



## REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:**

November 18, 2020

**DEPARTMENT:**

City Attorney

**DIVISION:**

Administration

- ☐ Motion
- ☐ Resolution
- ☐ Ordinance - Introduction
- ☒ Ordinance - Adoption
- ☐ Public Hearing

**TITLE:**

First Amendment to Sixteen & Four, LLC Land and Improvements Lease and Memorandum of Lease

**SUMMARY RECOMMENDATION:**

Authorize the City Administrator to execute a First Amendment to the Parcel A government property lease, creating two separate lease documents applicable to the two separate parcels that resulted from the land division of Parcel A into Parcel A1 and Parcel A2 located at the northwest corner of 16th Street and 4th Avenue. (This item must be adopted by a simple majority vote without the use of the consent calendar) (City Attorney) (Richard Files)

**REPORT:**

On October 21, 2015, City Council adopted Resolution No. R2015-045, authorizing a Real Property Exchange and Development Agreement (Agreement) between the City and Kenyon's Market, Inc. (KMI). The Agreement described, among other things, a real property exchange, a lot tie by KMI, the redevelopment of the KMI property, an assignment of KMI's rights under the Agreement to Sixteen & Four, LLC (Developer), and the potential for the Developer to take advantage of a government property land and improvements lease, provided Developer deeded the redeveloped property to the City prior to opting into the lease. The City then would lease the redeveloped property to Developer, under a government property land and improvements lease with the City as landlord and Developer as prime lessee. At the conclusion of the eight-year lease, the City must reconvey the property back to the Developer.

During the term of the lease, the leased land and improvements are subject to the Government Property Lease Excise Tax (GPLET), which, because the redevelopment property is in a statutory central business district and statutory redevelopment area, qualifies for abatement of the property tax associated with the parcel.

On June 15, 2016, the Developer entered into a government property land and improvement lease for Parcel A. Subsequent to entering into the Parcel A GPLET Lease, the City and Sixteen & Four split Parcel A into two legal parcels, Parcel A1 and Parcel A2, by the Sprouts Farmers Market Lot Split, recorded on November 29, 2017, at Document No. 2017-29802, Book 29 of Plats, Yuma County Records. Parcel A1 is the parcel upon which the Sprouts Market was constructed and Parcel A2 is

the parcel upon which the in-line shops east of the Sprouts Market were constructed. The Parcel A GPLET Lease currently applies to both Parcel A1 and Parcel A2.

Sixteen & Four intends to sell its interest in Parcel A1 to an unaffiliated third party, Agree Realty Corporation. In connection with the sale of Parcel A1, the legal description set forth on Exhibit A to the Parcel A GPLET Lease will need to be modified to reflect that the Parcel A1 GPLET Lease, as amended, would only apply to Parcel A1 (in other words, remove Parcel A2 from the legal description of the Parcel A GPLET Lease). The Amended Parcel A GPLET Lease would thereafter be referred to as the Parcel A1 GPLET Lease. Simultaneously, a separate amendment to the Parcel A GPLET Lease would be made to create a separate GPLET Lease applicable to as the Parcel A2 GPLET Lease, which would thereafter be referred to as the Parcel A2 GPLET Lease. It is these modifications to the legal descriptions that are the main subject of the First Amendment. One other minor modification to the Parcel A GPLET Lease includes the removal of the remedies available to the City in the event of a default under the Parcel A1 GPLET Lease and the Parcel A2 GPLET Lease (in the event of a default the City will simply deed the property back to the tenants and the property tax abatement will cease to apply to the real property any longer); all other terms and conditions of the Parcel A GPLET Lease will remain in effect for both the Parcel A1 and Parcel A2 GPLET Leases.

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	\$0.00		
	FISCAL IMPACT STATEMENT:			
ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK:			
	1. 2. 3. 4. 5.			
ADDITIONAL INFORMATION	IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?			
	<input type="radio"/> Department <input checked="" type="radio"/> City Clerk's Office <input type="checkbox"/> Document to be recorded <input type="checkbox"/> Document to be codified			
SIGNATURES	CITY ADMINISTRATOR:		DATE:	
	Philip Rodriguez		10/28/2020	
	REVIEWED BY CITY ATTORNEY:		DATE:	
	Richard W. Files		10/28/2020	
	RECOMMENDED BY (DEPT/DIV HEAD):		DATE:	
Richard W. Files		10/20/2020		
WRITTEN/SUBMITTED BY:		DATE:		