

RESOLUTION 2000 - 33 R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A FOURTH LEASE AMENDMENT FOR THE LEASE OF CITY REAL PROPERTY TO THE SAN MARCOS AREA CHAMBER OF COMMERCE; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. The City's lease of real property (the "Lease") to the San Marcos Area Chamber of Commerce (the "Chamber") was amended in 1999 to provide for an expansion of the Chamber's office building.
2. The Chamber has requested the City's approval of the mortgaging of the Lease as collateral for a loan from the Balcones Bank for the building expansion.
3. The City is willing to grant approval of the mortgage of the Lease in accordance with the terms of the attached Fourth Lease Amendment.

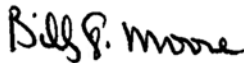
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached Fourth Lease Amendment for the lease of City-owned property to the Chamber is approved.

PART 2. The City Manager, Larry G. Gilley, is authorized to execute the lease amendment on behalf of the City.

PART 3. That this Resolution shall be in full force and effect from and after its passage.

ADOPTED on FEBRUARY 14, 2000.



Billy G. Moore
Mayor

Attest:



Janis K. Womack
City Secretary

THE STATE OF TEXAS §
§
§
COUNTY OF HAYS §

FOURTH LEASE AMENDMENT

This Amendment is entered into this 15th day of February, 2000, by and between the City of San Marcos, hereinafter referred to as "City" and the San Marcos Area Chamber of Commerce, Incorporated, hereinafter referred to as "Chamber". On October 17, 1977, City and Chamber entered into a Lease Agreement covering some of real property described herein in the attached Exhibit "A" Said lease was amended by instruments dated April 3, 1978, June 12, 1978 and October 12, 1999, and now covers all the land described on Exhibit "A" attached. City and Chamber now wish to further amend and modify certain provisions of the said lease, as amended, as well as add certain provisions, and in all respects to affirm said lease, as amended. This amendment is in accordance with paragraph XVIII of said lease.

I.

Chamber intends to finance the construction of certain improvements and shall have the right to use its leasehold estate in the demised real property and premises as security for a mortgage loan to construct the improvements. City hereby acknowledges and consents to such financing of construction on the condition that no financial burden, present or future, shall be assumed by City, and that no change in use of the demised premises and/or no transfer or assignment of the lease shall be permitted except as specifically stated hereinafter or with the written consent of the City.

II.

City hereby agrees to give to Chamber's mortgagee a copy of each notice of default by Chamber at the same time as any such notice of default shall be given by City to Chamber. The

RETURN TO:
CITY OF SAN MARCOS
ATTN: Legal Dept.
630 East Hopkins Street
San Marcos, TX 78666

copy of such notice of default shall, in each instance, be deemed duly given to mortgagee when deposited at any United States Post Office, sent Certified or Registered Mail, Return Receipt Requested, and addressed to the mortgagee at its business address.

III.

Should Chamber's mortgagee desire to cure default for the Chamber, the City hereby agrees to accept performance by the mortgagee of any term of the lease or its amendment required to be performed by Chamber, with the same force and effect as though performed by Chamber. The mortgagee shall have ten (10) days after receipt of notice of default to cure for the Chamber any default in the payment of rent or additional rent to be paid under the lease and a reasonable time to cure any other default.

IV.

The City shall be given notice of any foreclosure of the lien as if the City were an obligor on the debt. If the mortgagee purchases the leasehold estate at foreclosure, then the City shall have an option for 60 days thereafter to buy the leasehold estate for an amount equal to the balance of principal and interest owed on the note given by Chamber to Mortgagee at the time of foreclosure plus all of mortgagees expenses of collection, plus interest on such total at the regular rate provided for in the note. In the Event of a foreclosure of the lien secured by the leasehold estate, and the subsequent acquisition of Chamber's interest in this lease by Chamber's mortgagee through foreclosure, Chamber's mortgagee and its assigns of the leasehold estate may assume the Chamber's lease obligations to City and the lease shall continue on the same terms as if the Chamber were still tenant, except that Chamber's mortgagee may assign the leasehold estate and it or its assignee may sublease the leasehold estate. Thereafter, the use of the premises shall not be limited to uses allowed in the applicable provisions of the Urban Renewal Plan, or approved

