Real Estate Assets Department
SDC003

CBRE, Inc.

City-896-AM

Document Type

LEGAL DOCUMENTS

Sub - Category

AMENDMENTS

6

FIRST AMENDMENT TO
PROPERTY MANAGEMENT AGREEMENT
CIVIC CENTER PLAZA

THIS FIRST AMENDMENT TO PROPERTY MANAGEMENT AGREEMENT – CIVIC CENTER PLAZA ("First Amendment"), is entered into between the City of San Diego, a California municipal corporation ("Master Tenant") and CBRE, Inc., a Delaware corporation ("Manager") (cumulatively referred to as the "Parties"), effective on the later date on which this First Amendment is signed by the Parties and approved by the Office of the City Attorney ("Effective Date").

RECITALS

A. In accordance with San Diego City Charter section 45 and California Government Code section 53630 et seq, it has been determined that Manager must open a trust account in favor of the City of San Diego, using Manager's tax ID number instead of using Master Tenant's tax ID number. Once Manager's new trust account has been established, Master Tenant can issue checks to Manager, and thereafter Manager will use said funds to pay Operating Expenses incurred in the management of the Property on behalf of Master Tenant.

B. Because the above-referenced trust account was not contemplated in the original Property Management Agreement (Agreement), the Parties now wish to amend the Agreement to allow for the inclusion of certain contractual provisions into the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

1. Master Tenant and Manager hereby agree that from and after the Effective Date hereof, the current "Section 7. Bank Accounts" is **DELETED** in its entirety and **REPLACED** with the following text:

"7. **Bank Accounts**

7.1 **Bank Accounts**. Manager shall open and maintain, in such bank as Manager may select and shall be approved by Master Tenant, a non-interest bearing, non-money market operating account (the "Operating Account") in Manager's name and tax identification number ("TIN"), as Master Tenant's nominee and agent, so that at all times the funds deposited into such account shall be the sole and exclusive property of Master Tenant. Such account shall be styled in a manner acceptable to Master Tenant. Master Tenant acknowledges that only employees of Manager or Manager's affiliate shall be signatories for the Operating Account. Manager shall deposit in the Operating Account amounts collected or otherwise received in connection with the Property, including all Gross Rental Receipts. Upon receipt of Manager's monthly statement of receipts and disbursements and requests for funding or upon Manager's reasonable written request, in the event of any actual or projected insufficiency, Master Tenant shall promptly fund into the Operating

Account an amount sufficient to pay the estimated expenses of the Property for the following month in order to eliminate such actual or projected insufficiency. Such request for additional monies shall be accompanied by an explanation of expenses and insufficiencies which require such funding. Manager is authorized to draw on the Operating Account in payment, as and when required in connection with the operation or maintenance of the Property only for the purpose of:

(1) paying expenses of the Property in accordance with this Agreement, including paying (each, a "Property Activity", and collectively, the "Property Activities") the following:

(i) Operating Expenses, Capital Expenditures and Debt Service in compliance with the current Property Budget;

(ii) any impound or reserve payments required by any financing on the Property; and

(iii) any other charge, item of cost, or expense Master Tenant directs to be paid.

(2) disbursing funds to Master Tenant as and when requested by Master Tenant.

No payment shall be made by Manager out of the Operating Account for expenses, except expenses relating to the Property, payment of which by Manager is authorized by the terms of this Agreement. Expenses incurred by Manager without authorization hereunder are not and shall not be deemed costs of Property Activities. In no event shall Property Activity costs and expenses include any amounts paid by Manager to affiliates of Manager which are in excess of a market rate for the applicable services or goods required for the Property. Any checks drawn on or withdrawals made from the Operating Account in excess of Five Thousand and No/100 Dollars ($5,000.00) shall require two (2) signatures by Manager – and the prior approval of Master Tenant as set forth above in Section 4.7 of the Agreement. Master Tenant acknowledges and agrees that Manager maintains bank accounts for itself ("Manager's Account") and other clients using Manager's TIN (the Operating Account, Manager's Account, and such other client accounts collectively referred to as the "CBRE TIN Accounts"), Master Tenant also acknowledges that, if (a) any CBRE TIN Account is overdrawn, or (b) a judgment is entered against Master Tenant, Manager, or any other client for whom Manager maintains a CBRE TIN Account, then the funds maintained in each CBRE TIN Account may be subject to a legal collection process (including garnishment or set-off), including a legal collection process against the Operating Account for liabilities of third-parties. However, because the funds in the Operating Account are held in trust for the City of San Diego and said funds are public funds, and to help prevent a situation where a financial institution could withdraw funds from the City of San Diego's Master Tenant's Operating Account to rectify an overdrawn account of anyone other than the Master Tenant's, or a situation where a Court could award a judgment for a legal collection process again the whole of Manager's CBRE TIN Accounts located at a particular financial institution, including the Master Tenant's Operating Account, Manager agrees to the following: (a) Manager shall maintain a trust account for Master Tenant (utilizing Manager's CBRE TIN), from which the Master Tenant's funds shall be used solely for the payment of expenses related to the Property; (b) Manager agrees never to comingle Master Tenant's funds with other CBRE TIN Account funds to cover any other CBRE TIN Account funds or use Master Tenant's funds to cover any other CBRE TIN Account which is overdrawn; and (c)

should any type of legal collection process for liabilities of third-parties ever be instituted against the Operating Account, or Manager gains knowledge that the Master Tenant's Operating Account funds are at risk for the payment of liabilities of a party other than the Master Tenant, CBRE shall within two (2) business days receipt of gaining knowledge of a pending legal collection process or otherwise that the Operating Account funds are at risk, give Master Tenant written notice of such collection process and/or other knowledge (allowing Master Tenant the opportunity to possibly intervene), and Manager shall within five (5) business days at the latest reimburse the Master Tenant's Operating Account for all funds seized for the obligations of a party other than the Master Tenant. If the financial institution at which the Master Tenant's Operating Account is maintained subsequently reimburses the Operating Account, Master Tenant shall, upon demand, reimburse Manager for any funds previously paid by Manager with respect to funds seized.

