

ORIGINAL

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CITY CLERK'S OFFICE
1965 JUN -7 AM 11:45
SAN DIEGO CALIFORNIA

FIRST AMENDMENT

TO LEASE AGREEMENT

THIS FIRST AMENDMENT to Lease Agreement, executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "City," and SANDY, INC., a California corporation, hereinafter called "Sandy,"

W I T N E S S E T H:

WHEREAS, City and Sandy executed a lease agreement on November 12, 1964, said lease agreement being Document No. 678883, on file in the Office of the City Clerk; and

WHEREAS, Paragraph 23 of the lease agreement refers to an interchange that is to be constructed across a portion of the leased property and sets out the respective rights and duties of the parties; and

WHEREAS, Paragraph 24 of the lease agreement refers to zoning and permitted use of the leased property; and

WHEREAS, City and Sandy desire to amend Paragraph 23 so that it more clearly and specifically sets out the intent of the parties and amend Paragraph 24 to include the requirement that Sandy file a subdivision map relating to the zoning and use of the leased property; and

WHEREAS, City and Sandy desire to amend said lease agreement by adding thereto Paragraph 26 which provides that Sandy may encumber the leasehold interest; NOW, THEREFORE,

CITY and SANDY AGREE:

1. That the lease agreement between City and Sandy on file in the Office of the City Clerk as Document No. 678883, is amended to read as follows:

"23. DELETION OF AREA. City has the absolute right upon written notice to Sandy to withdraw such portion or portions of the leased property as may in City's sole discretion be required for interchange purposes at any time or times during the term of this lease. Sandy covenants and warrants that the leasehold property will be kept free and clear of any and all encumbrances, and shall indemnify and save City and its successors and assigns free and harmless of any liability on account of any such encumbrances. Sandy further expressly disclaims any right, title, claim or interest in or to any damages of whatsoever nature by way of condemnation or otherwise arising out of or connected with the use of the property for interchange purposes, including without limitation the loss of access or otherwise.

00868

Upon any such withdrawal of any such portion or portions of the leasehold property, any fixtures including buildings that may have been affixed by Sandy shall pass to and shall become the property of City, its successors and assigns and Sandy shall have no right, title, claim or interest thereto whatsoever or at all, Sandy acting upon City's absolute right so to withdraw such property recognizing that any structures of any kind that may be placed on such property shall be at Sandy's sole risk, cost and liability; it being provided, however, that Sandy may have ninety (90) days within which to remove any such structures from the premises and thereby retain ownership, with the further condition that the surface of the leasehold property shall be restored if City so requires.

Sandy shall have the right to continue the lease on the remaining portion of the leased area not necessary for said interchange. In the event Sandy determines that the remaining area is not suitable for continued use, then Sandy may terminate the Lease Agreement within 90 days of receipt of written notice by City of said deletion. If Sandy elects to continue the lease on the remaining area, there shall be a prorata reduction in rent.

"24. ZONING. The leasehold property is presently zoned Interim R-1-20 which precludes use of the premises for automobile parking or for any commercial purposes. However, upon filing a final Subdivision Map the leasehold property will become an M-1-A zone. Therefore, prior to Sandy's commercial use, Sandy shall file a final Subdivision Map covering the leased premises. All costs in connection with the filing of said Subdivision Map, including construction and installation of required improvements, shall be borne by Sandy and at no cost to City. Said Subdivision Map shall be filed only on City-owned property under lease to Sandy and shall in no way be connected with Sandy-owned property. Said City-owned property shall not be considered as parking area required by Zoning for Sandy's development of adjacent property.

"26. LEASE ENCUMBRANCE. Lessee shall be entitled to assign or encumber the leasehold interest of Lessee as security for any loan obtained by Lessee for purposes of constructing improvements on the demised premises or adjacent premises owned by Lessee or for the purpose of refinancing loan after completion of construction of improvements, providing that Lessee or the lender delivers to City within a reasonable time after such assignment or encumbrance, a true and correct copy of the security instrument entered into between Lessee and the lender. In the event any such assignment or encumbrance to a lender is made, such lender shall succeed to Lessee's interest by foreclosure of such security instrument, or assignment in lieu of foreclosure. In the event Lessee defaults in performance of any obligations under the lease, City will not terminate this lease because of such default, unless and until City gives thirty days written notice to the holder of the security instrument, and such holder of such security instrument either (a) fails to cure such default if the same can be cured by the payment of money required to be paid under the provisions of the lease, or (b) if such default is not curable by such payment of money, fails to commence and thereafter diligently pursue foreclosure and sale proceedings under such security instrument, and keeps the payments of rent current during the pendency of such foreclosure and sale proceedings."

