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 City of Stockton
 8

9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION
 12

13 In re:
 14 CITY OF STOCKTON, CALIFORNIA,
 15 Debtor.

Case No. 2012-32118
 D.C. No. OHS-22
 Chapter 9

**CITY OF STOCKTON,
 CALIFORNIA'S, MOTION TO
 ASSUME AND ASSIGN LEASES ON
 THE EFFECTIVE DATE OF THE
 PLAN**

Date: November 18, 2014
 Time: 9:30 a.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

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1 By this Motion, the City seeks the Court's approval pursuant to 11 U.S.C. § 365(f) of the
2 assumption and assignment of four real property leases (together, the "Leases") between the City
3 as tenant or subtenant and certain lessors and sublessors.

4 On August 8, 2014, the City filed an amended version of its plan of adjustment.¹ The Plan
5 was confirmed by a minute order filed on October 30, 2014 [Dkt. No. 1747]. A complete
6 confirmation order will be uploaded in the near future. As in prior versions, the Plan incorporated
7 negotiated settlements that the City reached through the mediations conducted by Judge Elizabeth
8 Perris. The settlement relevant to this motion is the NPFPG Parking Settlement. Specifically, the
9 Plan provides for the assumption of the City's parking leases that are pledged to NPFPG, the
10 assumption of the SCC 16 Lease and the assignment of those leases to a newly-created Parking
11 Authority. *See* Plan, at p. 36, 39 (Classes 4 and 8, respectively).

12 Pursuant to the NPFPG Parking Settlement, the City agreed to assume other leases relating
13 to the Parking Structure Properties and to assign them to the Parking Authority. While such
14 parking leases were not specifically described in the Plan, the assignment thereof to the Parking
15 Authority was always contemplated by the City and the affected parties.

16 The Parking Authority will manage, or supervise a third-party operator's management of,
17 the Parking Structure Properties, including the parking lots that are the subject of the Leases, and
18 will pay to NPFPG certain of the revenues earned by the Parking Authority.

19 The Leases are as follows:

- 20 • Lease No. SJX004-0600/0700-01, between the City and the State of California,
21 Department of Transportation, dated May 8, 1997, for which the form of assignment is
22 attached hereto as **Exhibit A**.
- 23 • Lease No. SJX004-0900-02, between the City and the State of California, Department
24 of Transportation, dated October 1, 2006, for which the form of assignment is attached
25 hereto as **Exhibit B**.

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28 ¹ First Amended Plan For The Adjustment Of Debts Of City Of Stockton, California, as Modified (August 8, 2014)
[Dkt. No. 1645] ("**Plan**"). Capitalized terms not defined herein shall have the meaning provided in the Plan.

Exhibit A

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

CONSENT OF ASSIGNMENT (No Relief)

RW 15-6 (REV 1/2013)

ASSIGNMENT OF LEASE

For value received, Assignor, _____ City of Stockton _____, assigns and transfers to Assignee, _____ Parking Authority _____, that certain lease number SJX004-0600/0700-01 dated May 8, 1997, executed by Assignor as Lessee and the State of California, Department of Transportation, as Lessor of that certain real property located under Highway 4 between El Dorado and Sutter Streets in the city of Stockton, county of San Joaquin, State of California, together with all its right, title, and interest in and to the lease and the leased premises, subject to all the conditions and terms contained in the lease, to have and to hold from _____ until the present term of the lease expires on July 31, 2016. A copy of the lease is attached hereto and made a part hereof.

Assignor covenants that it has performed all duties and obligations and made all payments required under the terms and conditions of the lease.

Assignor understand and agrees that this Assignment shall not release it from any of the duties and Obligations imposed on it under the terms, covenants, and conditions of the lease, and Assignor shall remain liable to perform all such duties and obligations separately and apart from the assumption made herein by Assignee.

Assignee agrees to pay all rents due after the effective date of this Assignment, _____ and to assume and perform all duties and obligations required by the terms, covenants and conditions of the lease.

Dated: _____

Assignor

Assignee

Name Title

Name Title

CONSENT OF LESSOR

The State of California, Department of Transportation, Lessor named in the above Assignment of that certain lease number SJX004-0600/0700-01, executed by Lessor on _____, consents to that Assignment.

Lessor further consents to the agreement by Assignee to assume after _____ the payment of rent and performance of all duties and obligations set forth in the lease. Lessor does not by this consent release the City of Stockton, Lessee and Assignor from any of its obligations under the lease, including the payment of rent, and this consent is given only on the express condition that Lessee and Assignor not to be released.