Subject to the foregoing, Manager shall have no liability to Master Tenant in connection with the Operating Account if the Operating Account becomes subject to garnishment or court judgment, except in the event of Manager or Manager's affiliate's negligence, willful misconduct, or fraud.

7.2 **Negative Cash Flow**. Manager shall notify Master Tenant of any anticipated Negative Cash Flow. Within five (5) days from Master Tenant's receipt of such notice, Master Tenant shall provide for the transfer of funds to Manager so that funds may be deposited in the Operating Account in an amount necessary to cover said Negative Cash Flow. Excepting when due to Manager's negligence or willful misconduct, Manager shall be held harmless for failure to pay any charges to the extent that funds are not available in the Operating Account. To the extent that there is Negative Cash Flow, Manager shall apply the funds in the Operating Account as directed by Master Tenant but in any event first to pay Debt Service. Nothing herein contained shall obligate Manager to advance its own funds on behalf of Master Tenant or relieve Master Tenant from the obligation to pay the Manager Compensation."

2. The text set forth in subsection "(f)" [the definition of "Depository Account"] of section "1. Definitions" of the Agreement, shall be **DELETED** in its entirety and **REPLACED** with: "[RESERVED]".

3. All references to the term "Depository Account" – such as set forth in Section 4.8 of the Agreement – shall hence forth be read as referring to the "Operating Account", as the term "Depository Account" shall no longer be applicable to the Agreement as of the Effective Date of this First Amendment.

4. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. This First Amendment may be executed by a Party's signature transmitted by facsimile or PDF email, and copies of this First Amendment executed and delivered by means of facsimile signatures or PDF email shall have the same force and effect as copies hereof executed and delivered with original signatures. All Parties hereto may rely upon facsimile or email signatures as if such signatures were originals.

5. No Further Modification. Except as set forth in this First Amendment, all of the terms and provisions

of the Agreement shall remain unmodified and in full force and effect. Effective as of the date hereof, all references to the "Agreement" shall refer to the Agreement as amended by this First Amendment.

IN WITNESS WHEREOF, this First Amendment has been executed as first above written.

MASTER TENANT:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____
Name: Cybele L. Thompson, RPA, FMA, CCIM, LEED AP - Lic # 01176298
Title: Director, Real Estate Assets
Date: 3/10/16

MANAGER:

CBRE, Inc., a Delaware corporation

By: _____
Name: Mark E. Butcher
Title: Associate Managing Director
Date: 2/5/2016

Environmental Analysis Section Environmental Clearance:
This activity is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Sections §15301–(Existing facilities).

Date: 3/10/16

BY: _____
Name: _____
Title: _____

Approved as to form this 10th day of March, 2016.

JAN I. GOLDSMITH, City Attorney

By: _____
Name: Jeri L. Bevier
Title: Deputy City Attorney

Date of Notice: February 24, 2016

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT

PROJECT NAME/NUMBER: First Amendment to a Property Management Agreement - Civic Center Plaza

COMMUNITY PLAN AREA: Downtown
COUNCIL DISTRICT: 3
LOCATION: 1200 Third Avenue, Suite 1700, San Diego, California.

PROJECT DESCRIPTION: Authorize the Mayor or his designee to execute a First Amendment to a Property Management Agreement between the City of San Diego (Master Tenant) and CBRE, Inc., a Delaware corporation (Manager) to allow for the inclusion of certain contractual provisions into the Agreement which were not originally contemplated. This First Amendment will incorporate contractual provisions in accordance with San Diego City Charter section 45 and California Government Code section 53630 et seq, requiring the Manager to open a trust account in favor of the City of San Diego, using Manager's tax ID number instead of using Master Tenant's tax ID number. Once Manager's new trust account has been established, Master Tenant can issue checks to Manager, and thereafter Manager will use said funds to pay Operating Expenses incurred in the management of the Property on behalf of Master Tenant.

ENTITY CONSIDERING PROJECT APPROVAL: City of Dan Diego Mayor-Appointed Designee

ENVIRONMENTAL DETERMINATION: CEQA Exemption Section 15301- Existing facilities.

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION: This activity has been determined to be exempt from CEQA pursuant to CEQA Section 15301 (Existing Facilities) which allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use; and where the exceptions listed in CEQA Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effect on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action, and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

PROJECT MANAGER: Cybele L. Thompson, RPA, FMA, CCIM, LEED AP
Director, Real Estate Assets Department
MAILING ADDRESS: 1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101
PHONE NUMBER: (619) 236-6145

On February 24, 2016 the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (**March 9, 2016**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: 2/24/16

REMOVED: 3/10/16

POSTED: M. Herrmann