2. Nothing herein contained shall be construed to alter any of the other terms, conditions and covenants contained in the aforementioned agreement heretofore executed between the parties.

IN WITNESS WHEREOF, this First Amendment to Lease Agreement, is executed by The City of San Diego, acting by and through its City Manager, pursuant to Resolution No. 183749 authorizing such execution, and by Sandy, Inc., a California corporation, through its duly authorized officers, the day and year first hereinabove written.

THE CITY OF SAN DIEGO

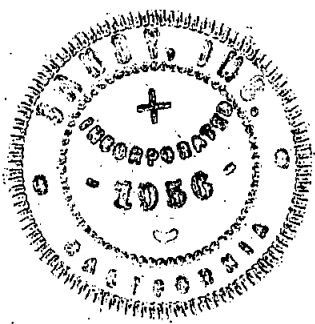
By

[Signature]
~~Assistant~~ City Manager

SANDY, INC., a California corporation

By

[Signature] Pres.
By *Harry L. Johnson* Asst. Secy.



I HEREBY APPROVE the form and legality of the within First Amendment to Lease Agreement, this 18 day of May, 1965.

EDWARD T. BUTLER, City Attorney

By

[Signature]
~~Joseph D. Patello, Deputy~~

H.C. CAVANAGH

RESOLUTION No. 183749ADOPTED ON MAY 18 1965

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

That the City Manager is authorized to execute a First Amendment to the Agreement with Sandy, Inc. for the lease of City owned land as set forth in Document No. 678883 on file in the office of the City Clerk.

Presented by _____

APPROVED: EDWARD T. SUTLER, City Attorney

By _____

Hubert C. Cavanagh, Deputy

HCC/mar
5/12/65

00871

00834

FILE/PAGE NO. **90505**
RECORDED REQUEST OF

CITY CLERK

MAY 20 9 01 AM '65

SERIES 6 BOOK 1965
OFFICIAL RECORDS
SAN DIEGO COUNTY, CALIF.
A. S. GRAY, RECORDER

DOCUMENT NO. **685905**

FILED **MAY 19 1965**
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

(Lease)

First Amendment to Lease agreement with Sandy, Inc. -
Deletion of Area, Zoning & Lease Encumbrance.

NO FEE

cc: Auditor - Sta. #72
Property - Sta. #81
Co. Assessor - J. Collins
Dup Orig to Mr. Burford - 5/18/65

h
5/19/65

Passed and adopted by the Council of The City of San Diego on
May 18, 1965, by the following vote:

YEAS -- Councilmen: Cobb, de Kirby, Scheidle, Hitch, Hom,
Walsh, Mayor Curran.

NAYS -- Councilmen: None.

ABSENT -- Councilmen: None.

AUTHENTICATED BY:

FRANK E. CURRAN,
Mayor of The City of San Diego, California.

PHILLIP ACKER,
City Clerk of The City of San Diego, California

(SEAL)

By RUTH KLAUER, Deputy.

I HEREBY CERTIFY that the above and foregoing is a full, true
 and correct copy of RESOLUTION NO. 183749 passed and adopted
 by the Council of The City of San Diego, California, May 18, 1965.

PHILLIP ACKER,
City Clerk of The City of San Diego, California.

By Ruth Kluwer, Deputy.

(SEAL)

00872

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. DATE:

May 11, 1965

TO:
CITY ATTORNEY2. VIA: (CLEARING DEPARTMENT)
CITY MANAGER3. FROM: (ORIGINATOR)
PROPERTY DEPARTMENT

4. PREPARATION OF:

☒ 1 RESOLUTION(S)☐ ORDINANCE(S)☐ AGREEMENT(S)

To Authorize execution of First Amendment to Lease Agreement with Sandy, Inc. covering Lot 30 of The Highlands.

