and

accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the leased premises. The records shall be supported by source documents such as sequentially numbered sales slips, purchase invoices, or other documents as necessary to allow CITY to easily determine the total gross income.

Any retail sales or charges will be recorded on sales slips or purchase invoices or other documents which display to the customer the amount of the transaction. Sales totals shall be recorded for each sale regularly and periodically, usually daily, but no less often than weekly.

- b. Right to Inspect. All LESSEE'S books of account, records and supporting documentation, as described under Section 3.05a., Records, will be retained and made available to CITY in one location within the County of San Diego, at either of the LESSEE'S three existing locations, San Diego, La Mesa, or Solana Beach. Said books and records shall be maintained separate from all other accounts not relating to the leased premises. The CITY, at its discretion, shall have the right to inspect and audit the business of LESSEE, its agents, sublessees, concessionaires, and licensees operating on and in connection with the leased premises as necessary and appropriate for CITY to determine the amounts of rent due CITY

in compliance with the requirements of this Lease. If CITY fails to conduct an audit within two and one-half years after receiving LESSEE'S yearly statement of gross receipts provided by Section 3.03 herein, then the statement of gross receipts shall become final and conclusive up CITY and LESSEE.

At CITY'S request, LESSEE shall promptly provide, at LESSEE'S expense, any necessary data to enable CITY to fully comply with all requirements of the state or federal government for lease information or reports concerning the leased premises. Such data will include, if required, a detailed breakdown of LESSEE'S receipts.

c. Audit Cost. The full cost of CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case LESSEE hereby agrees to pay CITY'S cost of audit(s):

(1) The audit(s) reveal an underpayment of more than five percent (5%) or more than \$10,000, whichever is less, between the rent due as reported and paid by LESSEE pursuant to the Lease and rent due as determined by the audit(s); or

(2) LESSEE has failed to maintain complete and true books, records, accounts, and supporting source documents in strict accordance with this section hereof.

LESSEE shall pay any deficiency determined by the audit(s) hereof, within thirty (30) days of notice thereof by CITY. CITY will credit any overpayment against future rents. Any overpayment determined after the end of this Lease will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

d. Default. LESSEE'S failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is a breach of this Lease and cause for termination.

III. Sections 4.(a) and 5 are deleted in their entirety and there is no replacement. Sections 4.(b) and (c) remain in full force and effect. Section 4.(d) is modified by deleting the words "November 8, 1995." The balance of the section remains unchanged.

IV. CITY and LESSEE acknowledge and agree that Victor J. Schulman has assigned the Lease to LESSEE; and that Victor J. Schulman has a valid interest in the term of the Lease. Any proposed agreement between CITY and LESSEE to shorten the term of, or terminate the Lease without the prior written consent of Victor J. Schulman shall be invalid, except in the case of default, because Victor J. Schulman owns the buildings situated on the leased premises, and leases those buildings to LESSEE.

V. Section 30, City Approval, is hereby added in sequence:

30. City Approval. The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the City Manager unless otherwise specified without need for further resolution by the City Council.

VI. Section 31, Nondiscrimination, is hereby added in sequence:

31. 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, 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.

VII. Section 32, Equal Opportunity, is hereby added in sequence:

32. 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 Workforce Analysis Report and 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.

VIII. This amendment shall become effective upon execution by CITY and LESSEE.

All other terms and conditions of the Lease remain in full force and effect.

THE CITY OF SAN DIEGO, a municipal corporation

Date 3/25, 19 93 By Robert J. Collins
Supervising Property Agent
Deputy Director on behalf
of the City Manager

TREND FURNITURE OF SAN DIEGO, INC.

Date 2-10, 19 93 By [Signature]

APPROVED AS TO FORM AND LEGALITY THIS 23 DAY OF March, 1993.

JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

MLG:MLM:st(19)
1-26-93

AMENDMENT OF LEASE (Sublease)

On the 18th day of Dec., 1969, a lease was entered into between VICTOR J. SCHULMAN, as Lessor, and TREND FURNITURE OF SAN DIEGO, INC., a California corporation, as Lessee, which was the lease of property which Lessor was subleasing from the UNION-BREITBARD JOINT VENTURE.

Paragraph 4 of said Lease called for certain rental adjustments based on cost of living.

Paragraph 2 of said Lease gave the Lessor a right to unilaterally require Lessee to extend the lease period to November 7, 2000, provided such extension was done within three (3) years from the commencement date.

The parties at the time of the entry of said Lease did not contemplate the rate of inflation that would be taking place and now realize that, if the rent is adjusted pursuant to said cost of living as called for in paragraph 4, the Lessee could be forced out of business, which would inure to the detriment of the Lessor.

Further, at the time of the entry of the Lease, Lessor felt it could have its financing completed within the three(3) year period then contemplated and now finds it may have to do some refinancing at a later period in the Lease, since the type of financing that was obtained was of a short-term nature. It would, therefore, inure to the benefit of the Lessor to have the right of extension, as set out in paragraph 2 of said Lease.

