

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Allan L. Roeder
Dept.: Interim City Manager
Subject: ADOPTION OF A RESOLUTION
AUTHORIZING EVICTION PROCEEDINGS
AGAINST TENANT HOLDING OVER ON AN
EXPIRED LEASE OF CITY PROPERTY
(12302 HARBOR BOULEVARD, 12511 AND 12531
TWINTREE LANE, GARDEN GROVE)

From: Kingsley Okereke
Dept.: Finance
Date: March 24, 2015

OBJECTIVE

For the City Council to adopt a resolution authorizing the eviction of a tenant holding over on an expired lease of City property.

BACKGROUND

The City is the owner of property located at the northeast corner of Harbor Boulevard and Twintree Lane acquired for development of a hotel within the City's resort district (Site C). The commercial property was acquired from Nida Neff subject to a commercial lease with a tenant, Mike Abeyta, who operates Joe's Italian Ice on the property. The City commenced discussions about relocating Mr. Abeyta's business in February 2011 and entered into a Settlement, Release and Waiver Agreement re Relocation Assistance, Benefits and Damages on March 26, 2013.

Under the Settlement Agreement, the City paid Mr. Abeyta \$240,000 and allowed him to remain on the property rent-free another 12 months through March 31, 2014, subject to the existing lease with his prior landlord. The Settlement Agreement requires Mr. Abeyta to vacate the property by March 31, 2014. Mr. Abeyta further took possession of the adjacent properties on 12511 and 12531 Twintree Lane. The terms of the Settlement Agreement were intended to allow Mr. Abeyta to secure another location for his business and to relocate. Mr. Abeyta had requested a 24-month stay, but the City had already negotiated an agreement with Land and Design, Inc. to build a hotel on the property and it was determined at the time of the Settlement Agreement that the City needed Mr. Abeyta to vacate the property within 12 months so that it could meet the City's obligations to the developer to convey the property free and clear of encumbrances.

Mr. Abeyta did not vacate the properties on March 31, 2014. Because the City did not at that time require possession of the properties, the City was amenable to allow him

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to stay another six months subject to the payment of \$3,000 per month in rent and sent a draft lease agreement to that effect in May 2014. However, Mr. Abeyta sought even more time plus free rent, and refused to sign a new lease agreement for the six month period. Because Mr. Abeyta would not agree to the terms proposed by the City for an extension of his stay, the City sent notices to Mr. Abeyta notifying him that he must vacate by the middle of June 2014. Because Mr. Abeyta refused to vacate the properties and instead sought to stay longer, the City commenced eviction proceedings on July 29, 2014. However, prior to his actual eviction, Mr. Abeyta was successful in convincing the former City Manager that he would pay rent and execute an agreement for a six month stay. The City sent Mr. Abeyta a new proposed six month lease agreement subject to \$3,000 monthly rent. Mr. Abeyta then again refused to sign it and instead sought new terms that included a longer stay plus substantially reduced rent. Mr. Abeyta apparently believes that development is still some time away, and argues that the \$240,000 he received to relocate his business was not sufficient to cover the costs of relocation, notwithstanding his acceptance of the \$240,000 in return for a complete waiver and release of the City's liability for all costs and damages associated with Mr. Abeyta's relocation. Additionally, Mr. Abeyta has now had possession of the properties since March 2014 without paying any rent to the City.

The developer of the hotel has indicated that they are ready to proceed with development of the hotel and the City now needs the property to prepare to meet its obligations to the developer. Mr. Abeyta's refusal to leave voluntarily will require the City to commence civil proceedings in Superior Court for eviction.

DISCUSSION

State law does not permit property owners to use self-help to remove holdover tenants or trespassers from their property. State law has established expedited proceedings called unlawful detainer actions where property owners can prove to a court of law that a person is illegally occupying their property. Once a property owner proves its case for unlawful detainer, the court issues an order of possession, which authorizes the Sheriff to physically remove the occupants of the property to restore it to the property owner.

The attached resolution authorizes unlawful detainer proceedings to evict Mr. Abeyta and anyone who may have possession of the properties and restore possession to the City. The City has retained counsel specializing in unlawful detainer proceedings to assist with the eviction proceedings.

FINANCIAL IMPACT

Eviction proceedings through unlawful detainer actions typically cost less than \$3,000.

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OF CITY PROPERTY

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RECOMMENDATION

It is recommended that the City Council:

- Adopt the Resolution authorizing eviction proceedings.



