

SECOND AMENDMENT TO AMENDED AND RESTATED OPTION AGREEMENT
HUD STADIUM SITE
BY AND BETWEEN THE CITY OF SAN JOSÉ
AND
EARTHQUAKES SOCCER, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

This Second Amendment to Amended and Restated Option Agreement ("Amendment") is made as of this ___th day of October, 2010, by and between the CITY OF SAN JOSÉ, a municipal corporation (the "CITY"), and EARTHQUAKES SOCCER, LLC, a California limited liability company ("OPTIONEE").

RECITALS

A. The CITY is the owner of certain real property and improvements located at 1125 Coleman Avenue, in San José, California more particularly described and depicted on Exhibit A and Exhibit B attached hereto and incorporated herein by reference; and

B. The CITY and OPTIONEE entered into an Amended and Restated Option Agreement HUD Stadium Site dated as of February 23, 2010 as to a portion of the Property defined therein as the HUD Stadium Site (the "Original Agreement"), wherein, subject to the terms and conditions contained therein, the CITY granted OPTIONEE an option to purchase the HUD Stadium Site; and

C. OPTIONEE exercised its option to extend the term of the Stadium Option Agreement for three years to June 30, 2013 pursuant to Section 1.3 of the HUD Stadium Option Agreement;

D. The CITY and OPTIONEE entered into a First Amendment to Amended and Restated Option Agreement HUD Stadium Site dated as of April 7, 2010 to reflect the exercise of OPTIONEE's option to extend the Stadium Option Agreement term (the "First Amendment"). The Original Agreement, as amended by the First Amendment, is hereinafter referred to as the "Stadium Option Agreement". Reference is made to the Stadium Option Agreement for the meaning of each capitalized term used, but not defined, herein.

E. OPTIONEE and the CITY desire to further amend the terms of the Stadium Option Agreement as set forth below.

NOW, THEREFORE, for valuable consideration, the parties hereby amend the Stadium Option Agreement as follows:

1. Section 1.4 of the Stadium Option Agreement is hereby amended and restated to read in its entirety as follows:

1.4 **Purchase Price.** Notwithstanding anything to the contrary contained herein or in the Purchase Agreement, the Purchase Price for the HUD Stadium Site shall be Seven Million Dollars (\$7,000,000) ("Purchase Price"); provided, however, that if Optionee exercises the Option on or before June 30, 2012 and the City has received the aggregate amount of Two Million Dollars (\$2,000,000)

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from the optionee(s) under the Amended and Restated HUD Commercial Option Agreement and/or the Amended and Restated Development Site Option Agreement to extend the option terms of such agreements through December 31, 2013 (i) the Two Million Dollar option payment shall be applied to the Purchase Price and (ii) Optionee shall, no later than six months after the date of Closing, conduct and complete demolition of the above-grade structures (excluding foundations) on the Airport West Site pursuant to the Demolition Plan attached hereto as Exhibit R. In order to secure the obligation of Optionee to comply with the Demolition Plan, Optionee shall deposit with the City a performance bond in the amount of \$_____ at the Closing which shall be returned to Optionee upon completion of the demolition pursuant to the Demolition Plan. Such demolition shall be subject to Section 7(a) of the Purchase Agreement, including but not limited to the Stadium Easement Agreement and the reimbursement rights set forth therein.

2. Section 2.4 of the Stadium Option Agreement is hereby amended and restated to read in its entirety as follows:

2.4 **Development, Use and Entitlements.** The Parties acknowledge that the Airport West Site is currently entitled for, alternatively (i) 3,000,000 square feet of Office/ Research and Development uses, or (ii) the Stadium (as defined in the Purchase Agreement), including incidental and support uses, on the HUD Stadium Site portion of the Airport West Site and up to 1.514 million square feet of office development, 300 hotel rooms, and 75,000 square feet of retail development on the remainder of the Airport West Site. The Parties agree that the City shall reserve and/or cause the owners of the HUD Commercial Site and/or the Development Site to reserve an appropriate amount of the entitled 1.514 million office square footage and allocate the vehicle trips that would have been generated by improvements constructed pursuant to this reserved entitlement towards the construction of up to 200,000 square feet of retail development and associated surface parking on the HUD Stadium Site. The appropriate amount of office square footage reserved to accommodate the contemplated retail development shall be determined by a vehicle trip generation equivalency analysis. In the event the Stadium is constructed on the HUD Stadium Site, the City shall, upon issuance of a certificate of occupancy for the Stadium, release and reallocate the reserved and unused office entitlement square footage to the remainder of the Airport West Site. In the event Optionee elects to seek a Planned Development Permit ("PD Permit") for the construction of a retail development in lieu of the Stadium, Optionee shall not be required to modify the Planned Development Zoning ("PD Zoning") for the Airport West Site prior to issuance of the PD Permit, provided that (i) a trip generation equivalency analysis confirms that the reserved amount of office square footage is sufficient to accommodate the vehicle trips associated with the proposed retail development, and (ii) the retail development otherwise conforms to the applicable PD Zoning development standards. Any reserved amount of office not required to accommodate the proposed retail development shall be released and reallocated to the remainder of the Airport West Site upon issuance of a certificate of occupancy for the retail development. If the trip generation equivalency analysis reveals that the reserved amount of office square footage