modifications therefor for the TEX A-6 Neighborhood Development Program, and further shall not be limited to the sole purpose of operating a Chamber of Commerce, but rather such use shall be limited only to any reasonable office use. Other transfers or assignments of the lease, except for an assignment by Chamber's mortgagee after foreclosure, and/or alterations in use of the demised premises shall continue to be governed by the basic lease provision requiring express written approval by City.

In the event the leasehold estate is sold at foreclosure to someone other than the City, rent shall be due to City, payable on the first day of each month in advance, in an amount equal to the appraised monthly value of a ground lease of the property without the value of the improvements, assuming the highest and best use of the property is with the improvements then on the property. The appraisal shall be by an appraiser selected with the agreement of City and the then owner of the leasehold. However, if agreement as to an appraiser cannot be reached, they shall each appoint an appraiser who shall agree between themselves on a third appraiser, and the value agreed on by any two of them shall be used. Rent shall be adjusted every five years thereafter in accordance with changes in the consumer price index.

V.

This Amendment shall be filed of record with the County Clerk of Hays County, Texas.

EXECUTED this 29th day of February, 2000.

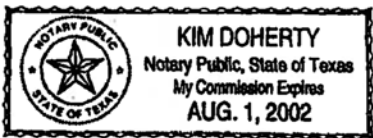
CITY OF SAN MARCOS

By: [Signature]
Name: Larry D. Gitley
Title: City manager

By: Phil Neighbors
Name: Phil Neighbors
Title: President

STATE OF TEXAS §
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COUNTY OF HAYS §

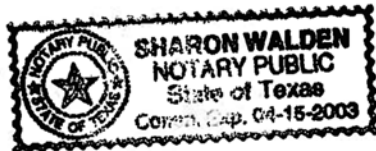
This instrument was acknowledged before me on February 28, 2000 by Larry D. Gilley, City mgr. of the City of San Marcos, on behalf of said City.



Kim Doherty
Notary Public - State of Texas

STATE OF TEXAS §
 §
COUNTY OF HAYS §

This instrument was acknowledged before me on February 28, 2000 by Phil Neighbors, President of San Marcos Area Chamber of Commerce, Incorporated, a Texas non-profit corporation, on behalf of said corporation.



Sharon Walden
Notary Public - State of

DESCRIPTION OF 24,059 SQUARE FEET, MORE OR LESS, OF LAND AREA BEING A PORTION OF BLOCK 3 OF THE ORIGINAL TOWN OF SAN MARCOS, HAYS COUNTY, TEXAS AS SHOWN ON THAT PLAT OF SAID TOWN AS RECORDED IN VOLUME 46, PAGE 448 OF THE HAYS COUNTY DEED RECORDS, AND BEING A PORTION OF THAT 2.3374 ACRE PARCEL 1A-2 DESCRIBED IN A DEED FROM URBAN RENEWAL AGENCY OF THE CITY OF SAN MARCOS TO THE CITY OF SAN MARCOS DATED NOVEMBER 6, 1972 AND RECORDED IN VOLUME 256, PAGE 104 OF THE HAYS COUNTY DEED RECORDS, AND BEING A PORTION OF THAT 2.0296 ACRE PARCEL 1A-2B DESCRIBED IN A DEED FROM URBAN RENEWAL AGENCY OF THE CITY OF SAN MARCOS TO THE CITY OF SAN MARCOS DATED NOVEMBER 6, 1972 AND RECORDED IN VOLUME 256, PAGE 110 OF THE HAYS COUNTY DEED RECORDS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at ¼" iron rod set in the common north line of Lot 4, Block 3 of the City of San Marcos, and the south line of the original Hutchison Street for the northeast corner of a 15,470 square foot tract described in a lease agreement from the City of San Marcos to San Marcos Chamber of Commerce dated November 9, 1977 and recorded in Volume 311, Page 640 of the Hays County Deed Records (this 24,059 square foot tract includes the 15,470 square feet Chamber of Commerce tract), this corner being within the City of San Marcos 2.0296 acre tract;