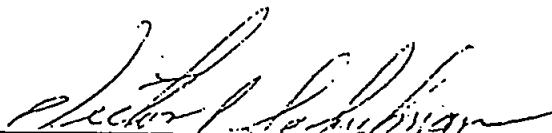
Therefore, in consideration of the above and for other good and valuable consideration, the parties agree as follows:

1. Paragraph 2 shall be amended to permit VICTOR J. SCHULMAN the right to require the extension of the lease period to November 7, 2002, at any time during the existence of said Lease. This right shall be personal to said VICTOR J. SCHULMAN and shall not be assignable and shall not inure to the benefit of his heirs, successors and assigns.

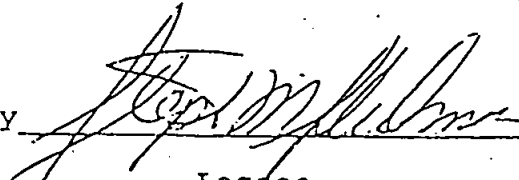
2. Lessor agrees that paragraph 4 shall be amended to limit the increase for any five (5) year adjustment period to seven and one-half per cent (7-1/2%) of the rent for the prior five (5) year period and, therefore, the rent for the period commencing December 7, 1974, shall be limited to an increase of 7-1/2% over the rent paid during the prior period, and adjustments of December 7 of 1979, 1984, and 1989 shall each be limited to seven and one-half per cent (7-1/2%) over the rent for the prior five (5) year period.

All the remaining terms, covenants and conditions of said Lease shall remain in full force and effect.

DATED:


VICTOR J. SCHULMAN, Lessor

TREND FURNITURE OF SAN DIEGO, INC.

By 
Lessee

Mr. Victor J. Schulman
4275 El Cajon Boulevard
San Diego, California 92105

Dear Mr. Schulman:

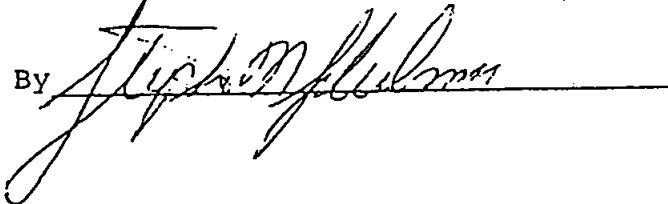
This letter will clarify some confusion which has arisen regarding the Assignment of Sublease dated July 24, 1970. Such assignment was only the assignment of your interest in the Ground Lease from Union-Breitbard Joint Venture and in no way effected any form of transfer of your interest in the improvements made to such real property. Those improvements are separately leased pursuant to the lease executed by Trend Furniture of San Diego, Inc. and Victor J. Schulman on the 18th day of Dec., 1969, and even though rentals are paid directly under the Ground Lease to Union-Breitbard, rent is also being paid to you as the owner of the improvements.

I trust that this clarifies this matter.

Very truly yours,

TREND FURNITURE OF SAN DIEGO, INC.

By



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^{SUB}
AMENDMENT OF LEASE

On the 18th day of Dec., 1969, a lease was entered into between VICTOR J. SCHULMAN, as Lessor, and TREND FURNITURE OF SAN DIEGO, INC., a California corporation, as Lessee, which was the lease of property which Lessor was subleasing from the UNION-BREITBARD JOINT VENTURE.

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The parties at the time of the entry of said Lease did not contemplate the rate of inflation that would be taking place and now realize that, if the rent is adjusted pursuant to said cost of living as called for in paragraph 4, the Lessee could be forced out of business, which would inure to the detriment of the Lessor.

Further, at the time of the entry of the Lease, Lessor felt it could have its financing completed within the three(3) year period then contemplated and now finds it may have to do some refinancing at a later period in the Lease, since the type of financing that was obtained was of a short-term nature. It would, therefore, inure to the benefit of the Lessor to have the right of extension, as set out in paragraph 2 of said Lease.

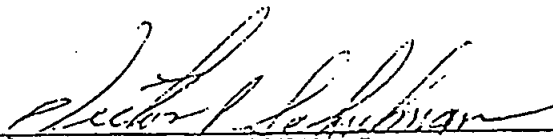
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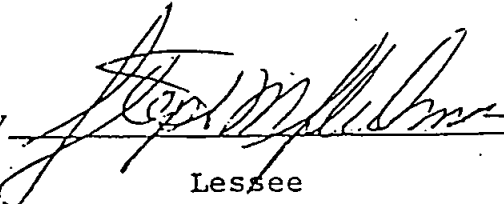
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DATED:


VICTOR J. SCHULMAN, Lessor

TREND FURNITURE OF SAN DIEGO, INC.

By 
Lessee