

**SECOND AMENDMENT
TO GROUND LEASE
WITH RESPECT TO THE BLOCK 7 THEATER PARCEL**

This SECOND AMENDMENT ("Second Amendment") TO GROUND LEASE is entered into as of this 8th day of March, 2011, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE, a public body, corporate and politic, established and operating pursuant to the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000, et seq.) ("Landlord" or "Agency"), F.C. PAVILION L.L.C., an Ohio Limited Liability Company ("Assignor"), and FC PAVILION THEATRE, LLC, a California Limited Liability Company ("Assignee").

RECITALS

A. Landlord and a predecessor in interest to Assignor entered into that certain Ground Lease dated February 3, 1994 ("Original Lease"), wherein Tenant's predecessor leased from Landlord certain real property as more particularly described on Exhibit A attached hereto ("Property").

B. The assignment of the Original Lease to Assignor by 50 West San Fernando Associates was approved by the Agency's Board of Directors pursuant to its Resolution No. 4451 adopted May 21, 1998.

C. The Original Lease requires that the Site be operated as a theater. United Artists Theatre Circuit, Inc. ("UA") was the original subtenant of the Site, however, UA subsequently vacated and abandoned the Site.

D. On October 14, 2003, the Agency Board approved a First Amendment to the Original Lease ("First Amendment"). Concurrent with the First Amendment and with the approval of Landlord, Tenant entered into a sublease ("Cameras Sublease") of the Site with Cameras Cinema Management Corporation, a California corporation ("Cameras"). The First Amendment (i) provided for a portion of the rent payable under the Cameras Sublease to be payable to Landlord, (ii) allowed Tenant the option to acquire the fee underlying the Site earlier than the time provided in the Original Lease, and (iii) eliminated the covenant that the Site be operated as a theater if, upon a default by Cameras resulting in an early termination of the Cameras Sublease, Landlord is unable to obtain an substitute subtenant to operate a theater at the Site within a certain period of time and as otherwise provided in the First Amendment. The Original Lease and the First Amendment shall be collectively referred to herein as the "Lease".

E. Due to various circumstances, Cameras has been unable to pay its rent to Tenant since April of 2010 and was on the verge of going dark. Acting in its capacity as a redevelopment agency, Landlord desires to retain the Cameras in the downtown to prevent the blight associated with a large vacant building. Moreover, the presence of Cameras in downtown provides a significant entertainment anchor attracting residents and visitors to the downtown and helps activate various downtown redevelopment project areas. Moreover, a cinema in that location results in a more vibrant and active public space along the Paseo de San Antonio.

F. Landlord and Tenant now desire to further amend the Lease to suspend the Supplemental Rent provision in the Lease for a period of up to five years, as well as to provide for the assignment of Tenant's rights under the Lease from Assignor to Assignee.

NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

1. The following paragraph shall be added to Section 1 of the First Amendment:

"Notwithstanding the above, the payment of Supplemental Rent shall be suspended for a period of up to five (5) years, commencing April 1, 2010 through March 31, 2015 ("Suspension Period"). In consideration of the Suspension Period, Tenant shall require Cameras under the Cameras Sublease to provide quarterly financial statements and certified annual statements to Tenant and Agency during the Suspension Period. If Cameras' gross sales exceed Three Million One Hundred Seventy-Seven Thousand (\$3,177,000) for any rent year, the Suspension Period shall cease. Thereafter, commencing on the next rent year, Cameras shall resume paying its full base rent under the Cameras Sublease, and Agency shall again receive Supplemental Rent."

2. Assignment. Assignor hereby transfers and assigns to Assignee all of Assignor's right, title and interest in the Lease. Assignee hereby accepts the assignment granted herein, and assumes and agrees to perform all of the terms, covenants, conditions and other obligations of Tenant under the Lease. Assignee henceforth shall be referred to as Tenant.

3. Approval of Assignment. The Agency hereby approves the assignment of Lease from Assignor to Assignee as set forth in Paragraph 2 above.

