

Council Meeting of
April 10, 2012

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

Members of the Council:

SUBJECT: City Manager – Approve an Assignment and Assumption of Ground Lease for property located at 2700 Skypark Drive.

RECOMMENDATION

Recommendation of the City Manager that City Council approve an Assignment and Assumption of Ground Lease by and between 6th St. Governor, LLC, a California limited liability company (“Assignor”) and LDC Skypark, LLC, a California corporation (“Assignee”) for property located at 2700 Skypark operating as a Lowe’s Home Improvement Center (C2004-155).

FUNDING

Funding is not required for this item.

BACKGROUND/ANALYSIS

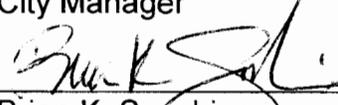
In March of 2007, an Assignment and Assumption Agreement was approved by Your Honorable Body that created a Tenants-In-Common ownership of the Leasehold that of which eighty percent is held by LDC Skypark, LLC and twenty percent by 6th St. Governor, LLC.

The Lessee has been in the process of a refinance of the Leasehold. As part of this refinance the City approved a Third Amendment to Lease that made certain modifications to the Lease, as well as approved an Estoppel Certificate. The Lessee and their bank are ready to close escrow; however, the bank has requested that the Tenants-In-Common be dissolved and that it be folded into the partnership. The ownership stake would remain the same amongst the partnership, 80% to LDC Skypark, LLC and 20% to 6th St. Governor, LLC however only one entity would remain after the transaction, LDC Skypark, LLC.

The Agreement before you does not make any material changes to the Lease and therefore staff recommends approval.

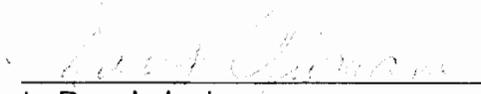
Respectfully submitted,

LeROY J. JACKSON
City Manager



By: Brian K. Sunshine
Assistant to the City Manager

CONCUR:



LeRoy J. Jackson
City Manager

Attachment:

A. Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (the “Assignment”) is made and entered on this ___ day of April, 2012 by and between 6th St. Governor, LLC, a California limited liability company (“Assignor”) and LDC Skypark, LLC, a California corporation (“Assignee”), and is consented to by the City of Torrance, a municipal corporation (the “City”).

RECITALS

A. The City and Assignee entered into that certain Lease dated as of July 27, 2004, as amended by that certain Amendment to Lease dated August 30, 2005 (collectively, the “Original Lease”) pursuant to which the City leased to Assignee certain real property located in Los Angeles County, California, commonly known as 2700 Skypark Drive, Torrance, California, as more particularly described in the Original Lease (the “Leased Premises”). Capitalized terms not otherwise defined herein shall have the same meaning as given to them in the Original Lease.

B. Assignee subsequently assigned an undivided twenty percent (20%) interest in its rights, title and interest under the Original Lease to Assignor, and Assignor accepted such assignment and assumed Assignee’s obligations under the Original Lease with respect to such undivided twenty percent (20%) interest, pursuant to that certain Second Amendment to and Assignment and Assumption of Ground Lease dated March 6, 2007 (the “Second Amendment”).

C. The City, Assignee and Assignor subsequently further amended the Original Lease by that certain Third Amendment to Ground Lease dated March 6, 2012 (the “Third Amendment”).

D. Assignor now desires to assign all of Assignor’s interest in the Original Lease, as amended by the First Amendment, the Second Amendment and the Third Amendment (collectively, the “Lease”) and the Leased Premises to Assignee, and Assignee desires to accept such assignment and to assume Assignor’s rights, title and interest obligations under the Lease and the Leased Premises.

E. Assignor and Assignee have requested that City consent to the Assignment. City desires to consent to the Assignment in accordance with and expressly conditioned upon the terms and conditions set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the promises herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the City, Assignor and Assignee agree as follows:

1. **Assignment.** As of the Effective Date (as such term is defined in Section 9 below), Assignor hereby transfers and assigns to Assignee, all right, title and interest of Assignor in and to its undivided twenty percent (20%) interest in the Lease and the Leased Premises demised thereunder (“Assignor’s Interest”).