5. CERTIFICATE NUMBER:

6. SUPPORTING INFORMATION:

DOCUMENTS SUBMITTED: Enclosed are the original and six (6) copies of proposed First Amendment to Lease with Sandy, Inc. amending the lease as follows:

COMMENTS: At the request of the City Attorney, Paragraph 23, Deletion of Area, and Paragraph 24, Zoning, has been re-written in order to clarify the rights of the City and Lessee. Paragraph 26 has been added so that Lessee may encumber the leasehold interest.

ACTION RECOMMENDED: Request the City Attorney prepare the necessary documents for the Council to authorize the execution of this agreement. All other terms and conditions remain the same.

HANDLING: When the agreement has been completed, please forward all copies to the City Clerk for distribution.

cc: City Attorney
City Manager

(FOR ADDITIONAL INFORMATION USE REVERSE SIDE)

7. COMPLETE FOR ACCOUNTING PURPOSES:

AMOUNT	SCHEDULED	UNSCHEDULED
FUND		
DEPT. & FUNCTION		
COST ACCOUNT		
WORK ORDER NUMBER		
OBJECT ACCOUNT		

8. ESTIMATED COST:

183749

MAY 18 1965

CLEARED

MAY 12 1965

COUNCIL REPRESENTATIVE

9. REQUEST PREPARED BY:

FORREST EASLEY:km

10. TELEPHONE NUMBER:

6020

APPROVALS

11. DEPARTMENT HEAD:

APPROVED

MAY 12 1965

2

PROPERTY DIRECTOR

12. CLEARING DEPARTMENT:

13. OTHER:

14. CITY MANAGER:

APPROVED

MAY 12 1965

Assistant City Manager

PROPERTY DEPARTMENT

DOCUMENT NO. 732550
JUL 13 1970

FILED

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

FOURTH AMENDMENT TO LEASE AGREEMENT

THE CITY OF SAN DIEGO (CITY) and SANDY, INC. do hereby amend that certain Lease Agreement, Document No. 678883 dated November 12, 1964 and amended by Document Nos. 685905, 725982 and 729843, as follows:

1. That subject real property as described in said Lease Agreement as amended by said Document No. 729843 ^{3rd Amendment} shall be deleted in its entirety and replaced with the following:

That subject real property shall be divided into two parcels, Parcel 1 and Parcel 2, and each parcel shall be considered to be the subject real property of a different lease, however, each lease shall embody the terms of said Document No. 678883. That said parcels shall be described as follows:

PARCEL 1

That portion of Lot 1 of the Highlands in the City of San Diego, County of San Diego, State of California, according to Map No. 5594, filed in the Office of the San Diego County Recorder on July 1, 1965, more particularly described as follows:

Commencing at a Nail with Tag marked "L. S. 2881" set for a point on the Northerly line of said City Highlands, said point being the Easterly terminus of that course shown as "North 89°20'15" East, 25.00 feet" on said Map No. 5594; thence along said Northerly line North 89°32'38" East, a distance of 10.00 feet to the Westerly line of said Lot 1; thence along said Westerly line South 00°42'47" West, a distance of 539.24 feet to the TRUE POINT OF BEGINNING; said point being the beginning of a 60.00 foot radius curve, concave Northeasterly, thence Southerly, Southeasterly and Easterly along the arc of said curve through a central angle of 90°57'33", an arc length of 95.26 feet to a point in the Southerly line of said Lot 1; thence along said Southerly line North 89°44'54" East, a distance of 185.48 feet; thence North 00°17'51" West, 263.25 feet; thence North 89°18'52" West, a distance of 187.03 feet to the beginning of a 55.00 foot radius curve, concave Southeasterly; thence Westerly, Southwesterly and Southerly along the arc of said curve through a central angle of 89°58'21", an arc length of 86.37 feet to a point in the Westerly line of said Lot 1; thence along said Westerly line Southerly 00°42'47" West, a distance of 141.26 feet, returning to the TRUE POINT OF BEGINNING.