KINGSLEY OKEREKE
Assistant City Manager/Finance Director

Attachment 1: Resolution Authorizing Eviction

Attachment 2: Settlement, Release and Waiver Agreement re Relocation
Assistance, Benefits, and Damages dated March 26, 2013

Approved for Agenda listing



Allan L. Roeder
Interim City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
AUTHORIZING EVICTION PROCEEDINGS AGAINST TENANT HOLDING OVER ON AN
EXPIRED LEASE OF CITY PROPERTY.

WHEREAS, the City is owner of property located at 12302 Harbor Boulevard, 12511 and 12531 Twintree Lane in the City of Garden Grove, generally located at the northeast corner of Harbor Blvd. and Twintree Lane; and

WHEREAS, the City acquired the 12302 Harbor Boulevard property with a tenant holding over an expired commercial lease subject to a month-to-month tenancy; and

WHEREAS, the City entered into that Settlement, Release and Waiver Agreement re Relocation Assistance, Benefits, and Damager dated March 26, 2013 with the commercial tenant, Mike Abeyta, subject to which the City paid Mike Abeyta \$240,000, and waived rent provided Mike Abeyta vacated the property and relocated his business, Joe's Italian Ice, by March 31, 2014; and

WHEREAS, Mike Abeyta has possession and use of the Twintree Lane properties and has sought to remain in possession of all the properties for additional time, but has refused to execute a new lease agreement, which the City has proposed for an additional six months at \$3,000 per month rent; and

WHEREAS, the City now needs possession of the properties to prepare the same for new development.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Garden Grove that the City Manager is authorize to cause the commencement of legal proceedings to evict Mike Abeyta, Joe's Italian Ice, and any other persons occupying the properties located at 12302 Harbor Boulevard, 12511 and 12531 Twintree Lane in the City of Garden Grove, State of California.

**SETTLEMENT, RELEASE AND WAIVER AGREEMENT
RE RELOCATION ASSISTANCE, BENEFITS, AND DAMAGES**

This **SETTLEMENT, RELEASE AND WAIVER AGREEMENT RE RELOCATION ASSISTANCE, BENEFITS, AND DAMAGES** ("Agreement") is entered into as of March 26, 2013, by and between the **CITY OF GARDEN GROVE**, a California municipal corporation ("Landlord"), and **MIKE ABEYTA**, doing business as *Joe's Italian Ice* ("Tenant"), for the settlement, waiver, and release of any and all claims associated with termination of Tenant's Leasehold Interest (as such term is defined herein), and the removal of Tenant's personal property from the Premises (as such term is defined herein).

RECITALS

A. Landlord currently owns certain improved real property with the common street address of 12302 Harbor Blvd, Garden Grove, California 92840 ("Premises").

B. Landlord and Tenant desire to confirm certain facts that are a part of this Agreement, including that on December 19, 2012, Landlord acquired the Premises from Nida Neff ("Seller") and took title thereof subject to a prior lease agreement entitled "Commercial Agreement" and dated February 1, 2001 ("Prior Lease") with respect to the Premises.

C. Under the Prior Lease, the landlord was Nida Neff ("Prior Landlord"). After Landlord's acquisition of the Premises, Tenant continued to occupy the Premises under the Prior Lease, which lease converted from a term lease to a month-to-month tenancy pursuant to Section 28.03 thereof as of and on February 1, 2006 ("Leasehold Interest").

D. The rent set forth in the Prior Lease for the month-to-month tenancy is \$3,000 per month.

E. Landlord has acquired the Premises for redevelopment purposes, but a redevelopment plan has not yet been completed. Notwithstanding that Landlord is not seeking to terminate the Leasehold Interest at this time, Tenant wishes to commence planning its relocation, which is expected to occur within 12 months, as Tenant is currently negotiating a new lease at another property. Consequently, Tenant voluntarily, independently, and of and by its own accord has requested a significant reduction in the monthly rent due under such Prior Lease (to be reduced hereunder from \$3,000 per month to the bargain rent of \$0 per month for up to 12 months), including the waiver of past rent due and unpaid since January 1, 2013, plus a cash payment in the amount of \$240,000.00, all as consideration by Landlord for Tenant's waiver and release of its future or potential eligibility for relocation assistance and benefits under the Relocation Laws (as such term is defined herein), including all relocation damages and any security deposits.

F. Tenant understands and acknowledges that it has voluntarily entered into this Agreement with Landlord, and that if Tenant is required to vacate the Premises upon notice from Landlord, its vacation of the Premises would be the result of the termination of Tenant's Leasehold Interest, and would not be considered, expressly or impliedly, as a direct result of either of the following: (i) a written notice of intent to acquire, or the acquisition of, the Premises, in whole or in part, for a program or project undertaken by a public entity or by any person having an agreement with, or acting on behalf of, a public entity; or (ii) the rehabilitation, demolition, or other displacing activity, as the public entity may prescribe under a program or project undertaken by a

public entity, of real property on which the person is a residential tenant or conducts a business or farm operation, if the public entity determines that the displacement is permanent.