2. Assumption; Indemnity. Assignee hereby accepts the assignment of Assignor's Interest and assumes all the obligations thereunder with respect to Assignor's Interest accruing on and after the Effective Date, and agrees to be bound by all of the terms and provisions of the Lease. It is understood and agreed that Assignor shall remain liable for all obligations under the Lease with respect to Assignor's Interest accruing before the Effective Date. Assignee agrees to indemnify, hold harmless, and defend Assignor from and against: (a) any loss, liability, or damage suffered or incurred by Assignor because of any default occurring on and after the date of this Assignment in the performance, compliance with, or observance of any of the terms, covenants, or conditions to be performed, observed, or complied with by Assignee under the Lease; and (b) all actions, suits, proceedings, demands, assessments, judgments, costs, and expenses (including reasonable attorneys' fees) incident to the foregoing.

3. City's Consent. The City hereby consents to the assignment of Assignor's Interest by Assignor to Assignee; provided, however, that such consent shall not constitute a waiver of any of the terms and provisions of the Lease nor constitute a waiver of the right of City to approve any further assignment, subletting or any other Transfer. Notwithstanding anything to the contrary set forth in the Lease, the term "Transfer" defined in Section 21 of the Lease shall also include the circumstances set forth below:

(a) any transfer or further transfers between Assignor and Assignee of any ownership interests in the Lease and/or Leased Premises; and

(b) any transfer of any membership interests in Assignee.

4. Definition of Lessee. Notwithstanding anything to the contrary set forth in the Lease, any and all references to "Lessee" under the Lease shall, on and after the Effective Date, refer exclusively to Assignee.

5. Execution of Documents Evidencing Assignment. Assignor agrees that it will, at any time and from time to time after the Effective Date, upon request by Assignee, do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledged, and delivered, all such further acts, assignments, transfers, powers of attorney, and assurances as may be required for the better assigning, transferring, granting, assuring, and confirming to Assignee, or to its successors and assigns, Assignor's Interest assigned to Assignee pursuant to this Assignment.

6. Authority and Capacity. Each of the persons signing this Assignment represents and warrants that (a) he/she is authorized to execute and deliver this Assignment, (b) this Assignment is binding upon the party for whom such person has signed, and (c) that the signature of no other party or person is required in order to bind such party.

7. Counterparts. This Assignment may be signed by the parties in several counterparts and each of the signature pages shall be deemed to be an original copy and combined shall be a document binding on all parties.

8. Effective Date. This Assignment shall have no force or effect until the lien of that certain Deed of Trust, dated as of March 8, 2007, and recorded March 13, 2007, as Instrument No. 2007-0551174 in the Official Records of Los Angeles County, California (the "Deed of Trust") shall have been released by the recordation in the Official Records of Los Angeles County, California of a Substitution of Trustee and Full Reconveyance. The date on which such

a Substitution of Trustee and Full Reconveyance is recorded in the Official Records of Los Angeles County, California is referred to herein as the "Effective Date."

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have caused this Assignment and Assumption of Lease to be properly executed by their duly authorized representatives as of the Effective Date.

ASSIGNOR:

6TH ST. GOVERNOR, LLC,
a California limited liability company

By: EXCELL INVESTMENT GROUP, LLC,
a California limited liability company,
its Manager

By: _____

Name: Chris J. Renard

Title: Manager

By: AZUZA BLVD, LLC,
a California limited liability company,
its Manager

By: _____

Name: Ricardo E. Macaya

Title: Manager

ASSIGNEE:

LDC SKYPARK, LLC,
a California limited liability company

By: _____

Name: Norman R. La Caze

Title: Manager

[Signature Page Continued]

CONSENTED TO BY THE CITY:

CITY OF TORRANCE,
a municipal corporation

By: _____

Name: _____

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF _____)
) ss.
COUNTY OF _____)

On April ____, 2012, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

On April ____, 2012, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

On April ____, 2012, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public