

DUPLICATE

SECOND AMENDMENT TO LEASE

[SAN DIEGO SQUARE]

THIS SECOND AMENDMENT TO LEASE ("Second Amendment") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and HOUSING DEVELOPMENT PARTNERS OF SAN DIEGO, a California nonprofit public benefit corporation created by the San Diego Housing Commission ("HDP"), to be effective as of NOV 20, 2014 (the "Second Amendment Effective Date") when signed by the parties and approved by the San Diego City Attorney.

RECITALS

A. CITY, as lessor, and HDP, as lessee, are parties to that certain PERCENTAGE GROUND LEASE ("Lease") filed in the Office of the San Diego City Clerk on May 14, 2013, as Document No. RR-308156, and relating to the lease of the land located at 1055 9th Avenue, San Diego, California 92101, commonly known as "San Diego Square" (Assessor's Parcel Number 534-196-05-00) (the "Premises").

A First Amendment to the Lease between CITY and HDP, on file in the Office of the San Diego City Clerk as Document No. RR-308899, was executed and is effective as of April 1, 2014.

- B. HDP has applied for funding to finance rehabilitation of the Premises, as is contemplated by the Lease. The lender entities have requested that HDP obtain an amendment of the Lease, to allow certain rent obligation limitations and other lender assurances in order for the funding to be provided.
- C. Accordingly, HDP has requested this Second Amendment to allow City, in its sole discretion, to execute such documents as necessary so that the Lease will not require Residential Rent payments in excess of seventy-five percent of Net Residential Operating Cash Flow on the Premises in any Lease Year, and so that certain rights regarding payment and performance bonds for improvements can be granted to lending entities.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. Rent Accrual. Lease section 3.5, RENT ACCRUAL, is deleted in its entirety and shall be replaced to read as follows, in its entirety:

RENT ACCRUAL. Notwithstanding any provision of this Lease to the contrary, if Net Residential Operating Cash Flow is insufficient to pay Base Rent and Supplemental Rent when due, LESSEE shall pay CITY one hundred percent (100%) of Net Residential Operating Cash Flow toward satisfaction of the rent then due, and any unpaid balance of the rent shall accrue with interest charged at the long-term "Applicable Federal Rate," as published each month by the U.S. Internal Revenue Service in accordance with Internal Revenue Code section 1274(d), and in

DUPLICATE

effect at the time the rent payment is due. LESSEE shall pay CITY one hundred percent (100%) of Net Residential Operating Cash Flow until all such rent balances and accrued interest are paid.

Notwithstanding the foregoing, for purposes of facilitating financing for improvement, repair, and maintenance of the Premises, CITY, in its sole discretion, may agree that LESSEE shall not be obligated to pay more than seventy-five percent (75%) of the Net Residential Operating Cash Flow for any current or accrued but unpaid rent due under Sections 3.4 or 3.5 of the Lease. Any such agreement shall be signed and in writing, and in CITY's sole discretion in each instance.

2. Construction Bond. The following shall be added to Lease Section 9.4, CONSTRUCTION BOND:

For purposes of facilitating financing for improvement, repair, and maintenance of the Premises, CITY may, in its sole discretion, agree that LESSEE's lending entities may have approval, consent, payment, endorsement and oversight right(s), as determined by CITY, in connection with any payment and performance bonds (or a letter of credit in lieu of such bonds) relating to future construction of improvements on the Premises.

3. No Other Changes. Except as may render the terms of this Second Amendment inoperable, all other terms and conditions of the Lease shall remain in full force and effect. Any conflict between the terms and conditions of the Lease and those of this Second Amendment shall be resolved in favor of this Second Amendment.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF this Second Amendment is executed to be effective as of the Second Amendment Effective Date.

Date: 11/18/14

HOUSING DEVELOPMENT PARTNERS OF SAN
DIEGO, a California nonprofit public benefit corporation

BY: [Signature]
Name: Michael Parco
Title: Executive Director

Date: 11/20/14

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: [Signature]
Cybele Thompson
Director, Real Estate Assets

Approved as to form and legality this 21st day of
Nov., 2014 (CITY):

JAN I. GOLDSMITH, San Diego City Attorney

BY: [Signature]
Name: Jeremy Fonseca
Title: Deputy City Attorney

RR-309323

RESOLUTION NUMBER R- 309323

DATE OF FINAL PASSAGE NOV 18 2014

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING AND DIRECTING THE EXECUTION
OF A SECOND AMENDMENT TO THE PERCENTAGE GROUND
LEASE WITH HOUSING DEVELOPMENT PARTNERS, WITH
REGARD TO THE SAN DIEGO SQUARE PROPERTY LOCATED
AT 910 C STREET, SAN DIEGO, CALIFORNIA.

