

CITY OF SAN DIEGO CONSENT TO SUBLEASE ASSIGNMENT

THIS CITY OF SAN DIEGO CONSENT TO SUBLEASE ASSIGNMENT (Consent) is made by the City of San Diego, a California municipal corporation (CITY), to be effective as of SEPTEMBER 1, 2015 (Effective Date), subject to the following recitals and terms and conditions.

RECITALS

This Consent is made with regard to the following facts:

- A. CITY leases certain CITY-owned improved real property located at 4611 Mercury Street, San Diego, California (Premises), to Mercury Street Annex LLC, a California limited liability company (LESSEE), pursuant to that certain City of San Diego Percentage Lease (Master Lease) filed June 23, 1986, as Document No. RR-266057 in the San Diego Office of the City Clerk.
- B. LESSEE subleases portions of the Premises to ZION MARKET SAN DIEGO, INC, a California corporation ("Zion"), pursuant to that certain "Lease" agreement between LESSEE and Zion dated October 16, 2014 ("Sublease").
- C. LESSEE, Zion, and FM San Diego, LLC, a California limited liability company (FMSD), entered into a certain "Lease Assignment Agreement" dated April 28, 2015 (Assignment), among other things assigning Zion's interest in the Sublease to FMSD.
- D. Pursuant to Section 4.02 of the Master Lease, LESSEE has sought CITY consent to the assignment of the Sublease to FMSD.
- E. CITY is willing to consent to the assignment and to LESSEE subleasing to FMSD on the terms and conditions contained in this Consent.

CONSENT

- 1. CITY's Consent. CITY consents to the assignment of the Sublease to FMSD. This consent is granted only on the terms and conditions stated in this Consent. CITY is not bound by any of the terms, covenants, or conditions of the Sublease or the Assignment. The Sublease is and shall remain 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 Consent, the terms, conditions, and obligations of this Consent and the Master Lease shall control. If there is a conflict between this Consent and the Master Lease, the terms, conditions, and obligations of this Consent shall control.

2. Limits of CITY's Consent. Neither the Sublease nor this Consent will:

- (a) release LESSEE from any liability, whether past, present, or future, under the Master Lease as to the Premises or any portion thereof;
- (b) alter the primary liability of LESSEE to pay the rent and perform all LESSEE'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 LESSEE under the Master Lease or by LESSEE 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 LESSEE greater than those rights granted to LESSEE under the Master Lease;
- (e) be deemed CITY consent to any other assignment, sublease, or transfer, notwithstanding anything to the contrary in the Sublease or the Assignment;
- (f) require CITY to recognize FMSD in the event of a default in the Master Lease by LESSEE;
- (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 explicitly set forth in this Consent;
- (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 the Master Lease;
- (k) be deemed to be any type of obligation by CITY to LESSEE, FMSD or to any governmental agent, board, commission, or agency with regard to any other action relating to FMSD's occupancy, use, development, maintenance or modification of any portion of the Premises or improvements thereon.
- (l) be deemed approval of CITY as required by any other provision of the Master Lease or Sublease.

3. NOTICE.

Address for FMSD for any notice or demand shall be:

FM San Diego, LLC
4611 Mercury Street
San Diego, CA 92122

4. CAPITALIZED TERMS. All terms spelled with initial-capital letters in this Consent that are not expressly defined in this Consent will have the respective meanings given such terms in the Master Lease.

IN WITNESS WHEREOF, this Consent is executed by CITY acting by and through its Mayor, or his designee.

Signed as acknowledging:

MERCURY STREET ANNEX LLC,
a California limited liability company

By: Sheila Weinstein
Name: Sheila Weinstein
Title: Manager

FM SAN DIEGO, LLC,
a California limited liability company

By: William Stark
Name: William Stark
Title: President

THE CITY OF SAN DIEGO, a California
municipal corporation

By: Cybele Thompson
Cybele Thompson
Director, Real Estate Assets Department
Date: 8/31/15

APPROVED as to form this
1st day of Sept, 2015

JAN I. GOLDSMITH, City Attorney

By: Debra J. Bevilacqua
Name: Debra J. Bevilacqua
Title: DCA