G. Tenant desires to enter into this Agreement whereby Tenant expressly, intentionally, voluntarily and knowingly does and will settle, waive, and release any and all claims associated in any manner with Landlord's termination of Tenant's Leasehold Interest and Tenant's business(es) and the removal of Tenant's personal property from the Premises, to the extent that such claims exist now, or otherwise may or may not arise, or may or may not have arisen in the future, if at all.

NOW, THEREFORE, for good and valuable consideration, receipt of which is acknowledged, the parties hereto agree as follows:

1. Relocation Law. Tenant acknowledges that Tenant has reviewed the Relocation Law (as defined in this Section 1). As used in this Agreement, the term "Relocation Law" means the California Relocation Assistance Law, Health and Safety Code Section 7260, *et seq.*, and the implementing regulations promulgated by the California Department of Housing and Community Development set forth in California Code of Regulations, Title 25, Housing and Community Development, Division 1, Chapter 6, Section 6000, *et seq.*, and federal relocation laws and regulations set forth in the Federal Uniform Relocation and Real Property Assistance Act, 42 U.S.C. Section 4601, *et seq.*, the implementing regulations thereto in the Code of Federal Regulations, 49 CFR Part 24, and all applicable, if any, federal funding programs in 24 CFR Parts 42, 91, 92, and 570, including for example, the CDBG Program and the HOME Program, and in other federal relocation codes and regulations.

2. Prior Lease in Effect Until Terminated Upon 30 Days Notice; Tenant's Warranty; Tenant's Vacation within One Year's Time. Except as otherwise provided for in this Agreement, Tenant and Landlord hereby agree that the terms and conditions of the Prior Lease in effect as of the date of this Agreement shall continue in full force and effect until terminated by Landlord or Tenant by giving thirty days notice to the other party. Tenant represents, warrants, and agrees that it has not entered into any other lease, assignment or any other agreement allowing any third party to occupy all or any part of the Premises. Tenant represents, warrants, and agrees that as of the date of this Agreement, other than Tenant, no other person or entity has any legal right to possess or occupy the Premises. Tenant further agrees to vacate the Premises no later than March 31, 2014.

3. Full and Complete Settlement for Termination of Leasehold, Relocation Benefits and Damages. Landlord's agreement to significantly reduce the monthly rent amount due and payable by Tenant, plus the additional consideration set forth in Section 4 below, is in consideration for termination of Tenant's Leasehold Interest in the Premises and any rights or obligations that exist or may arise out of the termination of Tenant's Leasehold Interest, whether for public purposes or private purposes, including without limitation, Tenant's Leasehold Interest, severance damages, relocation assistance, relocation benefits, any alleged pre-condemnation damages, any alleged loss of business goodwill, damages, security deposits, costs, interest, attorneys' fees, and any claim whatsoever of Tenant that might arise out of or relate in any respect whatsoever directly or indirectly to the termination of the Leasehold Interest by Landlord and Tenant's vacation of the Premises. Tenant covenants not to sue or to pursue any such claims. Tenant acknowledges and agrees that it will not be entitled to relocation assistance or benefits under Relocation Law due to Landlord's termination of Tenant's Leasehold Interest and Tenant's business(es) and the removal of Tenant's personal property from the Premises, and further acknowledges and agrees that Tenant's status is deemed and shall be and remain as a post-acquisition tenant with no eligibility or rights to relocation

assistance or benefits thereunder. Tenant fully, intentionally, knowingly and voluntarily waives, releases and discharges Landlord, and its appointed and elected officials, officers, directors, employees, contractors, and agents (together "Indemnitees") from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to (i) Landlord's acquisition of the Premises; (ii) the sale of the Premises by Landlord; (iii) the relocation of any of Tenant's business operations and/or relocation of any person or persons, business or businesses, or other occupant or occupants located on the Premises, including the specific waiver and release of any right to any relocation benefits, assistance and/or payments under the Relocation Law notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under such state or federal law; and (iv) compensation for any interest in the business operations at, on, or about the Premises including, but not limited to, land and improvements, fixtures, furniture, or equipment thereon, Leasehold Interest, goodwill, severance damage, security deposits, damages, attorneys' fees or any other compensation of any nature whatsoever. It is hereby intended that the release contained above relates to both known and unknown claims that Tenant and any person or entity claiming by or through Tenant may have, or claim to have, against any of the Indemnitees with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with, the items set out above, Tenant expressly waives any rights under California Civil Code Section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."