PARCEL 2

That portion of Lot 1 of City Highlands in the City of San Diego, County of San Diego, State of California, according to Map No. 5594, filed in the Office of the San Diego County Recorder on July 1, 1965, more particularly described as follows:

Commencing at a Nail with Tag marked "L. S. 2881" set for a point on the Northerly line of said City Highlands, said point being the Easterly terminus of that course shown as "North 89°20'15" East,

25.00 feet" on said Map No. 5594; thence along said Northerly line North 89°32'38" East, a distance of 10.00 feet to the point in the Westerly line of said Lot 1; said point being the TRUE POINT OF BEGINNING; thence along said Westerly line South 00°42'47" West, a distance of 205.91 feet; thence leaving said Westerly line, along a tangent curve to the left having a radius of 30.00 feet, through a central angle of 88°15'00", an arc length of 46.21 feet; thence South 87°32'13" East, a distance of 140.33 feet to the beginning of a tangent 625.00 foot radius curve, to the left; thence Easterly and Northeasterly along the arc of said curve through a central angle of 54°31'48", an arc length of 594.83 feet; thence North 37°55'59" East, a distance of 9.59 feet to a point in the Northerly line of said Lot 1; thence along said Northerly line South 89°32'38" West, a distance of 692.08 feet, returning to the TRUE POINT OF BEGINNING.

The bearings and distances used in the above descriptions are on the California Coordinate System, Zone 6. Multiply all distances used in the above description by 1.0000122 to obtain ground level distances.

That each lease shall be considered as separate and distinct, even though the terms are the same, and the rights under one lease shall not affect the rights under the other lease. That any remedy a party may have in regard to either lease may be sought independent of the other lease.

2. That certain provision, added to the end of Section (D) 23, DELETION OF AREA, of said Lease Agreement by Document No. 725982 entitled SECOND AMENDMENT TO LEASE AGREEMENT, shall be replaced by the following:

It is hereby agreed:

- a) That 4.05 acres of land was deleted from said Lease Agreement by Document No. 725982, ^{and Amendment} and that there was a proportional reduction of rent commencing on the effective date of said Document; however, as to 1.93 acres of said deleted area the proportional reduction of rent was retroactive to April 8, 1967.
- b) That .03 acres of land shall further be deleted from said Lease Agreement with a further reduction of rent under this FOURTH AMENDMENT TO LEASE AGREEMENT.
- c) The aforesaid reduction in rent was and shall be computed on the basis of \$3,528.00 per acre per year.

3. That EXHIBIT A attached to said Lease Agreement, being City of San Diego Engineering Department Drawing No. 11, 698-B designating the leased premises is hereby deleted.

4. This Fourth Amendment to Lease Agreement shall be effective upon the first day of the calendar month following execution hereof by CITY.

IN WITNESS WHEREOF, this lease agreement is executed by the City, acting by and through the City Manager of said City, under and pursuant to Council Resolution No. 200136 authorizing such execution and the Lessee has caused this agreement to be executed and its corporate name to be affixed by the proper officers, the day and year first above written.

THE CITY OF SAN DIEGO

Date

July 2, 1970

By

Memo L. Wilhelm
Assistant City Manager

SANDY, INC.

By

J. Kahn

By

Norman R. Smith

APPROVED as to form and legality this 24 day of June, 1970.

JOHN W. WITT, City Attorney

By

Clifton Reed
Deputy

PROPERTY DEPARTMENT

FILED OCT 20 1969

OFFICE OF THE CITY CLERK
THIRD AMENDMENT TO LEASE AGREEMENT SAN DIEGO, CALIFORNIA

THIS THIRD AMENDMENT TO LEASE AGREEMENT, executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "City," and SANDY, INC., a California corporation, hereinafter called "Sandy."