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cannot accommodate the proposed retail development square footage, Optionee may either reduce the square footage of a retail development so that its trip generation can be accommodated by the reserved office square footage or Optionee may elect to seek approval for a PD rezoning and PD permit to allow the a retail development and its associated increase in trip generation. In either case, the City shall promptly accept, process, review and act upon all applications for permits and approvals for the retail development in a professional and timely manner, promptly inform Optionee if its planning staff objects to any aspect of the retail development proposal and ensure that adequate staff is available to timely process all applications for permits and approvals for the retail development on an expedited schedule. Subsequent to Closing, Optionee shall be permitted to conduct commercial and airport parking on the HUD Stadium Site prior to the development of the HUD Stadium Site in conformance with any and all applicable permit approvals.

3. The Stadium Option Agreement is hereby supplemented to add thereto, as Exhibit R, a demolition plan in the form attached hereto as Attachment 1 (the "Demolition Plan").

5. The Purchase Agreement attached as Exhibit H to the Stadium Option Agreement is hereby amended as follows:

5.1 Subsection 1(a) of the Purchase Agreement is hereby amended and restated to read in its entirety as follows:

(a) the HUD Stadium Site for the development of, alternatively (i) the Stadium, including incidental and support uses, or (ii) up to 200,000 square feet of retail.

5.2 Section 2 of the Purchase Agreement is hereby amended and restated to read in its entirety as follows:

2. Purchase Price. Notwithstanding anything to the contrary contained herein or in the Purchase Agreement, the Purchase Price for the HUD Stadium Site shall be Seven Million Dollars (\$7,000,000) ("Purchase Price"); provided, however, that if Optionee exercises the Option on or before June 30, 2012 and the City has received the aggregate amount of Two Million Dollars (\$2,000,000) from the optionee(s) under the Amended and Restated HUD Commercial Option Agreement and/or the amended and Restated Development Site Option Agreement to extend the option terms of such agreements through December 31, 2013 (i) the Two Million Dollar option payment shall be applied to the Purchase Price and (ii) Optionee shall, no later than six months after the date of Closing, conduct and complete demolition of the above-grade structures (excluding concrete foundations) on the Airport West Site pursuant to the Demolition Plan attached hereto as Exhibit N. : In order to secure the obligation of Optionee to comply with the Demolition Plan, Optionee shall deposit with the City a performance bond in the amount of One Hundred Thousand Dollars (\$100,000.00 at the Closing which shall be returned to Optionee upon completion of the demolition pursuant to the Demolition Plan. Such demolition

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shall be subject to Section 7(a) of the Purchase Agreement, including but not limited to the Stadium Easement Agreement and the reimbursement rights set forth therein.

5.3 The portion of the second sentence of Subsection 7(a) of the Purchase Agreement beginning with “(2) Optionee shall be responsible...” is hereby amended and restated to read in its entirety as follows:

(2) Optionee shall be responsible for the payment of all costs in connection with the development of any infrastructure or demolition to the extent it is now or may hereafter be required in connection with the development of the HUD Stadium Site and to the extent it would not otherwise be required in connection with the development of the HUD Commercial Site and the Development Site.

5.4 The fourth sentence of Subsection 7(a) of the Purchase Agreement is hereby amended and replaced as follows:

Also, in the event that the HUD Stadium Site is developed prior to the development of the HUD Commercial Site and/or Development Site and the Optionee or Buyer, as applicable, is required to complete any infrastructure or conduct any demolition required for the HUD Commercial Site and/or Development Site in order to develop the HUD Stadium Site, the Commercial Developer shall be required to reimburse the Optionee or Buyer, as applicable, in full for all costs of any infrastructure or demolition required for the HUD Commercial Site and/or Development Site which was completed by the Optionee or Buyer, as applicable.

5.5 Subsection 7(c) of the Purchase Agreement is hereby supplemented to add the following sentence at the end of this Subsection:

The Use Agreement shall not be effective until a certificate of occupancy for the Stadium is issued. In the event a certificate of occupancy is issued on the HUD Stadium Site for retail development in lieu of the Stadium, the Use Agreement shall not be effective.

