



Real Estate Assets Department
SDC003

Mercury Street Annex LLC

N419PM-001-AD2

Document Type

LEGAL DOCUMENTS



Sub - Category

SUBLEASES



CITY OF SAN DIEGO
CONSENT TO SUBLEASE

THIS CITY OF SAN DIEGO CONSENT TO SUBLEASE (Agreement) is made as of 4th of April, 2013 (the "Effective Date") by and among THE CITY OF SAN DIEGO, a California municipal corporation, as master lessor (CITY), MERCURY STREET ANNEX, LLC, a California limited liability company, as sublessor (SUBLESSOR), and FIRST KOREAN MARKET LLC, a California limited liability company, as sublessee (SUBLESSEE), collectively known as "Parties".

RECITALS

This Agreement is made with regard to the following facts which the Parties acknowledge are true and correct:

- A. CITY and Rijo Enterprises, Inc., as lessee, were originally parties to that certain CITY OF SAN DIEGO PERCENTAGE LEASE (the "Master Lease"), filed in the Office of the San Diego City Clerk as Document No. RR-266057 on June 23, 1986 (the "Master Lease"), relating to a 1.7 acre lot on the southeast corner of Mercury Street and Engineer Road in the City of San Diego (Master Lease Premises).
- B. The Master Lease is attached to this Agreement as Exhibit A.
- C. Pursuant to the Master Lease, a 32,000 square foot commercial building with a current street address of 4611 Mercury Street, San Diego, was constructed on the Master Lease Premises, which building is now subleased to commercial users.
- D. SUBLESSOR, by virtue of prior assignments, is the current lessee under the Master Lease.
- E. SUBLESSOR and SUBLESSEE have entered into that certain STANDARD FORM NET LEASE dated January 22, 2013, and the Addendum to Standard Form Net Lease, collectively attached hereto as Exhibit B and collectively referenced hereinafter as "Sublease", all relating to the building and grounds on the Master Lease Premises located at 4611 Mercury Street, San Diego, California 92111, consisting of an approximately 29,158 square foot portion of said building on the Master Lease Premises as set forth more particularly in the Sublease (Sublease Premises).
- F. Pursuant to Section 4.02 of the Master Lease, SUBLESSOR has requested CITY's consent to sublease the Sublease Premises as set forth in the Sublease to SUBLESSEE.
- G. CITY is willing to consent to the subleasing of the Sublease Premises between SUBLESSOR and SUBLESSEE as more particularly described in the Sublease on the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

1. CITY's Consent. CITY consents to SUBLESSOR subleasing to SUBLESSEE. This consent is granted only on the terms and conditions stated in this Agreement. CITY is not bound by any of the terms, covenants, or conditions of the Sublease. The Sublease is subject and subordinate to the Master Lease, as may be amended from time to time. If there is a conflict between this Sublease and either the Master Lease or this Agreement, the terms, conditions, and obligations of this Agreement and the Master Lease shall control. If there is a conflict between this Agreement and the Master Lease, the terms, conditions, and obligations of this Agreement shall control.
2. Limits of CITY's Consent. Neither the Sublease nor this Agreement will:
 - (a) release SUBLESSOR from any liability, whether past, present, or future, under the Master Lease;
 - (b) alter the primary liability of SUBLESSOR to pay the rent and perform all SUBLESSOR's obligations under the Master Lease;
 - (c) be construed as a waiver of CITY's right to consent to any proposed sublease or assignment after the date hereof by SUBLESSOR under the Master Lease or SUBLESSEE under the Sublease, or as a consent to any portion of the Premises in the Sublease being used or occupied by any other party;
 - (d) grant any rights to SUBLESSEE greater than those rights granted to SUBLESSOR under the Master Lease;
 - (e) be deemed CITY consent to any other assignment or sublease;
 - (f) require CITY to recognize SUBLESSEE in the event of a default in the Master Lease by SUBLESSOR;
 - (g) enlarge or in any manner increase CITY's obligations or duties under the Master Lease;
 - (h) create obligations or costs to CITY with regard to the Sublease;
 - (i) modify, waive, amend, or otherwise affect any provision of the Master Lease other than as set forth in this Agreement;
 - (j) be deemed CITY approval of any alterations to the Premises referenced in the Sublease. Any and all alterations to the Premises are subject to the

prior written approval of CITY as set forth in Section 6.04 of the Master Lease; and

- (k) be deemed approval of CITY as to the form or content of the Sublease agreement or approval of CITY as required by any other provision of the Master Lease or the Sublease.

