

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: City Manager - Approve Landlord Subordination Agreement for Armstrong Garden Centers (C-417).

RECOMMENDATION

Recommendation of the City Manager that City Council approve a Subordination Agreement by and between the City of Torrance ("City") and BANK OF THE WEST, a California banking corporation (Bank) concerning real property commonly known as Armstrong Garden Centers (C-417) located in the City of Torrance on City-owned property located at 25225 Crenshaw Boulevard.

Funding

No funding is required for this action. License will generate \$1,800 annual income.

BACKGROUND AND ANALYSIS

The subject Lease was entered into in May 1985 with Rolling Hills Nursery, Inc. The Lease was Assigned to the current tenant, Armstrong Garden Centers, in February of 1995. The Lease has a termination date of April 30, 2015.

The Agreement before Your Honorable Body is an Agreement that banks require to protect their position on loans. The request for subordination is to allow the bank to take possession of the "Goods" secured by the line of credit for inventory, in this case it is the equipment, fixtures and other goods, secured by the Line of Credit. It is not the Leasehold improvements to the property.

This is a standard request to protect the Bank as it issues a line of credit; it does not diminish the City's position with regard to the Master Lease.

Respectfully submitted,

LeROY J. JACKSON
City Manager

CONCUR:



LeRoy J. Jackson
City Manager



by Brian K. Sunshine
Assistant to the City Manager

Attachment: A) Landlord Subordination Agreement

LANDLORD SUBORDINATION AGREEMENT

THIS LANDLORD SUBORDINATION AGREEMENT (this "Agreement") is made and entered into as of the latest date on the signature page to this Agreement between BANK OF THE WEST, a California banking corporation ("Bank"), and **City of Torrance** ("Landlord"), and affects that real property commonly known as **Armstrong Garden Centers located in Torrance, CA** ("Premises").

WHEREAS, this Agreement is executed at the request of Bank with respect to credit extended by Bank to **Armstrong Garden Centers** ("Tenant"), secured by all personal property of Tenant, including, without limitation, all of Tenant's inventory, equipment, fixtures and other goods ("Goods"). This Agreement does not amend any of the terms of the credit extended by Bank to Tenant or of the lease between Landlord and Tenant;

WHEREAS, Goods are or are to be located on and may be affixed to the Premises or the improvements thereon; and

WHEREAS, Tenant has leased the Premises from Landlord by the current Lease agreement (the "Lease").

Bank and Landlord agree that:

1. Bank's Security Interest. Landlord hereby acknowledges and consents to Bank's security interest in the Goods and agrees that any and all liens and security interests granted or otherwise accruing to Landlord with respect to the Goods is and shall be junior and subordinate to any and all liens and security interest granted to Bank with respect to the Goods. The foregoing subordination shall apply (a) irrespective of the time, order or manner of attachment or perfection of any security interest and irrespective of any statute, rule, law, or court decision to the contrary and (b) irrespective of whether the liens securing the obligations of Tenant to Bank are held to be unperfected, invalid, void, unenforceable, discharged or are set aside. This Agreement and the subordination provided herein shall continue to govern as between Bank and Landlord during and after any bankruptcy or insolvency proceeding involving Tenant or its affiliates. Until the earlier of (a) the date on which the obligations of Tenant to Bank have been fully and finally paid in full and all commitments of Bank to provide financing thereunder have been terminated and (b) the date on which Bank has taken, or has failed on a timely basis to take, the Permitted Actions described in Section 2 below, Landlord shall not, without the prior written consent of Bank, exercise any rights or remedies with respect to the Goods or any other assets of Tenant or its affiliates which arise by virtue of Landlord's status as a secured creditor, whether arising under Article 9 of the Uniform Commercial Code or otherwise. This provision does not require Landlord to store Goods or prevent Landlord from requiring Tenant to remove Goods at Lease termination.

2. Actions by Bank. Upon prior written notice from Bank to Landlord addressed or delivered to Landlord, or to such other address as Landlord shall notify Bank, Landlord agrees that Bank may enter into possession of the Premises to do any or all of the following (the "Permitted Actions") with respect to the Goods: assemble, have appraised, display, sever, remove, maintain, prepare for sale or lease, advertise, inspect, repair, lease, transfer, and/or sell (at public auction or private sale); provided, however, that in no event may Bank enter into possession or remain in possession of the Premises for a period (the "Possession Period") more than sixty (60) days after the later of (a) termination of the Tenant's right to possession and (b) notice from Landlord to Bank of such termination. Bank shall pay Landlord, periodically, a per diem occupancy fee equivalent to the monthly rental provided for in the Lease (including actual and reasonable costs chargeable to the Tenant under the Lease, including, without limitation, common area maintenance charges, for taxes, insurance, and utilities), based upon a thirty (30) day month, for actual days of occupancy by Bank. Bank shall repair, or reimburse Landlord for the reasonable costs to repair, all physical damage to the Premises directly caused by Bank or its agents in removing the Goods from the Premises.

3. Notices Regarding Lease; Abandonment of Goods. Landlord agrees to use reasonable efforts to give Bank notice, and by acknowledgement of this Agreement Tenant agrees to give Bank notice, within two (2) days of termination of, any abandonment or surrender under, or default of any of the provisions of the Lease, said notice to be sent to Bank at **32605 Hwy 79, #212, Temecula, CA 92592** or such other address as Bank shall notify Landlord. After the expiration of the Possession Period, Landlord may remove and sell or otherwise dispose of the Goods.

4. Miscellaneous. This Agreement shall be governed and controlled by and interpreted under the laws of the State of California and shall inure to the benefit of and be binding upon the successors, heirs, and assigns of Landlord and Bank. Landlord will notify any purchaser or successor owner or landlord of the Premises of the existence of this Agreement, which shall be binding upon the executors, administrators, successors, transferees or assignees of Landlord. This Agreement shall bind and inure to the benefit of the respective successors and assigns of Bank and Landlord.

[Signatures on following page]

BANK:

LANDLORD:

BANK OF THE WEST

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

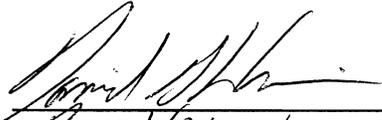
Dated: _____

Dated: _____

Consented and Agreed to:

TENANT

CITY OF TORRANCE,
a municipal corporation

By: 
Name: David Weston
Title: CFV

By: _____
Frank Scotto, Mayor

Dated: 9/30/2011

ATTEST:

Sue Herbers, CMC
City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
CITY ATTORNEY

By: _____