4. Conflict. In the event of a conflict between the terms and provisions of this Second Amendment and the terms and provisions of the Lease, the terms and provisions of this Second Amendment shall control. Except as amended, the

Lease shall remain unchanged and in full force and effect. Any capitalized terms used herein and not otherwise defined herein shall have the meaning given such term in the Lease.

5. Counterparts. This Second Amendment may be signed in counterparts, all copies of which, when taken together, shall comprise one fully-executed documents.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Second Amendment as of the date first hereinabove written.

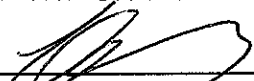
APPROVED AS TO FORM:



Supervising Sr. Associate Counsel

LANDLORD

REDEVELOPMENT AGENCY
OF THE CITY OF SAN JOSE



Executive Director

ASSIGNEE

F.C. PAVILION L.L.C

By: Forest City Commercial
Group, Inc.,
Administrative Member


By 

Duane F. Bishop, Jr.
Executive Vice President

ASSIGNEE

FC PAVILION THEATRE, LLC

By: Forest City Commercial
Group, Inc.
Managing Member

By 

Duane F. Bishop, Jr.
Executive Vice President

EXHIBIT A

DESCRIPTION OF REAL PROPERTY

Real Property in the City of San Jose, County of Santa Clara, State of California, described as follows:

Parcel 3 as shown on that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, State of California on November 17, 1986, in Book 567 of Maps, page 13 and 14.

APN: 467-46-105

INSTRUCTIONS FOR INSURANCE APPROVAL

Forward the following to: **RISK MANAGEMENT**, 200 East Santa Clara Street
2nd Floor Wing, San Jose, CA 95113

1. This form (149-7) completed;
2. Copy of face page of Contract;
3. Copy of insurance requirements included in contract.

NOTIFICATION OF CONTRACT BEING PROCESSED

DATE: 03.22.11

Service Provider: FC Pavilion, LLC	Phone No. (408) 286-2076
Second Amendment to Ground lease to suspend the Supplemental Rent provision	
Project: Camera Cinemas	
Start Date <u>02/03/94</u>	Project Amount: Total \$N/A Completion Date <u>12/31/41</u>
Scope of Work: Ground Lease - Block 7 Theater Parcel	
Department: San Jose Redevelopment Agency	Division: Transactions & Real Estate
Department	Extension 408.795.1839
Contact: Allen Ishibashi, Project Coordinator	

COMPLIANCE WITH INSURANCE REQUIREMENTS

Comments:	Digitally signed by Michele Coveau DN: cn=Michele Coveau, o=City of San Jose, ou=Risk Management, email=michele.coveau@sanjoseca.gov, c=US Date: 2011.03.29 11:27:50 -07'00'
Signature: <u>Michele Coveau</u>	Date:
Risk Management	

FOR RISK MANAGEMENT USE ONLY
Date Forwarded to SJRA - Sandy
Shayesteh

COMPLIANCE WITH BOND REQUIREMENTS

Signature: _____	Date:
City Clerk	

Form 149-7 (12/97)fv

THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE

MEMORANDUM

TO: REDEVELOPMENT AGENCY BOARD	FROM: HARRY S. MAVROGENES EXECUTIVE DIRECTOR
SUBJECT: SEE BELOW	DATE: FEBRUARY 28, 2011

SUBJECT: SECOND AMENDMENT TO THE GROUND LEASE WITH F.C. PAVILION, LLC FOR 201 SOUTH SECOND STREET (CAMERA 12 SITE)

RECOMMENDATION

It is recommended that Redevelopment Agency Board approve the second amendment to the Ground Lease Agreement with F.C. Pavilion, LLC (Forest City) suspending the pass-thru rent from Camera 12 for a period up to five years.

OUTCOME

Approval will prevent Forest City from evicting Camera 12 and will keep Camera 12 financially viable. In return, the City, Agency and community will continue to have a first-run multi-screen movie theater in the downtown.