3. Acknowledgments of SUBLESSOR and SUBLESSEE and Agreement to Fully Comply with Master Lease and Consent to Sublease Agreement. SUBLESSOR and SUBLESSEE acknowledge receipt of a copy of the Master Lease attached as Exhibit A. SUBLESSOR and SUBLESSEE further acknowledge that they have had ample and full opportunity to read and understand this Agreement and the Master Lease and to consult with any legal counsel of their choosing with regard to any of these documents or any of the terms and conditions set forth therein. SUBLESSOR and SUBLESSEE attest to fully understanding the terms and conditions set forth in the foregoing documents regardless of whether they have actually consulted with any such legal counsel and further agree to fully comply with the terms and conditions of the Master Lease and this Agreement at all times.
4. No Waiver by CITY. SUBLESSOR and SUBLESSEE acknowledge and agree that any failure of the CITY to enforce any provision of the Master Lease or this Agreement shall not in any way constitute, or otherwise be deemed, a waiver of any such provision or the CITY's enforcement of any such provision.
5. Indemnification of CITY by SUBLESSEE. SUBLESSEE shall protect, defend, indemnify, and hold City, its elected officials, officers, departments, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to SUBLESSEE's officers, employees, agents, contractors, invitees and guests, which arise out of or are in any manner directly or indirectly connected with the Sublease, the Agreement or the occupancy, use, development, or maintenance of the Sublease Premises by SUBLESSEE, including, but not limited to, attorneys' fees and costs; provided, however, that the duty of SUBLESSEE to indemnify and hold the CITY harmless shall not include any claims or liability arising from the established gross negligence, or intentional misconduct of City, its elected officials, officers, representatives, departments, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, SUBLESSEE shall be liable for paying all reasonable costs related thereto, including without limitation attorneys' fees and costs.
6. Insurance to Be Provided to CITY by SUBLESSEE. SUBLESSEE shall deliver to CITY a current certificate insurance and all relevant endorsements for all of the

insurance coverage required under the terms of the Master Lease. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], SUBLESSEE shall name "City of San Diego, its elected officials, officers, employees, representatives, and agents" as additional insureds in all policies issued to SUBLESSEE relating directly or indirectly to the Sublease Premises including, but not limited to, coverage under endorsement CG2010 (11/85) or its equivalent. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force from the earlier date of possession of the Sublease Premises or the Sublease commencement date and shall be continuously maintained by SUBLESSEE in full force and effect for the entire duration of the term of the Sublease.

7. Insurance and Indemnity for Subleasing by SUBLESSEE to be Provided to CITY.

- (a) SUBLESSEE shall require each and every one of its sublessees to indemnify CITY and name CITY as an additional insured in any insurance relating to any sublease or any other agreement for the occupancy of any portion of the Sublease Premises consistent with the indemnity and insurance coverage required pursuant to Sections 5 and 6 of this Agreement. SUBLESSEE shall ensure that any sublease or any other such agreement for the occupancy of any portion of the Sublease Premises contains the following language:

"Indemnity. _____ [*Insert name of sublessee*] shall protect, defend, indemnify, and hold the City of San Diego (City), its elected officials, officers, departments, representatives, agents, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to _____'s [*Insert name of sublessee*] officers, employees, agents, contractors, invitees, and guests, which arise out of or are in any manner directly or indirectly connected with the sublease, or the occupancy, use, development, or maintenance of that portion of the Sublease Premises occupied or otherwise used by _____ [*Insert name of sublessee*], including, but not limited to, attorneys' fees and costs; provided, however, that the duty of _____ [*Insert name of sublessee*] to indemnify and hold the harmless shall not include any claims or liability arising from the established gross negligence, or intentional misconduct of City, its elected officials, officers, representatives, departments, agents and employees. City may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If City chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, _____ [*Insert name of sublessee*] shall be

liable for paying all reasonable costs related thereto, including without limitation attorneys' fees and costs.

Insurance. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], _____ [Insert name of sublessee] shall name "City of San Diego, its elected officials, officers, employees, representatives, and agents" as additional insureds in all policies issued to _____ [Insert name of sublessee] relating to the lease between First Korean Market, LLC, and _____ [Insert name of sublessee], including, but not limited to, coverage under endorsement CG2010 (11/85) or its equivalent. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by City. The policies shall be kept in force for the entire duration of the term of this lease between First Korean Market, LLC and _____ [Insert name of sublessee]."