5.6 Section 7 of the Purchase Agreement is hereby supplemented to add the following subsection (d):

(d) Development, Use and Entitlements. The Parties acknowledge that the Airport West Site is currently entitled for, alternatively (i) 3,000,000 square feet of Office/ Research and Development uses, or (ii) the Stadium (as defined in the Purchase Agreement), including incidental and support uses, on the HUD Stadium Site portion of the Airport West Site and up to 1.514 million square feet of office development, 300 hotel rooms, and 75,000 square feet of retail development on the remainder of the Airport West Site. The Parties agree that City or Seller, as applicable, shall reserve and/or cause the owners of the HUD Commercial Site and/or the Development Site to reserve an appropriate

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amount of the entitled 1.514 million office square footage and allocate the vehicle trips that would have been generated by improvements constructed pursuant to this reserved entitlement towards the construction of up to 200,000 square feet of retail development and associated surface parking on the HUD Stadium Site. The appropriate amount of office square footage reserved to accommodate the contemplated retail development shall be determined by a vehicle trip generation equivalency analysis . In the event the Stadium is constructed on the HUD Stadium Site, City or Seller, as applicable, shall, upon issuance of a certificate of occupancy for the Stadium, release and reallocate the reserved and unused office entitlement square footage to the remainder of the Airport West Site. In the event Optionee or Buyer, as applicable, elects to seek a Planned Development Permit (“PD Permit”) for the construction of a retail development in lieu of the Stadium, Optionee or Buyer, as applicable, shall not be required to modify the Planned Development Zoning (“PD Zoning”) for the Airport West Site prior to issuance of the PD Permit, provided that (i) a trip generation equivalency analysis confirms that the reserved amount of office square footage is sufficient to accommodate the vehicle trips associated with the proposed retail development, and (ii) the retail development otherwise conforms to the applicable PD Zoning development standards. Any reserved amount of office not required to accommodate the proposed retail development shall be released and reallocated to the remainder of the Airport West Site upon issuance of a certificate of occupancy for the retail development. If the trip generation equivalency analysis reveals that the reserved amount of office square footage cannot accommodate the proposed retail development square footage, Optionee or Buyer, as applicable, may either reduce the square footage of a retail development so that its trip generation can be accommodated by the reserved office square footage or Buyer may elect to seek approval for a PD rezoning and PD permit to allow the a retail development and its associated increase in trip generation. In either case, City or Seller, as applicable, in its capacity as the City of San Jose, shall promptly accept, process, review and act upon all applications for permits and approvals for the retail development in a professional and timely manner, promptly inform Optionee or Buyer, as applicable, if its planning staff objects to any aspect of the retail development proposal and ensure that adequate staff is available to timely process all applications for permits and approvals for the retail development on an expedited schedule. Subsequent to Closing, Optionee or Buyer, as applicable, shall be permitted to conduct commercial and airport parking on the HUD Stadium Site prior to the development of the HUD Stadium Site in conformance with any and all applicable permit approvals.

5.7 The second sentence of Subsection 22(h) of the Purchase Agreement is hereby amended and replaced with the following:

Notwithstanding the foregoing, Seller shall not (1) withhold its consent to the assignment of this Agreement as to the Property from Buyer to a legal entity to be formed for the purpose of undertaking the development contemplated by this Agreement provided that at least one of the Development Principals retain management and control of such legal entity prior to Closing or (2) unreasonably withhold its consent to the assignment of this Agreement to a legal entity managed and controlled by John Fisher prior to Closing.

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5.8 The Purchase Agreement is hereby supplemented to add thereto, as Exhibit N, a demolition plan in the form attached hereto as Attachment 1 (the "Demolition Plan").

6. Except for the modifications in this Amendment, in all other respects, the terms and conditions in the Stadium Option Agreement shall remain unchanged and in full force and effect.

7. The effective date of this Amendment is the date set forth above.

8. This Amendment may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

WITNESS THE EXECUTION HEREOF as of the day and year first hereinabove written.

"CITY"

APPROVED AS TO FORM: THE CITY OF SAN JOSÉ, a municipal corporation

Ed Moran,
Assistant City Attorney

By: _____
Name:
Title:

"OPTIONEES"

EARTHQUAKE SOCCER, LLC, a California limited liability company

By: _____
Lewis N. Wolff, Managing Member, Partner

EXHIBIT A
LEGAL DESCRIPTION OF AIRPORT WEST SITE

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EXHIBIT B
PLAT MAP OF AIRPORT WEST SITE

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ATTACHMENT 1
DEMOLITION PLAN

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