



THE CITY OF SAN DIEGO

November 5, 2018

Boys and Girls Clubs of Greater San Diego
Attn: Danny Sherlock
PO Box 178569
San Diego, CA 92177

Re: Copy of Consent for the Nonprofit Lease between the City of San Diego and Boys and Girls Clubs of Greater San Diego

Dear Mr. Sherlock,

We have included a copy of the Consent to First Amendment to Sublease with Empower Charter School for your records. Thank you for your cooperation in this matter. If you have any questions, please contact me at (619) 236-6264 or itanori@sandiego.gov.

Sincerely,

Isaac Tanori
Property Agent

Real Estate Assets Department

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199
Tel (619) 236-6020 Fax (619) 236-6706

CONSENT TO FIRST AMENDMENT TO SUBLEASE

THIS CONSENT TO FIRST AMENDMENT TO SUBLEASE (Consent) is provided by THE CITY OF SAN DIEGO, a California municipal corporation (City), to BOYS AND GIRLS CLUBS OF GREATER SAN DIEGO, a California nonprofit public benefit corporation, dba Boys and Girls Clubs of San Diego (Lessee/Sublessor), to be effective upon execution by City and approval by the San Diego City Attorney (Effective Date), as follows:

RECITALS

- A. City as Lessor and Lessee/Sublessor, are parties to that certain City of San Diego Non Profit Lease (Master Lease) filed in the Office of the San Diego City Clerk December 9, 2002 as Document No. RR-297469. The Master Lease pertains to that certain City-owned property consisting of approximately 2.05 acres, located at 2230 East Jewett Street, San Diego, California (Premises).
- B. Lessee/Sublessor and Empower Charter School, a California nonprofit corporation (Sublessee), are parties to that certain Sublease dated September 16, 2014, relating to the use of a portion of the Premises for the operation of a charter school.
- C. Lessee/Sublessor and Sublessee wish to amend the Sublease by adjusting the Premises, Options to Extend, Base Rent, and Hours of Operations, and other terms and conditions.
- D. The Master Lease requires Lessee/Sublessor to obtain City's consent to the sublease of any portion of the Premises.

NOW, THEREFORE, based on the Recitals set forth above which are incorporated herein, City provides its consent subject to the following:

- 1. In reliance upon Sublessee's written agreement to assume the rights and obligations subleased and to keep and perform all covenants, conditions, and provisions of the Master Lease which are applicable to the rights acquired, City consents to Lessee/Sublessor's request to sublease a portion of its right, title, and interest in and to the Master Lease to Sublessee. By giving this Consent, City is merely consenting to Lessee/Sublessor's request to sublease that certain portion of the Master Lease to the Sublessee, not approving the sublease or amendment between Lessee/Sublessor and Sublessee. All terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in any sublease agreement executed between Lessee/Sublessor and the Sublessee.
- 2. City's Consent is conditioned upon Lessee/Sublessor's payment to City of fifty percent (50%) of any sublease rent for the consented use, in accordance with the Master Lease.
- 3. City does not release, discharge or modify Lessee/Sublessor's obligations to City under the Master Lease. As set forth in applicable law, Lessee/Sublessor's obligations under the Lease shall survive said sublease and shall continue through the termination dates of the Master Lease, as set forth therein.

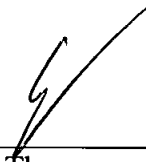
4. This Consent does not constitute consent to any subsequent subleasing of any interest in and to the Master Lease.
5. Lessee/Sublessor agrees to pay City any applicable processing and/or administrative fee(s) for processing this Consent.
6. City shall not be liable for any brokerage commission or finder's fee in connection with the consummation of the sublease. Further, Lessee/Sublessor agrees to protect, defend, indemnify, and hold City, its elected officials, officers, representatives, agents, and employees harmless from and against any claim for any brokerage commission or finder's fee related to the consummation of this Consent, and from and against any cost or expense (including without limitation attorney fees) incurred by City in resisting any claim for any such brokerage commission or finder's fee.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

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

THE CITY OF SAN DIEGO, a California municipal corporation

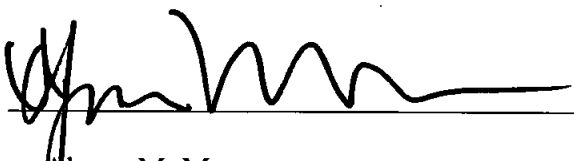
Date: 10/24/18

By: 
Cybele L. Thompson
Director, Real Estate Assets Department

Planning Department - Environmental Clearance:

The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration 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 effects 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.