BACKGROUND

Camera Cinemas is a locally-based theater operator that has screened films in downtown San Jose for over 30 years. Camera Cinemas began as a single screen film operator in downtown San Jose specializing in art and independent films. Camera Cinemas now operates 24 screens in four South Bay locations showing first-run films in addition to the art and independent films. Over the past 30 years, Camera Cinemas has hosted numerous community events such as Cinequest, the Asian Film Festival, and the Jewish Film Festival.

On February 3, 1994, the Agency and F.C. Pavilion, LLC (formerly 50 W. San Fernando Associates) ("Forest City") entered into a long-term ground lease for the Block 7 theater parcel located at 201 S. Second Street. The lease required that

developed and operated as a theater. United Theatre Circuit, Inc. (UA) was the original subtenant of the eight-screen multi-story theater complex. UA subsequently vacated and abandoned the site in 2000.

On October 13, 2003, Camera 12 and Forest City entered into a 15-year lease with one 5-year option. The rent is a combination of base rent, currently \$21,180 per month or \$0.30 per square foot on a monthly basis, and percentage rent, which is based on predetermined gross sale numbers. The current percentage rent threshold is \$3,177,000. The base rent is schedule to increase to \$24,567 per month on January 1, 2014 and the percentage rent threshold will increase to \$3,685,050.

On October 14, 2003, the ground lease between Forest City and the Agency was amended to facilitate the sublease of the space to Camera 12. This first amendment added a supplemental rent provision in which the Agency would receive 60% of any rent paid to Forest City by Camera 12. In addition, the first amendment added an early purchase option and modified the theater use restriction to allow any commercial use on the site if Camera 12 went dark and Forest City was unable to find another theater operator within six months.

Also on October 14, 2003, the Redevelopment Agency entered into a \$2,500,000 Commercial Building Loan Agreement with Camera 12 for the rehabilitation of the former United Artists Theaters into the current Camera 12 theater complex. This loan was needed to expand the eight-screen theater to 12 screens and to help replace equipment removed by UA. On March 9, 2004, the Agency Board approved an amendment to the Commercial Building Loan to, among other things, increase the loan amount to \$3,250,000.

Camera 12 opened to the public in June 2004. Due to the overall decline in the movie theater industry in the following years, slow growth in the downtown residential population and the continuing challenges of attracting movie patrons to Downtown, Camera 12 was unable to make the required monthly loan payments of \$18,024.42 to the Agency from May 2005 until February 2007.

On November 18, 2008, the Agency executed the second amendment to the Commercial Building Loan. This amendment reduced the interest rate to 2%, made the term ten years, required \$2,500 monthly payments and added a loan credit provision in which Camera 12 receives a monthly credit of \$34,287 against the loan balance in exchange for providing five theater slides to the Agency. The slides are projected during all hours of operations on 24 screens at all Camera Cinema complexes (Camera 12, Camera 3, Camera 7 Pruneyard in Campbell and the Los Gatos Cinema).

Despite its best efforts to generate adequate revenue, the recent recession has significantly impacted the gross receipts for Camera 12, which was compounded with a 25% rent increase and the increased costs of first-run film rentals. Camera 12 stopped paying all rent to its landlord, Forest City, beginning in April 2010. For many months, the Agency, Forest City and Camera 12 have all been exploring options to keep Camera 12 in operation. On January 31, 2011 Camera 12 presented a rent plan that was accepted by Forest City. The rent plan prevented Camera 12 from being served a three-day notice. The basic outline of the plan is below:

1. Camera 12 would immediately make a \$50,000 payment towards past due rent and CAM (past due rent did not include the Agency's portion).
2. The remaining past due balance of approximately \$110,000 would be amortized over the remaining term of the lease (does not include the Agency's portion).
3. Beginning March 1, 2011, Camera 12 would begin making payments of \$13,500 to Forest City for rent and CAM.

