

COUNCIL MEETING  
June 27, 2006

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

Members of the Council:

**SUBJECT: Lessor Estoppel Certificate for property located at 2790 Skypark  
in the City of Torrance (C-2399)**

### **RECOMMENDATION**

It is the recommendation of the Land Management Team that the City Council authorize the Mayor to Execute and the City Clerk to Attest to a Ground Lease Estoppel Certificate for a Lease on City-owned property located at 2790 Skypark (Lease #C-2399).

#### Funding

There is no funding required for this action.

### **BACKGROUND**

The subject Lease was originally entered into January 1, 1983 with an expiration of December 31, 2032. Subsequent Lease amendments have set the expiration of Lease for December 31, 2052.

The subject site is 2.25 acres and has improvements, which include a 58,000 square feet of rentable office space.

The current minimum basic rent is \$7,361.28 per month. The rent is current through May 2006.

The Lease was Assigned to Skypark Atrium Q, LLC, a California limited liability company, and Nobuhiro Sotowa, as Trustee of the Survivor's Trust under the Sotowa 1988 Revocable Trust ("Trust No. 1"), and Nobuhiro Sotowa, as Trustee of the Residual Trust under the Sotowa 1988 Revocable Trust ("Trust No. 2"), as tenants-in-common by City Council action on August 25, 2005. An Estoppel Certificate was also approved at that time.

The transaction to the new tenant has been in escrow since Your Honorable Body took action at the August 2005 meeting. The property was in a 1031 exchange that requires the seller to purchase a property of equal or greater value to reduce tax liability. The property has been found which allows for this transaction to become final.

## ANALYSIS

The new Master Tenant contacted the City to have a new Estoppel Certificate approved. The need for the new certificate is for the tenant mix to be approved as well as a change in the original loan amount in the first Estoppel from what was stated as "an approximate amount of \$5,000,000 to an amount "not to exceed \$6,000,000". The increased amount will cover expenditures and other costs the new Master Tenant has made to the project while in escrow.

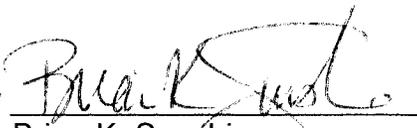
## ESTOPPEL Certificate

The Estoppel Certificate is required by the Lender to determine that the Lease is in full effect and contains no known defaults. In addition, the Certificate reiterates certain deal points contained in the Lease to verify the terms and conditions of the Master Lease.

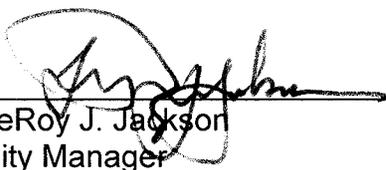
As a reminder of the transaction that was approved in August of 2005, the Sixth Amendment to Lease contained a requirement to expend \$125,000 to upgrade the air-conditioning and \$250,000 to refurbish the building. The Estoppel clarifies that the work has been completed or if not the clause is waived. Staff has worked with the buyer and seller and has not been able to review receipts for this work as it was done through a draw down account and the seller has been unable to provide documentation. Staff recommends that this language be accepted as the new tenant will be doing substantial improvements to the property which will enhance the asset value.

Respectfully submitted,

LeROY J. JACKSON  
CITY MANAGER

By   
Brian K. Sunshine  
Assistant to the City Manager

CONCUR:

  
LeRoy J. Jackson  
City Manager

BKS:LJJ/dle

Attachments: A) Council Item dated August 25, 2005  
B) Lessor Estoppel Certificate *(Limited distribution, copy available with the City Clerk)*

Council Meeting of  
August 30, 2005

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

Members of the Council:

**SUBJECT: Lessor Estoppel Certificate and Assignment and Assumption of Lease  
for property located at 2790 Skypark in the City of Torrance (C-2399)**

**RECOMMENDATION**

It is the recommendation of the Land Management Team that the City Council authorize the Mayor to Execute and the City Clerk to Attest to:

- Lessor Estoppel and Assignment and Assumption of Lease from Executive Quarters, LLC, a California limited liability company, and Skypark Atrium Q, LLC, a California limited liability company, and Nobuhiro Sotowa, as Trustee of the Survivor's Trust under the Sotowa 1988 Revocable Trust ("Trust No. 1"), and Nobuhiro Sotowa, as Trustee of the Residual Trust under the Sotowa 1988 Revocable Trust ("Trust No. 2"), as tenants-in-common (collectively, "Assignee") for City-owned property located at 2790 Skypark, Torrance, CA; and
- Authorize the City Attorney to review as to form the loan documents for this transaction.

**Funding**

There is no funding required for this action.

**BACKGROUND**

The subject Lease was originally entered into January 1, 1983 with an expiration of December 31, 2032. Subsequent Lease amendments have set the expiration of Lease for December 31, 2052.

The subject site is 2.25 acres and has improvements that include 58,000 square feet of rentable office space.

The current minimum basic rent is \$7,049.68 per month. The rent is current through August 31, 2005.