Dated: _____

Lessor
State of California
Department of Transportation

By _____

Name Title

Exhibit B

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

CONSENT OF ASSIGNMENT (No Relief)

RW 15-6 (REV 1/2013)

ASSIGNMENT OF LEASE

For value received, Assignor, City of Stockton, assigns and transfers to Assignee, Parking Authority, that certain lease number SJX004-0900-02 dated October 1, 2006, executed by Assignor as Lessee and the State of California, Department of Transportation, as Lessor of that certain real property located Parcel sites 4-8C and 4-9 located in the city of Stockton, county of San Joaquin, State of California, together with all its right, title, and interest in and to the lease and the leased premises, subject to all the conditions and terms contained in the lease, to have and to hold from _____ until the present term of the lease expires on September 31, 2016. A copy of the lease is attached hereto and made a part hereof.

Assignor covenants that it has performed all duties and obligations and made all payments required under the terms and conditions of the lease.

Assignor understand and agrees that this Assignment shall not release it from any of the duties and Obligations imposed on it under the terms, covenants, and conditions of the lease, and Assignor shall remain liable to perform all such duties and obligations separately and apart from the assumption made herein by Assignee.

Assignee agrees to pay all rents due after the effective date of this Assignment, _____ and to assume and perform all duties and obligations required by the terms, covenants and conditions of the lease.

Dated: _____

Assignor

Assignee

Name Title

Name Title

CONSENT OF LESSOR

The State of California, Department of Transportation, Lessor named in the above Assignment of that certain lease number SJX004-0900-02, executed by Lessor on _____, consents to that Assignment.

Lessor further consents to the agreement by Assignee to assume after _____ the payment of rent and performance of all duties and obligations set forth in the lease. Lessor does not by this consent release the City of Stockton, Lessee and Assignor from any of its obligations under the lease, including the payment of rent, and this consent is given only on the express condition that Lessee and Assignor not to be released.

Dated: _____

Lessor
State of California
Department of Transportation

By _____

Name Title

Exhibit C

STATE OF CALIFORNIA

DEPARTMENT OF GENERAL SERVICES
REAL ESTATE SERVICES DIVISION

<u>LEASE COVERING PREMISES LOCATED AT</u> 31 CHANNEL STREET STOCKTON, CA LOT 30
<u>AGENCY</u> DEPARTMENT OF GENERAL SERVICES

Lease No.: L-2583

ASSIGNMENT OF LEASE

Effective _____, the undersigned, **City of Stockton**, hereinafter "Assignor," is the present LESSEE in that certain lease consisting of twelve (12) pages, including exhibits, attached hereto and made a part hereof, marked Exhibit "A," dated April 3, 2013, hereinafter referred to as "STATE," with respect to premises located in a portion of Lot 30, 31 Channel Street in the City of Stockton and County of San Joaquin, hereinafter "Premises," do hereby assign all their right, title and interest in and to said Lease as set forth therein, as of May 1, 2014, to **the Parking Authority of the City of Stockton (The Parking Authority)**, hereinafter "Assignee."

Assignor agrees:

- (a) That it shall not be released from its obligations under the Lease, including all monetary obligations, if Assignee fails to perform them;
- (b) To promptly cure any event of default curable by Assignee under the Lease, provided the cure may reasonably be accomplished by Assignor without taking possession of the Premises;
- (c) That it shall not have any right to take possession of the Premises without the prior written consent of STATE;
- (d) That it has not failed to disclose to STATE any information which, if known by STATE, might provide grounds for STATE to withhold its consent to the assignment described herein pursuant to any of the provisions set forth in the Lease.

Dated this _____ day of _____, 2014.

CITY OF STOCKTON,
a Municipal Corporation and Charter City

By: _____
[NAME]
City Manager

As to Form:

By: _____
[NAME]
City Attorney

ASSUMPTION OF LEASE

For value received, and in consideration of the above assignment by the Assignor, and in consideration of the written consent of STATE, the undersigned hereby assumes and agrees to make all payments, and to perform all of the terms, covenants and conditions of the foregoing Lease, which the said Assignor therein had agreed to make and perform.

1. Assignee agrees:

- (a) That STATE has not made any express or implied oral or written representation or promise that future assignments will be approved and that Assignee will enjoy financial success in operating any business on the Premises;
- (b) That it has been provided with a copy of the Lease, together with all amendments, and that it has read the Lease and all amendments and fully understands its obligations and responsibilities as a "LESSEE" under the Lease;
- (c) That all information which it has provided to Assignor or STATE which STATE has reviewed in connection with its determination to consent to the assignment described herein is true, accurate and complete, and fairly and accurately represents the business, condition and status of the Assignee.