For this plan to be viable, the Agency would need to suspend its 60% supplemental rent provision in the ground lease between Forest City and the Agency.

ANALYSIS

The presence of Camera 12 in downtown provides a significant entertainment anchor for residents and visitors. Camera 12's business activates the core of downtown, drawing in theater and film festival patrons from the afternoon into the late evening. The result is a more vibrant and active public realm along the Paseo de San Antonio with spillover benefits for nearby restaurants and retail shops. With the number of residents in downtown increasing with the completion of several high-rise condominiums and growing retail, it is critical to maintain the presence of a first-run movie theater in downtown.

While the Camera 12 has maintained first-run movie theater operations in downtown, its revenues have been insufficient for Camera Cinemas to make its required rental payments under the existing lease with Forest City.

Gross Revenues: Comparison of Actual with Kagan Appraisal Projection*

	2007	2008	2009	2010
Kagan Projection*	\$2,704,000	\$2,859,000	\$2,935,000	\$3,114,000
Actual Gross	\$2,799,327	\$2,824,897	\$2,810,416	\$2,673,339
As % of Projection	104%	99%	96%	86%

* Camera 12 contracted with Kagan Media Appraisals, an industry expert with over 38 years experience, in 2008 to review the movie theater market. The assessment conducted by Kagan examined Camera 12's performance on box office revenues and operational costs and projected future revenues and cash flows based on expected changes in the theater industry and substantial growth in the downtown resident population.

In addition to the declining gross sales noted above, the base rent increased 25% on January 1, 2010, from \$16,942.50 to \$21,180 per month. The next scheduled increase is in January 2014.

In December 2010 the Agency authorized Keyser Marston Associates (KMA) to analyze Camera 12's rent structure, expenses and gross revenues to determine if rent relief was justified. Based on the report submitted in February 2011, KMA has come to the conclusion that rent relief is justified for Camera 12.

Under the proposed second amendment to the Ground Lease with Forest City, the Agency would suspend the 60% pass-thru rent provision in the lease for a period of up to five years from April 1, 2010 (retroactive) thru March 31, 2015. The suspension of the 60% pass-thru rent would save Camera 12 \$12,708 per month from April 1, 2010 to December 31, 2013 and \$14,740 a month from January 1, 2014, to March 31, 2015. In addition, Camera 12 would be required to provide quarterly financial statements and certified annual statements to Forest City and the Agency during this suspension period. If the gross sales exceed \$3,177,000 for any rent year the rent suspension period shall cease and Camera 12 shall resume paying full base rent under their lease with Forest City; therefore, the Agency would again receive its 60% pass-thru share. The gross sale number of \$3,177,000 is the current percentage rent threshold in the lease between Forest City and Camera 12.

Since the Agency's lease is with Forest City and not directly with Camera 12, Forest City is simultaneously amending its lease with Camera 12 to mirror the rent suspension and financial statement provisions in the proposed second amendment to the Ground Lease between the Agency and Forest City.

EVALUATION AND FOLLOW-UP

The required quarterly financial statements and certified annual statements from Camera 12 will provide the Agency with the ongoing ability to monitor the financial viability of Camera 12 and the \$3,177,000 gross sales threshold that, if met, will reinstate the suspended rent schedule.

PUBLIC OUTREACH/INTEREST

The proposed action does not meet any of the criteria noted below for added outreach efforts. This staff report was posted on the Agency's website and made available for public review in the Agency's public lobby area.

- Criterion 1:** Requires Agency action on the use of public funds equal to \$1 million or greater.
- Criterion 2:** Adoption of a new/revised policy that may have implications for the public health, safety, quality of life or financial/economic vitality.
- Criterion 3:** Consideration of proposed changes to service delivery, programs, or staffing that may have impacts to community services and have been identified by staff, the Board or community groups as requiring special outreach.

COORDINATION

This item has been coordinated with the Agency's General Counsel.