**ANALYSIS**

**ESTOPPEL Certificate**

The Estoppel Certificate is required by the Lender to determine that the Lease is in full effect and contains no known defaults. In addition, the Certificate reiterates certain deal points contained in the Lease to verify the terms and conditions of the Master Lease.

The Sixth Amendment to Lease contained a requirement to expend \$125,000 to upgrade the air-conditioning and \$250,000 to refurbish the building. The Estoppel clarifies that the work has been completed or if not the clause is waived. Staff has worked with the buyer and seller and has not been able to review receipts for this work as it was done through a draw down account and the seller has been unable to provide documentation. Staff recommends that this language be accepted as the new tenant will be doing substantial improvements to the property which will enhance the asset value.

**Consent to Assignment of Lease**

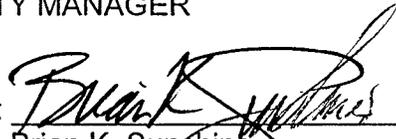
The current Master Tenant, Executive Quarters, L.L.C. has entered into escrow to sell the Master Lease and improvements to Skypark Atrium I, LLC. Staff has met with the proposed Master Tenant and recommends approval of this transaction.

The loan documents will be finalized upon approval of this transaction. Due to timing, it is recommended that the City Council authorize the City Attorney to review and approve as to form when submitted.

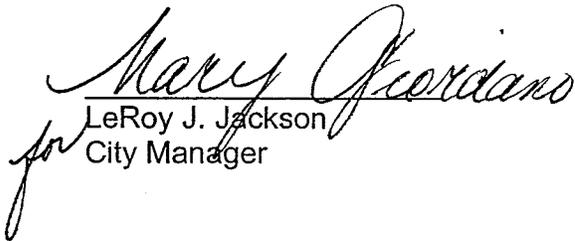
Respectfully submitted,

LeROY J. JACKSON  
CITY MANAGER

By:

  
Brian K. Sunshine  
Assistant to the City Manager

CONCUR:

  
for LeRoy J. Jackson  
City Manager

BKS/dle

- Attachments:
- A) Lessor Estoppel Certificate
    - Exhibit A: The Property
    - Exhibit B: Ground Lease (limited distribution)
  - B) Consent to Assignment and Assumption of Lease (limited distribution)
  - C) Fidelity National Title Proforma Policy Order #9822779 (limited distribution)
  - D) Form of Sublease (limited distribution)

## GROUND LEASE ESTOPPEL CERTIFICATE

This GROUND LEASE ESTOPPEL CERTIFICATE (the "Agreement") is made as of this 30th day of August, 2005, between the CITY OF TORRANCE, a municipal corporation, as ground lessor ("Ground Lessor"), SKYPARK ATRIUM I, LLC, NOBUHIRO SOTOWA, as trustee of the Survivor's Trust under the Sotowa 1988 Revocable Trust, and NOBUHIRO SOTOWA, as trustee of the Residual Trust under the Sotowa 1988 Revocable Trust, as tenants-in-common, as the lessees (collectively, "Lessees"), and in favor of FAR EAST NATIONAL BANK, as lender ("Lender").

### RECITALS

A. On or about January 1, 1983, Ground Lessor and Arthur L. Valdez and G. Arleen Valdez, husband and wife (the "Original Lessees"), entered into a certain ground lease, as amended by that certain Amendment to Lease between the Lessor and the Original Lessees dated as of March 13, 1984, that certain Second Amendment to Lease between the Lessor and the Original Lessees dated as of June 15, 1984, that certain Third Amendment to Lease between the Lessor and the Original Lessees dated as of January 12, 1987, that certain letter agreement by the Lessor to the Original Lessees dated as of November 4, 1994, that certain Fifth Amendment to Lease between the Lessor and Original Lessees dated as of January 1, 1997, and that certain Sixth Amendment to Lease dated as of September 24, 2002 by and between Lessor and Executive Quarters, LLC, a California limited liability company ("EQ") (the "Ground Lease").

B. The Ground Lease covers certain real property more particularly described in Exhibit "A" attached hereto (the "Property")

C. The Lessees are acquiring all of the interest of EQ as lessee under the Ground Lease.

D. Lessees are obtaining a mortgage loan from Lender in the approximate amount of \$5,000,000 (the "Loan"). The Loan will be secured by a mortgage lien on Lessees' leasehold interest in the Property, and will be evidenced by a promissory note, a deed of trust and security agreement and various other loan documents (the "Loan Documents").

E. As a condition precedent to the Lessees' acquisition of the interest of EQ in the Ground Lease and to the Loan, Lessees and Lender require the execution of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Ground Lessor hereby represents, warrants, covenants, certifies and agrees as follows:

### ESTOPPEL

1. A true, correct and complete copy of the Ground Lease is attached hereto as Exhibit "B."

2. The Ground Lease is presently in full force and effect and has not been amended, supplemented, modified or otherwise changed in any way, except as set forth above in Recital A.

