

**SECOND AMENDMENT TO PARKING  
AND RECIPROCAL EASEMENT AGREEMENT**

THIS SECOND AMENDMENT TO PARKING AND RECIPROCAL EASEMENT AGREEMENT ("Second Amendment") is entered into as of the \_\_\_\_ day of February, 2012, by and between the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a public body corporate and politic ("Agency"), and NNN CITY CENTRE PLACE, LLC, NNN CITY CENTRE PLACE 1, LLC, NNN CITY CENTRE PLACE 2, LLC, NNN CITY CENTRE PLACE 3, LLC, NNN CITY CENTRE PLACE 4, LLC, NNN CITY CENTRE PLACE 5, LLC, NNN CITY CENTRE PLACE 6, LLC, NNN CITY CENTRE PLACE 7, LLC, NNN CITY CENTRE PLACE 8, LLC, NNN CITY CENTRE PLACE 9, LLC, NNN CITY CENTER PLACE 10, LLC, NNN CITY CENTRE PLACE 12, LLC, NNN CITY CENTRE PLACE 13, LLC, NNN CITY CENTRE PLACE 14, LLC, NNN CITY CENTRE PLACE 17, LLC, NNN CITY CENTRE PLACE 18, LLC and NNN CITY CENTRE PLACE 19, LLC, each one a Delaware limited liability company ("Building Owner") acting by and through Daymark Properties Realty, Inc ("Agent" for Building Owner). In consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Agency and the Developer agree as follows:

**RECITALS:**

WHEREAS, Agency and Intown Office LLC, a Colorado limited liability company ("Developer"), previously entered into a Disposition and Development Agreement ("DDA") and the Parking and Reciprocal Easement Agreement dated June 26, 2000 (the "PREA"), and the terms used in this Second Amendment to the PREA have the same meanings as defined in said Agreements;

WHEREAS, Agency is record owner of a certain real property located in Las Vegas, Nevada, which is identified as APN 139-34-301-004 ("Garage Property"), which is described more particularly on Exhibit B to the PREA on which was constructed a 3-level parking garage in accordance with the DDA;

WHEREAS, at time of execution of the DDA and PREA Developer was record owner of a certain real property located in Las Vegas, Nevada, which is identified as APN 139-34-301-003 ("Building Property"), which is described more particularly on Exhibit A to the PREA on which was constructed a 6-level commercial office building in accordance with the DDA;

WHEREAS, Agency and Developer executed on September 18, 2002, a Second Amendment to the DDA and a First Amendment to the PREA;

WHEREAS, on November 5, 2004, Building Owner purchased the Building Property from Developer;

WHEREAS, the conditions of the PREA are recorded as a covenant against the Building Property and the Garage Property;

WHEREAS, as the current owners of the respective properties therefore the Agency and Building Owner are subject to the conditions of the PREA;

WHEREAS, on June 24, 2010 a representative of the Agency provided Notification of Default to Building Owner based upon requirements of the PREA;

WHEREAS, representatives of the Agency and Building Owner have reviewed and reached agreement for resolution of Agency concerns, and have also identified mutually desirable modifications to the PREA;

WHEREAS, the parties wish to memorialize issue resolution and the proposed modifications to the PREA with execution and recordation against the respective parcels this Second Amendment;

WHEREAS, both parties and any respective property owner successors will be bound by the conditions of this agreement;

WHEREAS, both parties agree execution and recordation of this document satisfies all issues raised in the aforementioned June 24, 2010 Agency correspondence;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein Agency and Building Owner hereby agree as follows:

A. Amendments to PREA

1. PREA Section 3.a. Section 3.a of the PREA was deleted and replaced in the First Amendment to the PREA. Subsection (iii), which was adopted in that amendment is hereby replaced as shown below, and the Building Owner will be granted a \$3,000 credit towards arrears in conjunction with this change:"

"(iii) Due to a reduction in the number of spaces in Lot A (top and bottom garage levels), the Building Owner has the option of leasing a maximum of 7 spaces in Lot B (ground level). The spaces may be taken or returned to the Agency at any time, with a minimum 30-day notice, or shorter notice with mutual agreement. These spaces are identified as 97, and 8-through-13, as identified in the attachments to the First Amendment to the PREA, or other such 7 spaces as may be mutually agreed upon. Rent for these spaces will be in accordance with Sections 3.c and 3.e."

2. PREA Section 3.c: Section 3.c of the PREA is hereby replaced in its entirety with the following text:

c. “Rent: Effective for the rent payment for June, 2009, the unit price for the parking spaces assigned to the Building Owner is established as \$68.91 per space per month. Adjustments to the unit price will be made on an annual basis, effective with the payment for March of 2010, and adjusted for each subsequent March payment thereafter. The rate adjustments will be calculated using the Consumer Price Index values for the prior calendar year as provided by the United States Department of Labor and identified as “All Urban Consumers U.S. City Average All Items 1982-84=100”. The Agency will provide 30-day notice of each rate adjustment. Each annual rate adjustment is limited to a range of 0%-to-2%, and will be rounded to the nearest \$0.01. The rate adjustment for March, 2011, is acknowledged as 1.7%. Utilizing that rate adjustment provides a unit price for the period of March, 2011, thru February, 2012, of \$70.08 per space per month. Reconciliation of amounts due for the period of June 2009, thru April, 2011, shall be in accordance with Section B of the Second Amendment to the Agreement”