FISCAL IMPACT

April 1, 2010, to March 31, 2015: \$817,344 (Potential foregone rent over the five-year period)

Rental Period	Monthly Rent	Annual Rent	Months
4/1/10 to 3/31/11	\$12,708	\$152,496	12
4/1/11 to 3/31/12	\$12,708	\$152,496	12
4/1/12 to 12/31/12	\$12,708	\$114,372	9
1/1/13 to 3/31/13	\$14,740	\$44,220	3
4/1/13 to 3/31/14	\$14,740	\$176,880	12
4/1/14 to 3/31/15	\$14,740	<u>\$176,880</u>	12
TOTAL OVER FIVE YEARS:		\$817,344	

CEQA

Not a project, File No. PP10-066(f), lease of existing space for the same use.



HARRY S. MAVROGENES
Executive Director



LEGAL DOCUMENT REQUEST (GENERAL)

e-mailed to me before 02/11/11

PROJECT COORDINATOR/MGR Allen Ishibashi *AI*

DATE: 2/10/11

DIVISION DIRECTOR APPROVAL Peter Larko *P Larko*

DATE: 2/10/11

TYPE of Agreement: LEASE Amendment No. 2 Contract No. N/A

BOARD Approval: Date 3/8/11 Not Required Budget Adjustment? Yes No

Note: Board Approval is required, attach a copy of the Draft Board Memo attached

NAME of Contracting Party: F.C. Pavilion LLC NEW OLD - VENDOR # 15534

Note: If an amendment, include any name changes since the original agreement

BUSINESS FORM of Contracting Party (i.e. corporation, partnership, incorporated, etc.): Incorporated LLC

CEQA review: Not Required

Redevelopment PROJECT AREA(s): San Antonio Plaza

Project Name: _____

TERM of the Agreement: 47 years

Note: The term should extend past the Schedule of Performance.

DATE for Contracting Party to begin work (New Contracts): N/A

Maximum amount of COMPENSATION: N/A Contingency _____
Basic _____ Reimbursables _____ Additional Services _____

Is the Compensation to be paid based on TIME AND MATERIALS (hourly) or LUMP SUM (per task)? N/A
Hourly Rate: _____ *Note: Agency policy is to provide for lump sum (without reimbursables) whenever appropriate.*

Are any REIMBURSABLE EXPENSES allowed? Yes No If so, attach a list.

Note: Agency policy is NO mark-ups on reimbursables/subconsultants.

Will SUBCONSULTANTS be used? Yes No If so, attach a list.

CONTACT INFORMATION for Contracting Party:

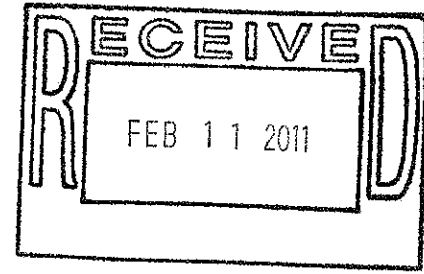
Principal Contact: Diana Beechie

Address: 50 W. San Fernando, 1st Floor

San Jose, CA 95113

Phone Number: 408-286-2076

Fax Number: _____



ATTACHMENTS: To be completed for both New and Amended contracts

Scope of Services

Note: Scope, including any ADDITIONAL SERVICES, should be drafted, keeping in mind logical order, completeness, clear definitions of deliverables and specific reference to any standards that need to be incorporated.

Schedule of Performance, including dates for deliverables

Schedule for Compensation

Insurance Requirements *(148-22 request to Connie on 02/10/11 SC 2/11/11)*

EDD Letter or W-9

Any Additional Provisions unique to this agreement

Fund Source: Bus. Unit Reduction in rent revenue Object _____ Job Cost _____

Contingency: Bus. Unit N/A Object _____ Job Cost _____

*****FOR FINANCE USE ONLY*****

Within Budget? Yes No _____

Finance Approval *Sandy [Signature]*

Date 2/11/2011