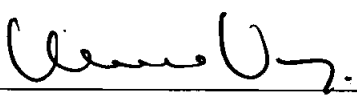
Date: 10/29/18

BY: 

Name: Alyssa M. Muto
Title: Deputy Director, Environmental and Policy Analysis
Planning Department

Approved as to form this 1st
day of November, 2018

MARA W. ELLIOT, City Attorney

BY: 
Name: Marco A. Verdugo
Title: Deputy City Attorney

1ST AMENDMENT TO SUBLEASE

This FIRST AMENDMENT TO LEASE AGREEMENT (the "First Amendment") is made and entered into as of the 13th day of July 2018, by and between BOYS & GIRLS CLUBS OF GREATER SAN DIEGO, a California nonprofit corporation ("Club" or "Landlord"), and Empower Charter School, a California nonprofit corporation ("Empower" or "Tenant") (each a "party" and collectively the "parties").

Recitals

- A. Landlord and Tenant entered into a Sublease dated August 28, 2014 (the "Lease"), whereby Landlord leases to Tenant and Tenant subleases from Landlord the real property located at 2230 East Jewett Street, San Diego CA 92111, County of San Diego, State of California (the "Property" sometimes referred to as the "Linda Vista Branch" or the "Ron Roberts Family Branch").
- B. Landlord and Tenant desire to provide for amendment of the Lease as more fully set forth herein.

Agreement

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree that effective as of the date hereof, the Lease shall be amended and modified as follows:

1.

To Amend Section 1 of the Original Sublease:

Subleased Premises. Subject to the written approval of this Sublease by the City, the written consent hereto by the City and to the provisions of the Lease between the City and the Club, the Club hereby subleases to Empower and Empower subleases from the Club, upon all of the terms and conditions set forth in this Sublease, exclusive use of an office/administrative area, as well use of use of four (4) classrooms during school hours, shared use of restrooms (including restrooms which meet ADA guidelines), outdoor areas and the gymnasium as listed and/or depicted on the Floor Plan attached hereto as Exhibit "C" and incorporated herein by reference (the "Premises") as well as non-exclusive use of the common areas as described below. In the event the restrooms and outdoor play areas are inoperable or are by necessity inaccessible, Empower shall have temporary, alternative access to the restrooms and play area at the Teen Center. Empower shall have no right of possession of any remaining portions of the real property or improvements located thereon. This Sublease subordinates to the applicable covenants and conditions of the Lease between the City and the Club. In the event of conflict between the provisions of this Sublease and those of the Lease

between the City and Club, the Lease between the City and the Club shall control. Rules for shared use to be established jointly by the Club and Empower.

In the event Empower desires to use the swimming pool located on the Property, the parties shall enter into a separate Pool Use Agreement prior to any use.

2.

To Amend Section 2 of the Original Sublease:

2.2 Options to Extend Term

2.2.1 As long as Empower is not in default of any material term or condition of this Sublease and upon written approval of both parties and if necessary the City, Empower is granted a first option ("First Option") to extend the Term of this Sublease by selecting any one of the following:

(a) an additional term of two (2) years ("Extended Term"), on the same terms and conditions as provided in this Sublease, except that Base Rent for the Extended Term shall be \$90,950.

(b) an additional term of five (5) years ("Extended Term"), on the same terms and conditions as provided in this Sublease, except that Base Rent for the Extended Term shall be \$89,250.

Empower shall exercise its First Option to extend, if at all, by delivering written notice to Club of such election ("Notice of Election") no later than December 31, 2018. If approved, the Extended Term shall become effective upon the written approval by the Club, no later than January 30, 2019, which approval shall not be unreasonably withheld.

2.2.2 In addition, as long as Empower is not in default of any material term or condition of this Sublease and upon written approval of both parties and if necessary the City, Empower is granted a second option ("Second Option") to extend the Term of this Sublease as follows:

(a) If Empower selected the First Option Extended Term as described in Paragraph 2.2.1(a), Empower may extend such term for an additional term of either

i. Three (3) years ("Second Extended Term"), on the same terms and conditions as provided in this Sublease, except that Base Rent for the Extended Term shall be \$90,950.

or

ii. Five (5) years ("Second Extended Term"), on the same terms and conditions as provided in this Sublease, except that Base Rent for the Extended Term shall be \$90,950.

(b) If Empower selected the First Option Extended Term described in Paragraph 2.2.1(b), Empower may extend such term for an additional term of two (2) years ("Second Extended Term"), on the same terms and conditions as provided in this Sublease, except that Base Rent for the Extended Term shall be \$90,950.

