

ORIGINAL

FIRST AMENDMENT TO LEASE AGREEMENT

(CITY DOCUMENT RR-253533)

The First Amendment to Lease Agreement is executed by and between the CITY OF SAN DIEGO, ("CITY"), as Lessor, and THE SAN DIEGO COMMUNITY COLLEGE DISTRICT, ("LESSEE"), as Lessee.

The above parties have entered into a lease agreement dated February 2, 1981, and filed in the Office of the City Clerk of the City of San Diego as document RR-253533. The CITY and LESSEE wish to modify and amend certain provisions of the lease.

The original agreement provided that the lease agreement, along with two (2) renewal options if exercised, would terminate on February 1, 1999. It is now desired by both parties to amend this provision to allow the LESSEE; by exercise of renewal options to remain on and in the leased premises until December 31, 2031 pursuant to the AGREEMENT FOR COOPERATION BETWEEN REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO AND THE SAN DIEGO COMMUNITY COLLEGE DISTRICT (BARRIO LOGAN REDEVELOPMENT PROJECT), dated May 27, 1992, Document No. 1918, which both parties acknowledge they have received and, by this reference, is made a part hereof. Additionally, both parties wish to add a provision that will allow the transfer of the leased premises to the LESSEE upon the completion of certain conditions by the Redevelopment Agency of the City of San Diego ("AGENCY") and LESSEE.

CITY and LESSEE hereby agree to amend the above-referenced lease as follows:

1. Section II., TERM OF AGREEMENT, A. COMMENCEMENT AND TERMINATION., is hereby deleted in its entirety. It is hereby replaced with; The term of this agreement shall be Twelve (12) years, commencing on February 1, 1993. LESSEE shall have the option, in its sole discretion, to renew this agreement for three (3) additional Twelve (12) year periods, provided however, that this agreement will terminate on December 31, 2031 or at such time prior thereto, that the proposed new community college facilities are completed, as identified in the agreement dated May 27, 1992, between the Redevelopment Agency of the City of San Diego and the San Diego Community College District, in the Mercado del Barrio retail shopping center is conveyed to the LESSEE, as described in Section 3.3 Essential Terms and Conditions, Paragraph 1 thru 11 of the above referenced agreement. In the event LESSEE desires to exercise an option to renew this agreement, LESSEE will so advise CITY sixty (60) days prior to the agreement termination date.
2. Section II., TERMS OF AGREEMENT, B. OPTION TO RENEW AND C. CONTINGENCY PROVISIONS., is hereby deleted in its entirety.
3. Section IV., COVENANTS AND CONDITIONS, B. LESSEES COVENANTS, 2. Affirmative Action, is hereby deleted in its entirety. It is hereby replaced with; Equal Opportunity. LESSEE shall comply with the CITY'S Equal Opportunity and Minority and Women Business

DOCUMENT NO. RR-282623

FILED SEP 13 1993

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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Enterprise Contracting Programs, approved by the City Council, and filed with the City Clerk as Document No. 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.

4. Section IV., COVENANTS AND CONDITIONS, C. RESTRICTIVE CONDITIONS, 23. TRANSFER OF TITLE., is hereby added to the lease; The CITY shall cooperate with the AGENCY to convey the leased premises (Harbor View facility located at 1960 National Avenue, consisting of approximately 15,682 square feet) to the LESSEE at the completion of the new Community College facility on the proposed pad located in the Mercado del Barrio retail shopping center or another site agreed to by the LESSEE and AGENCY. Upon the conveyance of title for the Harbor View Facility located at 1960 National Ave., the CITY shall include a deed restriction in the grant deed that will provide for the continued use of the facility for education and training purposes. LESSEE shall provide off-site improvements consisting of a pedestrian crosswalk across National Avenue connecting the Harbor View Facility and the new facility to be constructed in the Mercado Del Barrio retail shopping center, appropriate signage and improvements to the building as determined by the San Diego Community College District to carry out LESSEE'S mission, at no expense to the CITY or AGENCY. The CITY or AGENCY may, but is not required to, participate financially in off-site improvements.
5. The following provisions shall be added and become a part of the above-referenced lease agreement and shall be identified as Section V. Special Provisions.:
 - a) Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated ability in the management and operation of an adult and continuing education program and related activities in a fiscally responsible manner.
 - b) Availability of Premises. LESSEE shall make the premises available to those persons and organizations, including the CITY, who may request their use on the basis of LESSEE'S adopted guidelines for Civic Center use.