Tenant's Initials

In connection with this Agreement, Tenant acknowledges that it is aware that it and its attorneys may hereafter discover claims or facts or legal theories in addition to or different from those which they know or believe to exist with respect to the claims released herein, but that Tenant's intention hereby is to fully, finally and forever release and waive all such claims, known or unknown, suspected or unsuspected, which do now exist, may exist or have existed in favor of Tenant, and covenants not to sue or pursue any such claims. In furtherance of such intention, this Agreement shall be and remain in effect as a full and complete release and waiver, notwithstanding the discovery or existence of any such additional claims, facts, or legal theories under applicable laws or regulations or otherwise relating to the Premises. Tenant understands and acknowledges the significance and consequences of this Agreement.

4. Consideration; Landlord's Obligations. In consideration of Tenant's complete settlement and release as provided for in this Agreement, Landlord agrees to forgo past due rent and late fees due and payable by Tenant under the Prior Lease, and to forgo the payment of rent for a period not longer than twelve months commencing on April 1, 2013 and continuing through March 31, 2014, unless Tenant's tenancy sooner terminates as provided for in this Agreement and the Prior Lease. Additionally, Landlord will pay Tenant the cash sum of \$240,000.00 within 15 days of the execution of this Agreement.

5. **Informed Consent.** Tenant agrees, warrants and represents that it has carefully read the contents of this Agreement and that, in executing this Agreement, it does so with full knowledge of any right which it may have, that it has received independent legal advice from its attorneys, or in the alternative, knowingly has determined not to seek legal advice with respect to the matters set forth herein, and that Tenant has freely signed this Agreement without relying on any agreement, promise, statement or representation by or on behalf of any person or entity, including any and all Indemnitees, except as specifically set forth in this Agreement.

6. **Incorporation of Recitals; Binding On Successors.** The statements, representations and recitals contained in this Agreement are to be considered contractual in nature and not merely recitations of fact. This Agreement shall be binding upon Tenant and its heirs, agents, successors, legal representatives and assigns.

7. **Governing Law.** The laws of the State of California shall govern this Agreement in all respects, including, but not limited to, matters of construction, validity, enforcement and interpretation.

8. **Attorneys' Fees.** If any legal action is brought to enforce, construe, interpret or invalidate the terms of this Agreement, the prevailing party shall be entitled to all costs and expenses incurred in any such action including court costs and reasonable attorneys' fees, in addition to any other relief to which they may be entitled.

9. **Entire Agreement.** This Agreement supersedes any prior understandings, discussions or agreements with respect to the subject matter hereof, including without limitation the Prior Lease. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

10. **Severability.** In the event that any terms, covenants or provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid or contrary to public policy, the remaining provisions shall continue in full force and effect. If a court of competent jurisdiction is required to interpret this Agreement, the court shall be guided by Tenant's knowing, voluntary and willing request and desire for Landlord to consent to the Lease and the broadest and most comprehensive release and waiver of Leasehold Termination damages and Relocation Law benefits.

11. **Execution of Further Documents.** From time to time, at the request of Landlord and without further consideration of expense and within a reasonable period of time after a request is made, Tenant agrees to execute and deliver any and all further documents and instruments, and to do all acts, as Landlord may reasonably request, which may be necessary or appropriate to fully implement the provisions of this Agreement, as and if necessary.

12. **Co-Participation in Drafting of this Agreement.** Landlord and Tenant each represent and warrant that they and their respective counsel fully participated in the drafting and terms of this Agreement. Accordingly, any ambiguities in the terms of this release and waiver shall not be construed against Landlord and any doctrine of law regarding interpretation of any such ambiguities in the terms and provisions of this release and waiver against Landlord shall not be applicable.

13. **Notices.** Any notice, request, demand, consent, approval or other communication required or permitted hereunder or by law shall be validly given or made only if in writing and delivered in person to an officer or duly authorized representative of the other party, or deposited in

the United States mail, duly certified or registered (return receipt requested), postage prepaid, or delivered through another reasonably acceptable method, and addressed to the party for whom intended, as follows:

If to Landlord: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92840
Attention: City Manager

If to Tenant: Mike Abeyta
1656 Longview Drive
Diamond Bar, CA 91765

Any party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by mail as aforesaid, the same shall be deemed fully delivered and received forty-eight (48) hours after mailing as provided above.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto caused this Agreement to be executed as of the day and year first above written.

LANDLORD:

CITY OF GARDEN GROVE,
a California municipal corporation

By: Maria Stepi for
City Manager

ATTEST:

Maria Pomeroy, Deputy for
City Clerk

APPROVED AS TO FORM:

James H. Eggert for
City Attorney

TENANT:

Mike Abeyta, d.b .a. Joe's Italian Ice

Mike Abeyta
Mike Abeyta