3. PREA Section 3.d: This section is deleted in its entirety.

4. PREA Section 3.e: Section 3.e of the PREA is hereby replaced in its entirety with the following text:

e. “Payment of Rent: The Building Owner shall pay all Parking Rent, monthly, in advance, by the 20<sup>th</sup> of each month. In the event a due date falls on a Friday/Saturday/Sunday, payment shall be due on the following Monday. In the event a due date falls on a holiday it shall be due the following work day (Monday thru Thursday). If a payment is not received by the due date, a late payment penalty of 2% of the amount due shall be required of the Building Owner. If shared cost information required for net payment calculation is not immediately available, the Building Owner may use a reasonable estimate based upon prior calculations, and adjust for actual costs the following month. If payment is not received prior to the end of a month, the Agency may invoke options provided for in Section 15 (“Default”) of the PREA. Payment shall be made to the City of Las Vegas Department of Finance and Business Services, which is currently located at 400 Stewart Avenue (6<sup>th</sup> Floor), Las Vegas, NV 89101. In the event of an address change in this delivery location, the Agency shall provide 30 days prior notice”

5. PREA Section 3.f: Section 3.f of the PREA is hereby replaced in its entirety with the following text:

f. “Excess Parking Space Option: In the event that the Building Owner has insufficient demand for the allotment of spaces in the top and bottom levels, the Building Owner may temporarily return to the Agency up to 100 spaces on the top level. Such returns must be made in increments of 25-spaces. To exercise this option the Building Owner must provide a minimum of one-month notice, with the return effective the first day of the following month. For example, notification provided on July 15, would be effective on September 1. The identification of returned spaces will start on the ramp, then work upwards and to the east in a sequential manner. The spaces must be returned for a minimum of 3 months, and request for return of spaces by the Building Owner

requires a minimum of two months notice, with the return effective the first day of the following month. In the event that any spaces on the top level are returned, it will be necessary to terminate the gate card access, so that the returned spaces can be opened to metered public parking.”

**B. Reconciliation of Due Amounts.**

1. For the 13 payments made beginning with the June, 2009, payment and ending with the June, 2010, payment, both parties recognize the Building Owner underpaid at a rate of \$16.91 (\$68.91-\$52.00) per space per month. That yields a monthly underpayment of \$7,322.03, and for the 13-month period an aggregate underpayment of \$95,186.39.
2. For the 8 payments made beginning with the July, 2010, payment and ending with the February, 2011, payment, both parties recognize the Developer overpaid at a rate of \$7.39 (\$76.30-\$68.91) per space per month. That yields a monthly overpayment of \$3,199.87, and for the 8-month period an aggregate overpayment of \$25,598.96.
3. For the 2 payments made beginning with the March, 2011, payment and ending with the April, 2011, payment, both parties recognize the Developer overpaid at a rate of \$6.22 (\$76.30-\$70.08) per space per month. That yields a monthly overpayment of \$2,693.26, and for the 2-month period an aggregate overpayment of \$5,386.52.
4. The payments for May, 2011, forward will be at the rate of \$70.08 per space per month, with applicable annual adjustments.
5. A credit of \$3,000 is provided the Building Owner for reducing the allocation of ground level spaces from 9 to 7, in accordance with the changes to Section 3.a.iii of the PREA.
6. Based upon amounts provided above, there is an outstanding balance of \$61,200.91 due the Agency by the Building Owner (\$95,186.39-\$25,598.96-\$5,386.52-\$3,000).
7. Both parties agree that the Developer will be allowed to reconcile the outstanding amount, \$61,200.91, over an eighteen (18) month period, beginning with the March, 2012, payment and ending with the August, 2013 payment. The arrears will be subject to 6% interest effective March 1, 2012. To simplify the calculations the payments will be equally distributed over the eighteen month period, in an amount of \$3,754.84 each month. That calculation is based upon a monthly interest rate of 0.5% and assumed mid-month payment. These payments will be in addition to the normal monthly payments, and are subject to the same late penalty and default clauses.



WHEREFORE, the parties hereto have caused this Second Amendment to be executed by their respective representatives thereunto duly authorized, to be effective when approved and signed by the Agency as of the date first written above.

CITY OF LAS VEGAS  
REDEVELOPMENT AGENCY

By: \_\_\_\_\_  
Carolyn G. Goodman, Chairwoman

Attest:

\_\_\_\_\_  
Beverly K. Bridges, MMC, Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Chief Deputy City Attorney      Date

NNN CITY CENTRE PLACE LLC et al  
Daymark Properties Realty, Inc.  
As Agent for Building Owner

By: John Alh  
Title: PRESIDENT & CEO

“BUILDING OWNER”

**[NOTE: AS AN AMENDMENT TO THE PREA, THIS AGREEMENT MUST BE RECORDED, AND ACCORDINGLY, MUST BE EXECUTED IN RECORDABLE FORM]**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of September, 2011 by \_\_\_\_\_ as \_\_\_\_\_ of the City of Las Vegas Redevelopment Agency.

WITNESS MY HAND AND OFFICIAL SEAL  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(SEAL)

STATE OF California  
 ) ss.  
COUNTY OF San Diego

~~2011~~ <sup>2012</sup> The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of ~~September~~ <sup>January</sup>, 2011 by Todd Miltes as Building Owner and Authorized Signatory of the NNN City Centre Place, LLC.

WITNESS MY HAND AND OFFICIAL SEAL  
My commission expires: 10/28/12

\_\_\_\_\_  
Notary Public

(SEAL)

