CITY CLERK
ORIGINAL

C-8088-3
04/14/2015

FIRST AMENDMENT TO
GROUND LEASE

THIS FIRST AMENDMENT ("Amendment") is made and entered into this 14 day of APRIL, 2015, to be effective as of April 14, 2015, by and between the City of Glendale, an Arizona municipal corporation (the "City"), and Glendale Westgate Lodging Investors II, LLC, a Wisconsin limited liability company that is authorized to do business in Arizona ("GWLI"), to amend a Ground Lease (Contract No. C-8088) dated June 12, 2012 between the City and GWLI (the "Lease").

RECITALS:

WHEREAS, pursuant to the Lease, GWLI leases to the City the approximately six acres of undeveloped land located in Maricopa County, Arizona, as more fully described in the Lease (the "Premises"), which the City has improved and uses for parking purposes; and

WHEREAS, pursuant to the terms of the Lease, GWLI delivered to the City a notice of termination by letter dated December 1, 2014, stating that GWLI is contemplating development of a portion of the Premises, depicted as Lot 12A on Exhibit A-2-Amend ("Developed Lot") attached to and incorporated herein, and may elect to terminate the Lease in mid-2015, at a date to be mutually agreed upon by City and GWLI ("Notice); and

WHEREAS, despite the Notice, the City and GWLI desire for the Lease to continue until development, if any, occurs; and

WHEREAS, if development occurs, the City and GWLI desire that the City continue to lease Lot 12B, depicted on Exhibit A-2-Amend ("Undeveloped Lot") and for GWLI's right to terminate the Lease as to Lot 12A to be extended; and

WHEREAS, City and GWLI desire to amend the terms of the Lease, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. No Termination Until Development Occurs. Notwithstanding the Notice, the Lease will continue pursuant to its terms, except as amended in Paragraphs E, F and G herein, unless GWLI delivers written notice to the City that development will occur on the Premises ("Development Notice"). Development Notice shall specify the date on which Lot 12A will not be available for the City's parking use ("Development Date") and shall be delivered to the City at least 90 days prior to the Development Date.

B. Use of Developed Lot. Notwithstanding any Development Notice, the City may continue to use the Developed Lot up to the Development Date. In the event the City does not surrender the Developed Lot to GWLI on or before the Development Date, or such later date mutually agreed to by the Parties, in the condition required by the Lease, the City will reimburse GWLI its actual expense to remove improvements constructed by the City on the Developed Lot, except those that the parties agree are not required to be removed.

C. Lease of the Undeveloped Lot. Notwithstanding any Development Notice, GWLI may not terminate the Lease as to the portion of the Premises designated as the Undeveloped Lot until after March 1, 2016 (with notice being due by December 1, 2015). Thereafter, the termination provisions of Section 2.2 of the Lease apply with respect to the Undeveloped Lot.

D. Notice and Amended Terms. In the event GWLI provides a Development Notice, City's use of the Undeveloped Lot will continue pursuant to the terms of the Lease, except as amended as follows. These amendments will be effective on the Development Date or the date the City surrenders the Developed Lot to GWLI pursuant to Paragraph 13.4 of the Lease, whichever is earlier:

1. Premises. The definition of Premises will be amended to include only Undeveloped Lot, depicted as Lot 12B on Exhibit A-2-Amend attached hereto, comprising approximately 257 parking stalls. Exhibit A-1 to the Lease will be amended to add "A portion of" prior to the existing legal description of the Premises.

2. Rent. Monthly rent will be the proportional share of property taxes paid or payable by GWLI with respect to the Undeveloped Lot. Until such time as the area depicted as the Undeveloped Lot is taxed as a separate tax parcel, such proportional property taxes will be calculated by multiplying the total real property tax bill for the tax parcel of which the Undeveloped Lot is a part by the fraction in which the numerator is the number of parking spaces on the Undeveloped Lot (approximately 257 spaces) and the denominator is 516 spaces, rounded to the nearest hundredth, divided by 12. Rent for any partial period shall be pro-rated.

3. Section 3.2. GWLI and City acknowledge and agree that Section 3.2 of the Lease regarding additional rent for use exceeding 15 days is amended to replace "$3,000" with "$1,500."

4. Section 4.2. The definition of "Adjacent Hotel" will be amended to include a hotel to be developed on Lot 12A.

E. Exhibit A-2. Exhibit A-2 to the Lease is hereby replaced in its entirety by Exhibit A-2-Amend, attached hereto.

F. Section 2.2.c. GWLI and the City acknowledge and agree that Section 2.2.c of this Lease is hereby deleted and is of no further force and effect.

G. Section 4.5.

a. 4.5(a). The Mortgage defined in Section 4.5(a) is hereby amended to read as follows: "Deed of Trust and Fixture Filing dated January 28, 2014 and recorded in the Office of the County Recorder of Maricopa County, Arizona as Document Number 20140069147, in favor of BMO Harris Bank N.A."

b. Ground Lease Terminated. GWLI and the City acknowledge and agree that the Ground Lease defined in Section 4.5(b) of the Lease terminated effective January 28, 2014, and as of the date hereof GWLI owns fee simple title to the Premises. References in the Lease to the Ground Lease are deleted. As of the date hereof, GWLI owns a fee title interest in the Premises rather than a leasehold interest.

H. Capitalized Terms and Other Terms and Conditions. All capitalized terms used herein shall have the meaning set forth in the Lease, unless expressly given a different meaning herein. All of the terms and conditions of the Lease not expressly or by necessary implication modified herein shall have the meaning and definition as set forth in the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment effective the day and year first above written.