3. Except for the liens set forth on the pro forma policy for the Property dated as of August 3, 2005, and issued by Fidelity National Title Company as Order No. 9822779, Ground Lessor has not created, incurred, assumed or suffered to exist any mortgage, deed of trust, pledge or other lien, charge or encumbrance of any kind or any security interest upon the Property.

4. Ground Lessor has not transferred or assigned its interest in the Ground Lease.

5. As of the date hereof, neither Ground Lessor nor EQ are in default under the terms of the Ground Lease or the terms of any amendment thereto, and no other grounds for termination of the Ground Lease exist.

6. The term of the Ground Lease expires on December 31, 2052. Any conditions to commencement of the term of the Ground Lease have been satisfied.

7. EQ has not prepaid any rent to Ground Lessor or made a security deposit with Ground Lessor, except as set forth in the Ground Lease.

8. Ground Lessor has not received any notice of a violation of any environmental law nor incurred any previous liability therefor with respect to the Property.

9. The Ground Lease provides for no extensions or renewals nor does it provide for an option to purchase the Property. Lessees have no right, title or interest with respect to the Property other than as a lessee under the Ground Lease.

10. The current fixed rent under the Ground Lease is \$ 84,596.16 annually, payable in monthly installments, and EQ has paid the base monthly rental, and all other monetary obligations under the Ground Lease through August 31, 2005. .

11. Ground Lessor's current address for receipt of payment notices, elections, demands or other communications under the Ground Lease is:

City Clerk  
City of Torrance  
3031 Torrance Boulevard  
Torrance, California 90503

12. Ground Lessor hereby acknowledges and agrees that Ground Lessor has approved the form of sublease submitted to Ground Lessor by Lessee, and that Ground Lessor has approved the tenancies and leases of the subtenants enumerated on Exhibit "C," attached hereto and by this reference made a part hereof; provided, however, that anything contained herein or in any other instrument to the contrary notwithstanding (a) nothing contained herein shall result in a modification or in any way affect any term or provision of the Ground Lease or relieve the tenant under the Ground Lease from its obligations and liabilities to perform the terms and provisions of the Ground Lease; (b) nothing contained herein shall give any sublessee the right or privilege to enforce any term or provision of the Ground Lease; and (c) all subleases, including but not

limited to those listed on Exhibit "C," shall remain subject and subordinate to the Ground Lease and nothing contained herein shall be deemed an agreement by Ground Lessor to recognize any sublease or grant non-disturbance or attornment to any sublessee in the event that the Ground Lease is terminated for any reason.

13. All of the obligations of the Lessees under the Ground Lease with respect to construction in Section 6A, B and C of the Ground Lease have been satisfied.

14. The obligation of the Lessees to spend \$125,000.00 to upgrade air conditioning and \$250,000.00 to refurbish the Building pursuant to Section 14E of the Ground Lease (added by the Sixth Amendment) has been satisfied or, to the extent not satisfied, is hereby waived by Ground Lessor.

15. The Reciprocal Parking Agreement Consent and Agreement dated January 2, 1983, is of no further force or effect.

16. Ground Lessor acknowledges that it has received and reviewed the form of the Loan Documents which will evidence and secure the Loan. In accordance with Section 23(A)(3) of the Ground Lease, Ground Lessor hereby irrevocably approves such documents and consents to the Loan and Lender's encumbrance of Lessees' leasehold interest in the Property pursuant to the Loan Documents, and agrees that Lender shall have the rights of a "Lessee" and a "Leasehold Mortgage" as those terms are defined in the Ground Lease.

17. Ground Lessor hereby grants to Lender the right to demand and receive a new lease upon the terms and conditions contained in the Ground Lease for the remaining term thereof if the Ground Lease terminates prior to its expiration date for any reason, including, without limitation, the bankruptcy and insolvency of Lessees or any one of them. Any new lease between Lender and Ground Lessor shall be prior to any deed of trust, mortgage or other lien, charge or encumbrance on the fee interest upon the Property as to which the Ground Lease was prior, and the new lease shall have the same right, title, interest and priority in the Property and improvements thereon as Lessees had under the Ground Lease. The provisions of this Agreement shall survive any termination, rejection or disaffirmance of the Ground Lease and shall continue in full force and effect.

18. Ground Lessor confirms that the fair market value adjustments made pursuant to Section 3(C) of the Ground Lease shall be based solely on the value of the Property not including the value of the improvements located thereon.

19. If Lessee fails to cure any default within the applicable cure periods set forth in the Ground Lease, Ground Lessor agrees that Lender may have an additional five (5) days to cure Lessees' monetary defaults and an additional fifteen (15) days to cure Lessees' nonmonetary defaults. Such additional Lender cure periods shall commence on the day immediately following the lapse of Lessees' applicable cure periods without any additional notice from Ground Lessor to Lender.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day, month and year first written above.

Ground Lessor:

CITY OF TORRANCE, a municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_, City Attorney

By: \_\_\_\_\_  
\_\_\_\_\_, Deputy City Attorney