

CITY OF SAN DIEGO
CONSENT TO ASSIGNMENT AND AGREEMENT
[Alexander Construction and Home Inspection, Inc., 1220 Third Avenue, San Diego, CA 92101]

THIS CITY OF SAN DIEGO CONSENT TO ASSIGNMENT AND AGREEMENT ("Consent") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and ALEXANDER CONSTRUCTION AND HOME INSPECTION, INC., a California corporation ("ASSIGNOR"), and MDTQ LLC, a limited liability corporation, ("ASSIGNEE"), to be effective as of the later date upon which this Consent is signed by the parties and approved by the San Diego City Attorney ("Effective Date"), and shall be contingent upon the terms and conditions set forth herein.

RECITALS

- A. CITY, as the lessor, and ASSIGNOR, as the lessee, are parties to that certain CITY OF SAN DIEGO LEASE AGREEMENT ("Lease") dated May 29, 2002, relating to certain CITY-owned real property commonly known as "Downtown Johnny Brown's" and located at 1220 Third Avenue, San Diego, California 92101, and more particularly described in the Lease.
- B. ASSIGNOR and MDTQ LLC are parties to that certain AGREEMENT FOR THE ASSIGNMENT OF THE LEASE AND BUSINESS PURCHASE AGREEMENT dated May 22, 2013 and COUNTER OFFER NUMBER 1 & AMENDMENT TO ORIGINAL OFFER (Assignment & Purchase Agreement) dated May 29, 2013, relating to the purchase and sale of the Downtown Johnny Brown's restaurant.

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

- 1. Consent. Subject to the following terms and conditions, CITY hereby consents to the assignment of ASSIGNOR's rights and obligations under the Lease to ASSIGNEE.
- 2. Lease Controls. The terms and conditions of this Consent shall be subject and subordinate to the terms and conditions of the Lease unless otherwise set forth in this Consent. The CITY is not bound by any term or condition in the Assignment & Purchase Agreement.
- 3. Assignment & Assumption. Under the Assignment & Purchase Agreement, ASSIGNOR shall assign all of its rights and obligations as "LESSEE" under the Lease to ASSIGNEE, and ASSIGNEE shall assume all of ASSIGNOR'S rights and obligations as "LESSEE" under the Lease.
 - a) ASSIGNOR'S address for notices after the Effective Date will be:
2955 CURLEW STREET
SAN DIEGO, CALIFORNIA 92103
 - b) ASSIGNEE'S address for notices after the Effective Date will be:
2546 MERCURY DRIVE
SAN DIEGO, CALIFORNIA 91945

4. Continuing Obligations. ASSIGNOR acknowledges that in the event of a default by ASSIGNEE (now LESSEE) under the Lease, CITY may proceed directly against ASSIGNOR, ASSIGNEE, or any other person liable under the Lease without first exhausting CITY'S remedies against any of them.
5. Additional Consideration to CITY. Pursuant to Section 4.7 to the Lease, ASSIGNOR acknowledges that this Consent is contingent upon payment of Additional Consideration to CITY in the amount of five percent (5%) of the gross amount paid to ASSIGNOR in connection with an approved assignment of the Lease. Pursuant to the Assignment & Purchase Agreement, the gross amount to be paid to ASSIGNOR is One Hundred Ninety Thousand Dollars (\$190,000). ASSIGNOR agrees to pay five percent of said gross amount, which equates to Nine Thousand Five Hundred Dollars (\$9,500), as Additional Consideration, to CITY concurrent with the closing of the Assignment & Purchase Agreement.
6. Other Rents and Fees Owed to CITY. ASSIGNOR acknowledges and agrees that outstanding rents and fees owed to CITY in the amount of Thirty-Seven Thousand, Six Hundred Ten Dollars and Fifty Cents (\$37,610.50) shall be paid to CITY concurrent with the closing of the Assignment & Purchase Agreement
7. Brokerage Commission. CITY shall not be liable for any brokerage commission or finder's fee in connection with the granting of this Consent or the consummation of the Assignment & Purchase Agreement which is the subject of this Consent. ASSIGNOR and ASSIGNEE, and each of them, jointly and severally, shall protect, defend, indemnify and hold CITY harmless from and against any claim for any such brokerage commission or finder's fee, and from any cost or expense, including without limitation attorney fees, incurred by CITY as a direct or indirect result of any such claim for a brokerage commission or finder's fee.
8. Joint and Several Liability. If a party to this Consent is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of such party under this Consent.
9. Legal Proceedings. If, as a result of an action brought by or against ASSIGNOR in connection with this Consent, CITY intervenes therein, becomes a party, or is made a party thereto, ASSIGNOR shall pay all of CITY'S costs and expenses thereof, including without limitation reasonable attorney fees and costs.
10. Controlling Law. The terms and provisions of this Consent shall be construed in accordance with, and shall be governed by, the laws of the State of California.
11. Authority to Contract. Each individual executing this Consent on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Consent on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Consent, and that

this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Consent is executed to be effective as of the Effective Date.

ALEXANDER CONSTRUCTION AND HOME
INSPECTION, INC., a California corporation

Date: 10/1/13

BY: [Signature]
Name: Todd Alexander
Title: President

MDTQ LLC, a limited liability company

Date: 10/1/13

BY: [Signature]
Name: SEAN E. COLE
Title: MEMBER MDTQ LLC

THE CITY OF SAN DIEGO, a California municipal
corporation

Date: 10/1/13

BY: [Signature]
James F. Barwick, CCIM
Real Estate Assets Director

Approved as to form and legality this
2nd day of October, 2013

JAN I. GOLDSMITH, City Attorney

BY: [Signature]
Name: Debra J. Bevier
Title: Deputy City Attorney