WITNESSETH:

WHEREAS, City and Sandy executed a Lease Agreement on November 12, 1964, said Lease Agreement being Document No. 678883, on file in the Office of the City Clerk, with a First Amendment to Lease executed May 18, 1965, and a Second Amendment to Lease executed October 31, 1968;

WHEREAS, City and Sandy desire to separate the subject real property into two separate parcels and two separate leases to facilitate the development of the property; NOW, THEREFORE,

CITY AND SANDY AGREE:

1. That the Lease Agreement between City and Sandy on file in the Office of the City Clerk as Document No. 678883, is amended to read as follows:

That the subject real property shall be divided into two parcels, Parcel 1 and Parcel 2, and each parcel shall be considered to be the subject real property of a different lease, however, each lease shall embody the terms of Document No. 678883. That the parcels shall be described as follows and as shown in Exhibit "A" attached hereto.

Parcel 1

All of that portion of property, according to City Engineer's Drawing No. 11698-B dated September 13, 1968 on file in the Office of the City Engineer, City of San Diego, State of California, lying Southerly and Westerly of the following described line:

Commencing at a two inch iron pipe with disc stamped "LS 2881," set as the Northwest corner of City Highlands Map No. 5594; thence Southerly along the centerline of Mercury Street South $00^{\circ}41'08''$ West, a distance of 343.00 feet; thence leaving said centerline of Mercury Street South $89^{\circ}18'52''$ East, a distance of 35.00 feet to a point in the Easterly line of said Mercury Street, also being the TRUE POINT OF BEGINNING; thence leaving said Easterly line of Mercury Street South $89^{\circ}18'52''$ East, a distance of 242.00 feet; thence South $00^{\circ}17'51''$ East, a distance of 257.22 feet to a point in the Northerly line of Balboa Avenue as shown on said City Engineer's Drawing No. 11698-B.

Excepting therefrom any portions of Mercury Street and Balboa Avenue, as shown on said City Engineer's Drawing No. 11,698-B.

Parcel 2

All that portion of property, according to City Engineer's Drawing No. 11,698-B dated 9-13-68 on file in the Office of the City Engineer, City of San Diego, State of California, lying Northerly and Westerly of the following described line:

Commencing at a two inch iron pipe with copper disc stamped "LS 2881," set as the Northwest corner of City Highlands Map No. 5594; thence Easterly along the Northerly boundary of said City Highlands N. 89° 32'38" E. a distance of 35.00 feet to a point in the Easterly line of Mercury Street; thence Southerly along said Easterly line of Mercury Street S. 00°41'08" W. a distance of 235.00 feet to a point, said point being the TRUE POINT OF BEGINNING; thence leaving said Easterly line of Mercury Street S. 87°32'13" E. a distance of 169.43 feet to the beginning of a 625.00 foot radius curve concave Northwesterly; thence Easterly and Northeasterly along the arc of said 625.00 foot radius curve through a central angle of 54°31'48" a distance of 594.85 feet; thence N. 37°55'59" E. a distance of 8.92 feet to a point in said Northerly boundary of City Highlands, said point bearing N. 89°32'38" E. a distance of 690.34 feet from the Easterly line of Mercury Street.

X
That each lease shall be considered as separate and distinct, even though the terms are the same, and the rights under one lease shall not affect the rights under the other lease. That any remedy a party may have in regard to either lease may be sought independent of the other lease.

2. Nothing herein contained shall be construed to alter any of the other terms, conditions and covenants contained in the aforementioned agreement heretofore executed between the parties.

IN WITNESS WHEREOF, This Third Amendment to Lease Agreement is executed by the City of San Diego, acting by and through its City Manager, pursuant to Resolution No. 198229 authorizing such execution, and by Sandy, Inc., a California corporation through its duly authorized officers, the day and year first hereinabove written.

THE CITY OF SAN DIEGO

Date Oct 14, 1969

By Mervyn S. Wilhelmer
City Manager

SANDY, INC., a California corporation

By [Signature]

By [Signature]

APPROVED as to form and legality this 16 day of Oct 1969.