THENCE leaving Hutchison Street and the PLACE OF BEGINNING and entering Block 3 with the east line of the Chamber of Commerce tract, as shown on that plat numbered 24673-99-2-c dated August 13, 1999 as prepared for the San Marcos Chamber of Commerce by Byrn & Associates, Inc. of San Marcos, Texas, S 04° 44' 12" E 83.14 feet to a ¼" iron rod set for the southeast corner of the Chamber of Commerce tract;

THENCE leaving the Chamber of Commerce tract, S 37° 50' 22" W 84.52 feet to a ¼" iron rod set for a southeasterly corner of the herein described tract;

THENCE N 81° 01' 34" W 167.59 feet to a ¼" iron rod set in the curving common northwest line of the City of San Marcos 2.3374 acre tract and a southeast line of C.M. Allen Parkway (a publicly used roadway), pass on this course at 80.1 feet a point on the common northwest line of the City of San Marcos 2.0296 acre tract and south line of the City of San Marcos 2.3374 acre tract, from this corner a ¼" iron rod found for the end of a curve in the northwest line of the City of San Marcos 2.3374 acre tract at its' intersection with Hopkins Street bears S 06° 24' 15" W 217.66 feet;

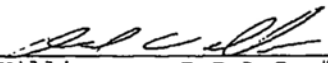
THENCE with the common northwest line of the City of San Marcos 2.3374 acre tract and southeast line of C.M. Allen Parkway, being a right-breaking curve having the following characteristics: central angle = 02° 34' 07", radius = 553.55 feet, arc length = 24.82 feet and a chord which bears N 19° 01' 37" E 24.81 feet to a ¼" iron rod set for the southwest corner of the Chamber of Commerce tract;

THENCE continuing with the common northwest line of the City of San Marcos 2.3374 acre tract and the Chamber of Commerce tract, and the southeast line of C.M. Allen Parkway, with a right-breaking curve having the following characteristics: central angle = 05° 54' 39", radius = 553.55 feet, arc length = 57.11 feet and a chord which bears N 23° 15' 59" E 57.08 feet to a ¼" iron rod set;]

THENCE entering the City of San Marcos 2.3374 acre tract with a right-breaking curve for the northwest line of the Chamber of Commerce tract being right-breaking having the following characteristics: central angle = 31° 55' 27", radius = 87.00 feet, arc length = 48.47 feet and a chord which bears N 42° 11' 02" E 47.85 feet to a ¼" iron rod set for the northwest corner of the Chamber of Commerce tract, being in the common south line of the original Hutchison Street and the north line of Block 3;

THENCE with said common line, N 85° 19' 00" E 148.25 feet to the PLACE OF BEGINNING.

There are contained within these metes and bounds 24,059 square feet, more or less, of land area as prepared from public records and a survey made on the ground on August 13, 1999 by Byrn & Associates, Inc. of San Marcos, Texas. All ¼" iron rods set are capped with a plastic cap stamped "Byrn Survey". The Bearing Basis for this description is the south line of the Chamber of Commerce tract.


David C. Williamson, R.P.L.S. #4190

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS
On: Mar 27, 2000 at 03:35P
Document Number: 00006628
Amount 19.00
Lee Carlisle
County Clerk
By
Rose Robinson, Deputy
Hays County

CLIENT: San Marcos Chamber of Commerce
DATE: August 13, 1999
SUBD: City of San Marcos
COUNTY: Hays, Texas
JOB NO.: 24673-99-2
FND24059.SQFT