2. This Paragraph shall supersede and replace Paragraph 26, "Notices," of the Lease in its entirety, as follows:

- (a) All notices or other communications required or permitted hereunder shall be in writing with Lease Number L-0470 prominently displayed, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below.
- (b) All such notices or other communications shall be deemed received upon the earlier of (1) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, or (2) if mailed as provided above, on the date of receipt or rejection, when received by the other party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Time so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

TO STATE: Department of General Services

Department of General Services
Real Estate Services Division
SOLD (L-2583)
P.O. Box 989052
West Sacramento, CA 95798-9052
(916) 375-4025 (phone)

Department of General Services
Real Estate Services Division
SOLD (L-2583)
707-3rd Street, MS 505
West Sacramento, CA 95605

TO LESSEE: The Parking Authority

[address]
Stockton, CA 95202
(209) _____ (phone)

- (c) Notice of change of address or telephone number shall be given by written notice in the manner described in this Paragraph. LESSEE is obligated to notice all STATE offices listed above and the failure to provide notice to all STATE offices will be deemed to constitute a lack of notice.

Dated this _____ day of _____, 2014

**THE PARKING AUTHORITY OF
THE CITY OF STOCKTON**

By: _____
[NAME]
[Title]

CONSENT TO ASSIGNMENT

For value received, and in consideration of the assumption of the Lease referred to heretofore by the above prior named Assignee thereof, the undersigned STATE hereby consent to the above assignment, but do not thereby waive any of its rights under said Lease or any extensions thereof, as to the Assignee. The STATE releases the Assignor as to any requirements of the Lease on _____, but not as to its duty to perform all of the terms, covenants and conditions of the Lease prior to _____.

STATE OF CALIFORNIA

APPROVAL RECOMMENDED:

DIRECTOR OF DEPARTMENT OF
GENERAL SERVICES

DEPARTMENT OF GENERAL SERVICES
REAL ESTATE SERVICES DIVISION

By: _____
TONY PSIHOPAIDAS, Manager
State Owned Leasing and Development

By: _____
KIMBERLEY TSUMURA
Senior Real Estate Officer
State Owned Leasing and Development

EXECUTED DATE: _____

CONSENT:

DEPARTMENT OF GENERAL SERVICES
OFFICE OF FLEET ADMINISTRATION

By: _____
JEFF JONES
Staff Services Manager

Date: _____

Exhibit D

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN IT TO:

Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105
Attn: Devin Brennan

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (this "**Assignment**") is made as of November __, 2014, by and among the CITY OF STOCKTON, a municipal corporation ("**Assignor**"), and PARKING AUTHORITY OF THE CITY OF STOCKTON, a public body, corporate and politic ("**Assignee**").

WITNESSETH:

WHEREAS, pursuant to that certain Master Lease dated February 26, 2008 and recorded by Memorandum of Master Lease on May 26, 2009 as Instrument No. 2009-078660 of Official Records of San Joaquin County, California (the "**Lease**"), between Assignor, as lessor, and Stockton City Center 16, LLC, a California limited liability company, as lessee ("**Lessee**"), Assignor subleased to Lessee that certain parcel of real property situated in San Joaquin County, State of California, commonly known as The Coy Parking Garage, and more particularly described in the Lease (the "**Site**");

WHEREAS, the Assignor is the debtor in a bankruptcy case under chapter 9 of Title 11 of the United States Code, Case No. 2012-32118 in the United States Bankruptcy Court for the Eastern District of California, Sacramento Division (the "**Bankruptcy Court**"), styled *In re City of Stockton, California* (the "**Bankruptcy Case**");

WHEREAS, on or about November 15, 2013, the City filed its Plan for the Adjustment of Debts of the City of Stockton, California in the Bankruptcy Court (as amended or modified from time to time, including as supplemented by the Plan Supplement in Connection with the First Amended Plan for the Adjustment of Debts of City of Stockton, California, filed in the Bankruptcy Court from time to time, the "**Plan**");

WHEREAS, in connection with the Bankruptcy Case, on or about May 8, 2014, Assignor, Lessee and Wells Fargo Bank, National Association, as trustee (the "**Trustee**") under that certain Indenture of Trust, dated as of June 1, 2004 (the "**Indenture**"), by and between the Stockton Public Financing Authority, a joint exercise of powers authority organized and existing

under and by virtue of the laws of the State of California (the “**Financing Authority**”) and the Trustee, entered into that certain Settlement Agreement and Release (the “**SCC 16 Settlement**”), settling certain actions Trustee previously commenced seeking to obtain possession of the Site in connection with Assignor’s prior failure to make certain lease payments to the Financing Authority with respect to the Site;

WHEREAS, on the Effective date of the Plan, Assignor will transfer its fee simple interest in the Site to Assignee pursuant to a grant deed;

WHEREAS, Assignee therefore desires to acquire and assume all of Assignor's right, title and interest, as lessor, in and to the Lease, and Assignor desires to assign and transfer all of the Assignor's right, title and interest, as lessor, in and to the Lease, to Assignee pursuant to the terms and conditions hereinafter set forth;

WHEREAS, Assignee further desires to assume all of Assignor's rights and obligations under the SCC 16 Settlement, including all rights of the Assignor to receive payment thereunder, and Assignor desires to assign and transfer all of its rights and obligations under the SCC 16 Settlement, including all of its rights to receive payment thereunder, to Assignee pursuant to the terms and conditions hereinafter set forth;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor assigns and transfers to Assignee the entire, undivided right, title and interest of the lessor under the Lease to have and to hold the same from and after the date hereof, subject to the covenants, conditions and provisions contained in the Lease. Assignee hereby assumes and agrees to perform and observe all of the terms, covenants and conditions of the Lease on the part of the lessor, to be performed or observed, from and after the date hereof. Except where otherwise required by the context, all references in the Lease to the Assignor shall be deemed to be references to the Assignee.

2. Assignor assigns and transfers to Assignee all of Assignor’s rights, title and interest arising under the SCC 16 Settlement, including all of Assignor’s rights to receive payment thereunder, and hereby pledges such payments to Assignee and covenants and agrees to pay over to Assignee any such amounts at any time received by Assignor. Assignee hereby assumes and agrees to perform and observe all of the terms, covenants and conditions of the SCC 16 Settlement on the part of the Assignor, to be performed or observed, from and after the date hereof. Except where otherwise required by the context, all references in the SCC 16 Settlement to the Assignor shall be deemed to be references to the Assignee.

3. Assignee shall defend, indemnify and hold harmless Assignor from and against all losses, damages, liabilities, claims, suits, demands, judgments, costs, interest and expense (including, without limitation, reasonable attorneys’ fees) which Assignor may suffer or incur as a result of (i) entering into this Assignment, (ii) the discharge of Assignor’s former obligations under the SCC 16 Settlement, or (iii) Assignee’s use or occupation of the Site on or subsequent to the date hereof.

4. Assignor shall be fully and unconditionally released and discharged from its obligations arising from or connected with the Lease and the SCC 16 Settlement.

5. Assignee acknowledges that Assignor has not made any representations or warranties in connection with the Lease, the SCC 16 Settlement Agreement or the condition of the Site.

6. By their signatures below, Lessee, the Financing Authority, National Public Finance Guarantee Corporation, a New York stock insurance corporation (“NPFGB”) and the Trustee hereby acknowledge and consent to, for all purposes, the assignment and assumption of the Lease and the SCC 16 Settlement pursuant to the terms set forth herein.

7. This Assignment may be executed in counterparts and shall constitute an agreement binding on all parties notwithstanding that all parties are not signatories to the original or the same counterpart provided that all parties are furnished a copy or copies thereof reflecting the signature of all parties.

8. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. Assignor and Assignee shall execute and deliver such additional documents and take such additional actions as either may reasonably request to carry out the purposes of this Assignment. The language of this Assignment shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Assignor or Assignee.

[Remainder of page intentionally left blank; signatures appear on next page]

IN WITNESS WHEREOF, this Assignment has been executed as of the day and year first above written.

ASSIGNOR:

CITY OF STOCKTON,
a municipal corporation

By: _____
Name: Kurt Wilson
Its: City Manager

STATE OF _____

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of the Notary Public

ASSIGNEE:

PARKING AUTHORITY OF THE CITY OF STOCKTON,
a public body, corporate and politic

By: _____
Name: Kurt Wilson
Its: Parking Administrator

STATE OF _____

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of the Notary Public

Acknowledgments of and consents to Assignment:

LESSEE:

STOCKTON CITY CENTER 16, LLC,
a California limited liability company,

By: Atlas Properties, Inc.,
Its: Manager

By: _____
Name: Edward A. Barkett
Its: President

STATE OF _____

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of the Notary Public

FINANCING AUTHORITY:

STOCKTON PUBLIC FINANCING AUTHORITY,
a joint exercise of powers authority organized and existing under and by virtue of the laws of the
State of California

By: _____
Name: Kurt Wilson
Its: Executive Director

STATE OF _____

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public, personally
appeared _____, who proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of
_____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of the Notary Public

NPFG:

NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION,
a New York stock insurance corporation

By: _____
Name: _____
Its: _____

STATE OF _____

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of the Notary Public

WELLS FARGO BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Name: _____
Its: _____

STATE OF _____

COUNTY OF _____

On _____, 2014, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of the Notary Public