GWLI:

GLENDALE WESTGATE LODGING
INVESTORS II, LLC, a Wisconsin limited
Liability company

By: JSL Investments, LLC, Managing
Member

By: _____
Jeffrey S. Lenz, Member

State of Wisconsin)
) ss
County of Dane)

The foregoing instrument was acknowledged before me this 6th day of April, 2015 by Jeffrey S. Lenz, the sole Member of JSL Investments, LLC, a Managing Member of Glendale Westgate Lodging Investors II, LLC, a Wisconsin limited liability company, on behalf of the company.

Barbara S. Fletcher
Notary Public

My Commission Expires:
2/26/2017

BARBARA S. FLETCHER
NOTARY
PUBLIC
STATE OF WISCONSIN

CITY:

CITY OF GLENDALE,
an Arizona municipal corporation

Richard A. Bowers
Acting City Manager

ATTEST:

Pamela Hanna, (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

Consent of Lender of Record

The undersigned, the Lender and holder of the Mortgage identified herein, acknowledges, consents to and approves the foregoing First Amendment to Ground Lease, and the provisions thereof:

BMO HARRIS BANK, N.A.

By: Sarah O'Hara

Name: Sarah O'Hara

Title: Vice President

State of Wisconsin)
) ss
County of Dane)

The foregoing instrument was acknowledged before me this 7th day of APRIL, 2015 by SARAH O'HARA, its V-P of BMO Harris Bank N.A. on behalf of the company.

Dena M Drennan
Notary Public

My Commission Expires:
1-22-17

DENA M. DRENNAN
NOTARY
PUBLIC
STATE OF WISCONSIN
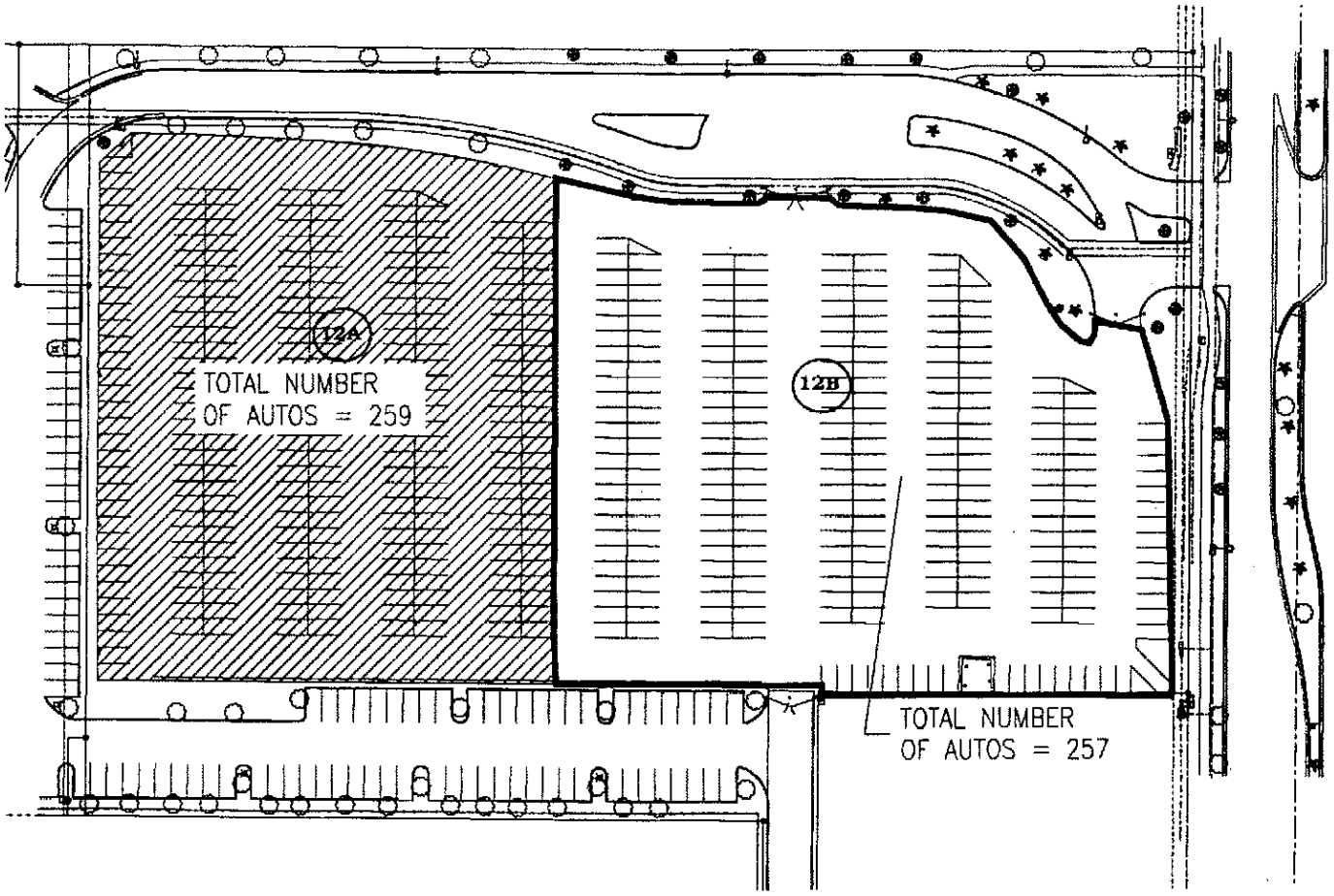
EXHIBIT A-2-AMEND
Depiction of Premises