JOHN W. WITT, City Attorney

By R. K. Fox

FILED OCT 31 1968SECOND AMENDMENT TO LEASE AGREEMENTOFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THIS AGREEMENT, executed this 31st day of October, 1968,
by and between THE CITY OF SAN DIEGO, a municipal corporation (CITY), and
SANDY, INC., a California corporation (LESSEE), WITNESSETH:

WHEREAS, CITY and LESSEE executed that certain Lease Agreement on November 12,
1964, filed as Document No. 678883 in the Office of the City Clerk, and that
certain amendment thereof called FIRST AMENDMENT TO LEASE AGREEMENT, filed
May 19, 1965, as Document No. 685905 in said Office of the City Clerk; and

WHEREAS, the parties now desire to further amend said Lease Agreement in the
manner herein set forth;

NOW, THEREFORE, CITY and LESSEE hereby agree:

- A. That the description of the leased premises being all that portion of
Section (A) of the aforesaid Lease Agreement following " . . . and more
particularly described as follows:" is hereby deleted in its entirety
and the following substituted therefor:

"That portion of Lot 1, City Highlands, according to Map
thereof No. 5594 filed in the Office of the County Recorder
of said County (formerly a portion of Lot 30, The Highlands,
according to Map No. 284) shown on City of San Diego Engi-
neering Department Drawing No. 11,698-B dated 9-13-68,
attached hereto as EXHIBIT A of this agreement, containing
4.46 acres of land."

- B. That Section (D)1. RENT PAYMENT of said Lease Agreement is hereby
deleted in its entirety and the following substituted therefor:

"1. RENT PAYMENT. The rent, as provided in Section (C) hereof, is
due and payable monthly in advance, on or before the first day of each
calendar month throughout said term. In the event LESSEE fails to pay
the applicable rents when due, then LESSEE shall pay CITY, in addition
to the delinquent rent, a sum of money equal to five percent (5%) of
said delinquent rent. In the event said delinquent rent is still unpaid
after fifteen (15) days of becoming delinquent, then LESSEE shall pay

"27. ANTI-DISCRIMINATION. LESSEE shall not discriminate in any manner against any person or persons on account of race, color, creed or national origin in LESSEE'S use of said premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment."

- E. The EXHIBIT A originally attached to said Lease Agreement as part thereof, being Drawing No. 653 showing a portion of Lot 30 of The Highlands, is hereby deleted in its entirety and the City of San Diego Engineering Department Drawing No. 11,698-B attached hereto, designating the leased premises within a portion of Lot 1 of City Highlands, is hereby substituted therefor.
- F. This Second Amendment to Lease Agreement shall be effective upon the first day of the calendar month following execution hereof by CITY.
- G. Nothing herein is intended to alter or amend any other covenants or conditions of said Lease Agreement.

THE CITY OF SAN DIEGO

By

James L. Williams
City Manager

SANDY, INC.

By

Irvin J. Kahn
President

By

John R. Smith
Secretary

APPROVED hereby the foregoing Second Amendment to Lease Agreement as to form and legality this 31st day of October, 1968.

EDWARD T. BUTLER, City Attorney

By

James P. McFarlane, Jr.

DSB:pe
10-15-68

CITY, instead of said five percent (5%), a sum equal to ten percent (10%) of said delinquent rent. Such additional sum or sums shall be deemed compensation to CITY for loss resulting from such delinquency, including costs to CITY of servicing the delinquent account. The City Manager of CITY may for good cause waive any such delinquency compensation charge upon written application of LESSEE prior to the delinquent period. Notwithstanding the foregoing provision for delinquent rent compensation failure by LESSEE to pay rent when due shall constitute a default which, at the option of the City Manager, shall be grounds for termination by CITY under the provisions of Section (D) 16."

- C. The following provision is hereby added to the end of Section (D) 23, DELETION OF AREA, of said Lease Agreement:

"It is hereby agreed that the amount of leased area to be deleted under this provision is 4.05 acres of land and that said proportional reduction in rent shall commence on the effective date of the Second Amendment to Lease Agreement; provided, however, that as to 1.93 acres of said deleted area the proportional reduction in rent shall be retroactive to April 8, 1967. The aforesaid reduction in rent shall be computed on the basis of \$3,528.00 per acre per year."

- D. The following provisions are hereby added in sequence to Section (D) of said Lease Agreement:

"26. INSTALLATION OF PARKING BERMS. LESSEE shall install and maintain without cost to CITY parking barriers by means of blacktop berms or other means approved by CITY at all locations upon said premises adjoining that City-owned land not herein leased within said Lot 1 of City Highlands."