Empower shall exercise its Second Option to extend, if at all, by delivering written notice to Club of such election ("Notice of Election") no later than December 31 of the year preceding the year in which the First Option term expires. If approved, the Second Extended Term shall become effective upon the written approval by the Club, no later than the January 30 immediately following Empower's Notice of Election (within 30 days of Empower's delivery of such Notice of Election), which approval shall not be unreasonably withheld.

3.

To Amend Section 3 of the Original Sublease:

3.1 Base Rent

Beginning July 1, 2018, Empower shall pay to Club a Base Rent as minimum monthly rent, without deduction, setoff, prior notice, or demand the sum of \$8,500 per month ("Base Rent") for the ten (10) month school year. No Rent shall be required to be paid for the months of July and August for each year of this Sublease. Monthly installments of Base Rent shall be payable monthly, in advance, on the first day of each month. The first month's rent shall be paid no later than September 1, 2018. The rent for any partial month shall be prorated on the basis of a thirty (30) day month. Rent shall be paid in lawful money of the United States to Club at the address set forth on the signature page of this Sublease or to such other person or at such other place as Club may designate in writing.

3.3 Utilities. The club shall be responsible for utilities and janitorial services. In the event the cost of utilities increases by 20% or more from the Fiscal Year 2017-18 school year, Empower shall pay 25% of the cost of the utilities increase.

3.4 Conditional Use Permit – This term in the original sublease shall be removed.

4.

To Amend Section 4 of the Original Sublease:

Use and Obligations of Parties.

4.1 Use. Empower shall use those portion of the Club's Property subleased to Empower herein solely for the charter school, with a maximum limit of two-hundred seventy (270) school children grades Kindergarten through twelfth (12th) grade, located on the subleased Premises at any one time, and for no other purpose.

5.

To Amend Section 10 of the Original Sublease:

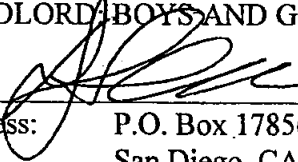
Hours of Operation. Empower shall conduct its operation of the charter school on the Premises during the following hours:

10.1 Monday through Friday, except holidays, 7:00 a.m. to 3:00 p.m. during the charter school year operated at the Premises ("Operating Hours"). Empower may schedule office hours beyond the regular school day with the Club's written approval. Empower shall conform to the San Diego Unified School District's school schedule as closely as possible.

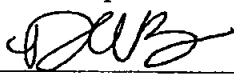
6. No Further Modification. Except as specifically set forth in this First Amendment, all of the terms and provisions of the Lease shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, this Amendment has been executed as of the day and year first above written.

LANDLORD: BOYS AND GIRLS CLUB OF GREATER SAN DIEGO

By:  Danny Sherlock, President and CEO
Address: P.O. Box 178569
San Diego, CA 92177
Tel. #: 858-866-0591
Facsimile: 858-866-0595
E-mail: dsherlock@sdyouth.org

TENANT: Empower Charter School

By:  Demi Brown, Executive Director
Address: 2230 East Jewett St
San Diego, CA 92111
Tel. #: 858-292-1304
Facsimile: 858-292-1328
E-mail: dbrown@empowercharter.org