WHEREAS, the City of San Diego (City) owns that certain real property located at 910
C Street, San Diego, California 92101 (Property), consisting of approximately 60,000 square
feet of land bound by 9th Avenue, 10th Avenue, Broadway and C Street, and commonly known as
“San Diego Square;” and

WHEREAS, the City has entered into a certain “Percentage Ground Lease,” as amended
(Lease), of the Property with Housing Development Partners, a California nonprofit public
benefit corporation (HDP). Commencement of the Lease is conditioned on certain conditions
being satisfied by HDP on or before April 30, 2015; and

WHEREAS, one of the Lease commencement conditions is that HDP secure financing
for a construction loan for rehabilitation of the Property. HDP has informed City staff that a
potential lender for this financing has been identified, but that the lender requires certain
assurances for it to provide the financing. The lender assurances require several Lease
amendments, including an amendment to allow a seventy-five percent (75%) maximum amount
limit on certain rents due to City under the Lease; and

WHEREAS, staff has negotiated that certain “Second Amendment to Percentage Ground
Lease,” on file in the Office of the City Clerk as Document No. cc-309323 which will

amend the Lease to allow staff to provide the lender assurances needed for HDP to obtain financing from its prospective lender; and

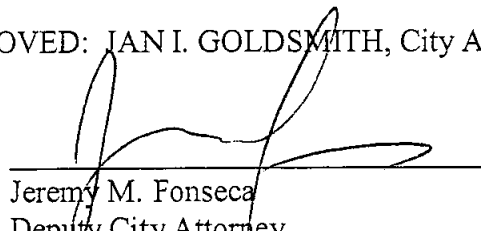
WHEREAS, upon commencement of the Lease, the City is entitled to a one-time payment of \$4 million dollars, in addition to other rents due throughout the term of the Lease. Because these revenues derive from City property utilized for low- and moderate-income housing, pursuant to City Council Resolutions Nos. 218880 (July 20, 1977) and 224179 (August 6, 1979) said revenues should be deposited and used for the City's low-income housing efforts; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute, for and on behalf of the City, the "Second Amendment to Percentage Ground Lease," between the City and Housing Development Partners, a California nonprofit public benefit corporation, on file in the Office of the City Clerk as Document No. ~~22~~ **309323**, to amend the current "Percentage Ground Lease" for the San Diego Square property located at 910 C Street, San Diego, California.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized and directed to accept and deposit the \$4 million dollars and all other rents and payments received by the City from the subject lease into Low-Income Housing Lease Revenue Fund 200398.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

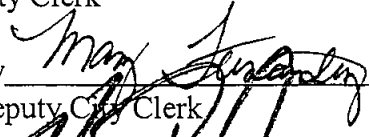


Jeremy M. Fonseca
Deputy City Attorney

JMF:meb
10/30/2014
Or.Dept: Real Estate Assets
Doc. No. 892896

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 11/18/14.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 11/18/14
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on NOV 18 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☒	☐	☐	☐
Ed Harris	☒	☐	☐	☐
Todd Gloria	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Marti Emerald	☒	☐	☐	☐

Date of final passage NOV 18 2014

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Mary Stenning*, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 309323

Passed by the Council of The City of San Diego on November 18, 2014 by the following vote:

YEAS: **LIGHTNER, HARRIS, GLORIA, COLE, KERSEY, ZAPF,
SHERMAN, ALVAREZ, EMERALD.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

VACANT: **NONE.**

AUTHENTICATED BY:

KEVIN FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

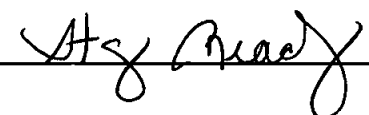
By: Stacy Ready, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. **R-309323** approved by the Council of the City of San Diego, California on ,
November 18, 2014 and approved by the Mayor of the City of San Diego on November 18,
2014.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy