



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: June 14, 2021

Approved

Date

06/18/21

COUNCIL DISTRICT: 3

SUBJECT: FIRST RESTATEMENT OF LEASE AGREEMENT BETWEEN THE CITY OF SAN JOSE AND CAMERA 3 ENTERTAINMENT, INC. TO ESTABLISH GUGGENHEIM ENTERTAINMENT, INC. AS THE TENANT AT 288 SOUTH SECOND STREET

RECOMMENDATION

Adopt a resolution authorizing the City Manager, or his designee, to negotiate and execute:

- a. A First Restatement of the lease dated August 1, 2015 among the City of San José, Camera 3 Entertainment, Inc., a California corporation dba Camera 3 Entertainment, L.P., Jack NyBlom, and Guggenheim Entertainment, Inc., a California corporation, for the use of approximately 7,850 square feet of space at the City-owned building located at 288 South Second Street, San José, CA allowing for a direct lease with Guggenheim Entertainment, Inc. for an initial term of five years at a rate of \$3,000 per month for the first year with a 1.5% annual escalator each year thereafter, and one option to extend for an additional five years; and
- b. All other documents or amendments necessary to effectuate the First Restatement of the lease.

OUTCOME

Approval of this recommendation will allow the City to negotiate and execute a First Restatement of the Lease Agreement dated August 1, 2015 between the City of San José (“City”), Camera 3 Entertainment, Inc., a California corporation, dba: Camera 3 Entertainment L.P. (“Camera 3”), Jack NyBlom, and Guggenheim Entertainment, Inc., a California corporation (“Guggenheim Entertainment”) allowing for a direct lease to Guggenheim Entertainment for the continued use of ±7,850 square feet of space at the City-owned building located at 288 South Second Street, San Jose, CA (“Subject Property”).

BACKGROUND

The ±7,850 square foot Subject Property is located at 288 South Second Street and is commonly referred to as a part of the 2nd and San Carlos Street Garage, which consists of a 544-space public parking facility and approximately 13,210 square feet of retail space. The parking garage and retail space was built by the Redevelopment Agency of the City of San José (“RDA”) in 1982 and ownership was transferred to the City in September 2011.

The City entered into a lease agreement with Camera 3 for its use of the Subject Property on August 1, 2015 (“Original Lease”) at a monthly rate of \$2,422.50 for the first year with an annual 1.5% escalator and two five-year options to extend at fair market rate. The City and Camera 3 executed a First Amendment to the Lease on October 3, 2017, in which the City provided a grant of \$500,000 for Camera 3 to use for Council-directed nonstructural improvements per the City Manager’s Budget Addendum #22, as approved in the Mayor’s June Budget Message for Fiscal Year 2017-2018. The grant was appropriated in the General Fund, Appropriation 7896.

On July 30, 2020, Camera 3 exercised their first option to extend the Original Lease for an additional five years, effectively extending the term of the Original Lease until July 31, 2025, at a monthly rate of \$7,500 for the first year with an annual 1.5% escalator.

Camera 3 consistently paid their rent throughout the lease term. However, theatre business was interrupted due to COVID-19 public safety measures, and Camera 3 last paid rent in April 2020. Camera 3 now owes the City \$93,000 in unpaid rent as of June 2021. Camera 3 currently sublets the Subject Property to 3Below Theaters and Lounge, which is operated by Guggenheim Entertainment. The 3Below Theater is currently the only independent theatre in downtown San Jose, showing films and providing family-friendly entertainment options. 3Below also sublets to Cinequest Inc. (“Cinequest”), who produces an annual film festival, and ComedySportz, an improv group. Part of the consideration for leasing directly with 3Below Theaters and Lounge is the success the Guggenheims have had pre-pandemic in activating the Theater space, particularly for families and a broad array of patrons. The Guggenheim’s also creatively and successfully used the top floor of the garage space to show “drive-in” movies safely during the pandemic.

ANALYSIS

In April 2021, Camera 3 and Guggenheim Entertainment notified the City that they entered into a separate agreement for Guggenheim Entertainment to become the master tenant at the Subject Property, provided that Guggenheim Entertainment pay Camera 3 \$25,000 to help resolve debt on the Sony projectors that are currently located at the Subject Property and \$10,000 from any grant funding they receive through the Shuttered Venue Operators Grant program provided by the Small Business Association (“Shuttered Venues”). After discussions including all parties, City staff, Camera 3, and Guggenheim Entertainment agreed to terms to enter into a three-party

agreement to restating the Original Lease (“First Restatement”) to allow the present subtenant Guggenheim Entertainment to replace Camera 3 as the Tenant.

Under terms of the First Restatement, the City will forgive Camera 3’s back rent, which totals \$93,000 as of June 2021, in consideration for Camera 3 transferring ownership of the Sony projectors to the City. Camera 3 will file a Uniform Commercial Code (UCC) 3 form to demonstrate clear title and confirm that all liens have been removed against the projectors and related equipment.

- Sony SRX R320 Projector and System Serial No.#121316
- Sony SRX R320 Projector and System Serial No.#130101
- Sony Internet Cine Watch equipment including all lenses and component parts related to the above projectors, sound, and automation systems.

The projectors will be owned by the City and maintained by Guggenheim Entertainment. Camera 3 purchased the projectors and had them custom installed by Sony at a cost of \$83,610. The projectors are installed with custom built pedestals and wired with a surround sound system. The wiring, lenses, and surround sound system were all purchased and installed at Camera 3’s additional expense. The City assuming ownership of these assets will keep the theatre space suitable for Guggenheim’s continued operation and provision of family-friendly entertainment options, and it will facilitate the City finding a new theatre operator should Guggenheim Entertainment cease operations.

In addition, any rental assistance grant from Shuttered Venues awarded to Camera 3, up to \$93,000, will be delivered to the City for payment of any outstanding past-due rent. Camera 3’s President, Jack NyBlom, will personally guarantee the First Restatement.

The initial term of the lease arrangement between City and Guggenheim Entertainment will be for five years beginning July 1, 2021, at a rate of \$3,000 per month for the first year, with a 1.5% annual escalator. Guggenheim Entertainment will have the option to extend the lease for one additional five-year term at fair market value for the theater space. The total term of the lease agreement, including the option term, will be ten years. City shall provide a \$500 monthly credit to Guggenheim Entertainment for 50 months to reimburse Guggenheim Entertainment’s \$25,000 payment to Camera 3 to remove debt against the Sony projectors. Also, City will require approval for all sublease arrangements and a 50/50 revenue share for all sublease proceeds greater than Guggenheim Entertainment’s monthly base rent of \$3,000. The City will reserve the right to terminate the First Restatement with a one-year notice without cause or relocation benefits owed to Guggenheim Entertainment, should the City elect to redevelop or sell the Subject Property.

The negotiated terms of the lease arrangement between City and Guggenheim Entertainment are as follows:

Building Address: 288 South Second Street, San José, CA

Landlord: City of San Jose, a municipal corporation of the State of California

Tenant: Guggenheim Entertainment, Inc. a California corporation

Rentable Area of Premises: ±7,850 square feet

Term: Sixty (60) months

Commencement Date: July 1, 2021

Expiration Date: June 30, 2026

Options to Extend: One option to extend for an additional five years (term would total ten years with the exercised option)

Rent:

Year:	Adjustment Date:	Monthly Rent:	Escalator:
1	July 1, 2021 – June 30, 2022	\$3,000	-
2	July 1, 2022 – June 30, 2023	\$3,045	1.5% from Year 1
3	July 1, 2023 – June 30, 2024	\$3,090.68	1.5% from Year 2
4	July 1, 2024 – June 30, 2025	\$3,137.04	1.5% from Year 3
5	July 1, 2025 – June 30, 2026	\$3,184.09	1.5% from Year 4

Staff recommend that the City enter into the First Restatement to establish Guggenheim Entertainment as the master tenant and operator of the City-owned theater located at 288 South Second Street. Although Camera 3 is the official Tenant on the Original Lease, Guggenheim Entertainment, as the present subtenant, is the party responsible for maintenance and operation expenses at the Subject Property per their sublet arrangement with Camera 3. The terms of the lease arrangement between Guggenheim Entertainment and the City are contingent upon their preservation of Cinequest's status as a subtenant. The Cinequest Film & Creativity Festival is an important element of San Jose's culture and provides a variety of arts programs and activities each year. The City is not obligated to adhere to the terms of the lease arrangement if Guggenheim Entertainment is unable to preserve Cinequest as a subtenant at the Subject Property.

CONCLUSION

Approval of the recommendation will direct staff to negotiate and execute a First Restatement of the Lease dated August 1, 2015 between the City of San José, Camera 3 Entertainment, Inc., a California corporation, dba: Camera 3 Entertainment, L.P., Jack NyBlom, and Guggenheim Entertainment, Inc., a California corporation, for the use of ±7,850 square feet of space at the City-owned building located at 288 South Second Street, making Guggenheim Entertainment the master tenant, and removing Camera 3 as the master tenant, while forgiving its outstanding rent balance absent any rental assistance grant money awarded to Camera 3 and delivered to the City. Leasing directly to 3Below will help activate the South of First Street Area (SPFA) as the City exits the pandemic.

EVALUATION AND FOLLOW-UP

Staff will negotiate and execute the First Restatement with Jack NyBlom, Camera 3, and Guggenheim Entertainment. Camera 3's unpaid rental balance will be forgiven, and a UCC 3 filing will ensure transfer of clear title to the Sony projectors to the City.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the June 29, 2021 Council Meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, Department of Planning, Building and Code Enforcement, and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

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FISCAL/POLICY ALIGNMENT

This action is consistent with the Economic Development Strategy approved by Council, specifically Initiative No. 1, “Encourage Companies and Sectors that Can Drive the San Jose/Silicon Valley Economy and Generate Revenue for City Services and Infrastructure.” A successful lease agreement will consequently result in revenue for the City.

COST SUMMARY/IMPLICATIONS

The estimated five-year rental revenue to the General Fund under this First Restatement is anticipated to be \$160,482, with the \$500 monthly credit to Guggenheim Entertainment for 50 months (\$25,000) accounted for. The estimated revenue was included as part of the development of the 2021-2022 Proposed Operating Budget, scheduled to be approved by City Council on June 15, 2021. The City will forgive Camera 3’s outstanding rental balance of \$93,000 in consideration for title to the Sony projectors transferring to the City, and for Camera 3 to forgo their remaining rights to lease the property in favor of Guggenheim Entertainment.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

NANCI KLEIN

Director of Economic Development

For questions, please contact Kevin Ice, Senior Manager, Real Estate Services at kevin.ice@sanjoseca.gov.