- (b) SUBLESSEE shall provide a copy of any and all insurance certificates set forth in Section 7(b) above to the CITY at least ten (10) business days prior to the effective date of any sublease with each particular sublessee. Such proof of insurance shall be provided as an electronic attachment to the email required by the "Mandatory Disclosures" set forth in, and in accordance with, Section 9 of this Agreement.

- 8. Non-Permitted Use of Master Lease Premises and Sublease Premises. SUBLESSOR and/or SUBLESSEE shall not use the Master Lease Premises and Sublease Premises for any activity that is of an adult, pornographic, or sexual nature, or smoke shop or any type of marijuana-related use, or is a second-hand or thrift store or flea market.
- 9. Mandatory Disclosures. In accordance with San Diego Charter section 225, SUBLESSEE shall provide CITY with a full and complete disclosure of the full names and identities of any and all persons directly or indirectly involved in any sublease of any portion of the building or grounds on the Sublease Premises at least ten (10) business days prior to the effective date of any sublease with any such persons. Such mandatory disclosure shall be provided in electronic format by email to the CITY's designated real property agent overseeing the administration of the Master Lease and this Agreement ("CITY's Designated Representative"), which shall be provided to SUBLESSOR and SUBLESSEE. If at any time any uncertainty exists as to the identity of the CITY's Designated Representative, it is incumbent upon SUBLESSOR and SUBLESSEE to take any and all actions necessary to contact the CITY to obtain the identity of such individual to ensure that such mandatory disclosures are being properly provided to the CITY's Designated Representative in accordance with this Agreement. SUBLESSEE shall also provide a complete copy of each sublease to CITY, which sublease shall be sent as an electronic attachment to the email sent by SUBLESSEE to the CITY's Designated Representative in accordance with this Section 9.

10. Controlling Law. The terms and provisions of this Agreement will be construed in accordance with, and will be governed by, the laws of the State of California.
11. Entire Agreement. This Agreement constitutes the final, complete and exclusive statement between the parties to this Agreement pertaining to the terms of CITY's consent to the Sublease, supersedes all prior and contemporaneous understandings or agreements of the Parties as to the Sublease, and is binding on and inures to the benefit of their respective heirs, representatives, successors, and assigns. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in Agreement. Any agreement made after the date of this Agreement is ineffective to modify, waive, or terminate this Agreement, in whole or in part, unless that agreement is in writing, is signed by the parties to this Agreement, and specifically states that agreement modifies this Agreement.
12. Partial Invalidity. If any term, covenant, or condition in this Agreement is, to any extent, held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of that term, covenant, or condition to persons or circumstances other than those as to which it is held to be invalid or unenforceable, will not be affected by that invalidity or unenforceability, and all other terms, covenants, and conditions of this Agreement will be valid and enforceable to the fullest extent permitted by law.
13. CITY's Consent Null and Void. If at any time, either SUBLESSOR or SUBLESSEE fails to comply with any of the terms and conditions set forth in this Agreement, this Agreement shall automatically and retroactively become null and void as of the date of any such failure to comply. Any such failure to comply with any term or condition of this Agreement shall constitute a default under the Master Lease and the CITY may avail itself of any rights and remedies available under the Master Lease and at law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date upon the signature of all of the Parties.

THE CITY OF SAN DIEGO, a California municipal corporation

Date: 3/29/13

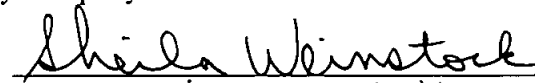
BY:


Name: James F. Barwick, CCIM
Title: Director, Real Estate Assets

Acknowledged and agreed to by SUBLESSOR:

MERCURY STREET ANNEX, LLC, a California limited liability company

BY:


Name: Sheila Weinstock
Title: manager
Date: April 4, 2013

Acknowledged and agreed to by SUBLESSEE:

FIRST KOREAN MARKET, LLC, a California limited liability company

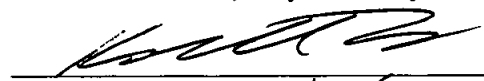
BY:


Name: E. G. Ro
Title: Managing Member
Date: 4/8/2013

Approved as to form and legality:

JAN I. GOLDSMITH, City Attorney

BY:


Name: Kenneth So
Title: Deputy City Atty
Date: 4/12/13