The general public shall not be wholly or permanently excluded from any portion of the premises. LESSEE may

develop reasonable restrictions for the facility use provided they are consistent with the rights of the general public, and are designed to allow LESSEE to use the premises for the purposes specified herein. LESSEE agrees that all activities conducted on the premises will be stated in Section I. A. PERMITTED USE, of the lease agreement or will be authorized under the Civic Center Act.

- c) Political Activities. The leased premises shall be used exclusively for the purposes specified in Section I., A. PERMITTED USE., of the lease agreement and for uses authorized under the Civic Center Act. 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, nor from providing use of the premises as election polls for the community.
- d) Assignment and Subletting. LESSEE shall not assign this lease, or any interest therein, and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, guests or Civic Center Act users of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable, as to the interest of LESSEE, by operation of law, without the written consent of the City Manager.

"Assignment," for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights

acquired. The City Manager may require, as a condition to approval of any sublease or assignment, that the proposed sublessee or assignee pay additional rent to CITY to equal the full fair market rent justifiable at the date of such proposed sublease or assignment and that this lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current.

- e) Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- f) Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.
- g) 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 (EPA) 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 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 be obtained at the sole cost and expense of LESSEE and said 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. If no hazardous substances exist on, in or under the premises in quantities greater than that allowed by CITY, County, State, or Federal laws, statutes, ordinances, or regulations, then said environmental assessment shall be obtained at the sole cost and expense of CITY.

- h) Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability 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.
- i) CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements or leases with consultants, vendors or LESSEES shall include a condition that the contract, agreement or lease shall be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.
- j) Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988 by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
 - a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances is pro-hibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.

b. Establishing a drug-free awareness program to inform employees about all of the following:

- (1) The dangers of drug abuse in the workplace.
- (2) The LESSEE'S policy of maintaining a drug-free workplace.
- (3) Any available drug counseling, rehabilitation, and employees assistance programs.
- (4) The penalties that may be imposed upon employees for drug abuse violations.

c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

6. Nothing contained herein is intended to alter or amend any other covenant or condition of said lease agreement.

7. This amendment shall be effective February 1, 1993.

THE CITY OF SAN DIEGO

DATE 9-21-93

BY [Signature]

SAN DIEGO COMMUNITY COLLEGE DISTRICT

DATE 2.1.93

BY [Signature]

APPROVED AS TO FORM AND LEGALITY THIS 22 DAY OF Sept, 1993.

John W. Witt, City Attorney

BY [Signature]
Deputy City Attorney

NRS:rc(1)
11/9/92

APPROVED AS TO FORM AND LEGALITY FOR
THE SAN DIEGO COMMUNITY COLLEGE DISTRICT
COUNTY COUNSEL

BY: [Signature]
DEPUTY

R- 282523

(R-94-126)

RESOLUTION NUMBER R- 282623

ADOPTED ON SEP 13 1993

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 SAN DIEGO COMMUNITY COLLEGE DISTRICT, which amendment extends the term of the lease to December 31, 2031, of those premises located at 1960 National Avenue, and which Amendment provides for a transfer of title to the property to the College District upon completion of a new facility proposed to be built by the College District in the Mercado del Barrio retail center, 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- 282623 .

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

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07/30/93
Or.Dept:Prop.
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Passed and adopted by the Council of The City of San Diego on **SEP 13 1993** by the following vote:

YEAS: Wolfsheimer, Roberts, Hartley, Stevens, Stallings, McCarty, Vargas,
Mayor Golding.

NAYS: None.

NOT PRESENT: Behr.

AUTHENTICATED BY:

SUSAN GOLDING
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- 282623, passed and adopted by the Council of The City of San Diego, California
on SEP 13 1993

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

(SEAL)

By: *Maydell L. Pontecorvo*, Deputy