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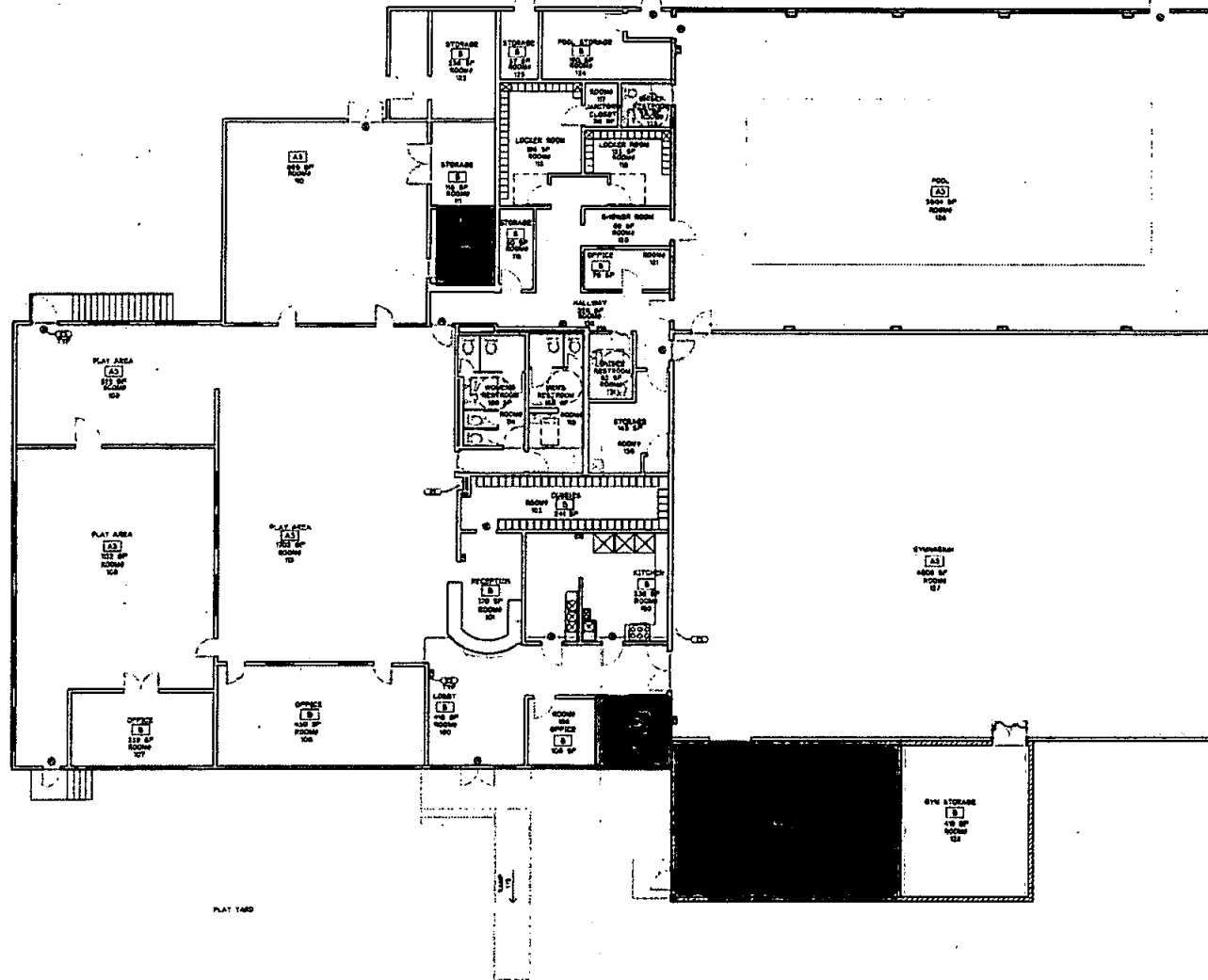
**BOYS & GIRLS CLUB
EMPOWER CHARTER**
2230 EAST JEWETT STREET
SAN DIEGO, CA 92111

DATE: _____
BY: _____

EXISTING
FLOOR PLAN

A2.0

Exhibit C MAIN BUILDING



BOYS & GIRLS CLUB EXISTING FLOOR PLAN

A

GRAPHIC SCALE
0' 4' 8' 12' 16' 20'
1/8" = 1'-0"

PLAN NORTH

EXHIBIT "C" – Page 1 out 2

Assumption of Rights and Obligations

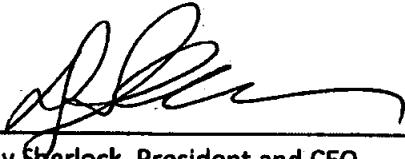
Empower Charter School agrees to assume the rights and obligations subleased from the Boys & Girls Club and will keep and perform all covenants, conditions, and provisions of this agreement which are applicable to the rights acquired.

BY: _____



Demi Brown, Executive Director
Empower Charter School

BY: _____



Danny Sherlock, President and CEO
Boys & Girls Clubs of Greater San Diego



Date of Notice: September 6, 2018

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Consent to First Amendment to Sublease for Empower Charter School under the Non-Profit Lease with the Boys' and Girls' Clubs of Inland North County

COMMUNITY PLAN AREA: Linda Vista

COUNCIL DISTRICT: District 7

LOCATION: 2230 E. Jewett Street, San Diego, CA 92111

PROJECT DESCRIPTION: City is willing to consent to the First Amendment to Sublease request by the Boys and Girls Clubs of Inland North County with Empower Charter School to adjust the sublease premises of the underutilized area and update the options to extend the term, rent, and hours of operation. City provided a Consent to Sublease to Empower Charter School in September 2014 for the purposes of operating a charter school.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: Categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301 (Existing Facilities).

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

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration 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 effects 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.

CITY CONTACT: Isaac Tanori, Property Agent
Real Estate Assets Department
MAILING ADDRESS: 1200 Third Avenue, Suite 1700, San Diego, CA 92101
PHONE NUMBER: (619) 236-6264

On September 6, 2018, 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 Contact listed above.

Applications to appeal CEQA determination 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 (**September 20, 2018**). 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: 9/6/2018

REMOVED: 9/25/2018

POSTED: E. Pascual