



AGENDA REPORT

Meeting Date: April 6, 2010

Item Number: F-2

To: Honorable Mayor & City Council

From: Brenda A. Lavender, Real Estate & Property Manager 

Subject: SECOND AMENDMENT TO LEASE BY AND BETWEEN THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS AND BOUCHON BEVERLY HILLS, L.P.

Attachments: 1. Second Amendment to Lease

RECOMMENDATION

It is recommended that the City Council approve the "Second Amendment to Lease by and between the Parking Authority of the City of Beverly Hills and Bouchon Beverly Hills, L.P." A copy of the lease is on file with the City Clerk. Bouchon Beverly Hills, LP is located in the City of Beverly Hills Gardens Building located at 240 N. Beverly Drive.

INTRODUCTION

A Second Amendment to Lease has been prepared for City Council approval. This amendment extends the term of the lease by three (3) months and delays the rent start by four (4) months. The amendment also includes a percentage rent component that was not previously included in the lease deal. The addition of percentage rent and the extension of the lease term were added in exchange for delaying the start of the rent by four (4) additional months.

DISCUSSION

The lease space is located within the Montage Hotel, Public Gardens, and City of Beverly Hills Gardens Building. The address for the City of Beverly Hills Gardens Building is 240 N. Beverly Drive although the restaurant has a separate address of 235 N. Canon Drive. The total leased premises including the restaurant, wine bar and office space is 12,423 square feet. The lease term is fifteen (15) years, with two (2) 5-year options to extend the term at the then Fair Market Rental Rate. The restaurant occupies the entire second floor, the majority of the first floor for the grand entry and Wine Bar with office space located on the third floor.

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FISCAL IMPACT

This amendment will defer \$424,552 in base rent that would have been payable in the first year and increase the last year of base rent by \$512,524.44. The 2nd amendment also provides the opportunity for the City to share in gross sales through percentage rent the exact amount of which is difficult to quantify at this time.


Scott G. Miller, Director of
Administrative Services, CFO

Approved By

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Parking Authority of the City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attention: City Clerk

[Space Above For Recorder's Use Only]

The undersigned declare that this Second Amendment to Lease is exempt from Recording Fees pursuant to California Government Code Section 27383 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE ("Second Amendment") is dated as of _____, 2010 (the "Effective Date"), and is entered into by and between THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS, a parking authority established pursuant to the Parking Law of 1949 of the State of California ("Landlord"), and BOUCHON BEVERLY HILLS, L.P., a California limited partnership, doing business as "Bouchon Beverly Hills" ("Tenant").

RECITALS

A. Landlord and Tenant entered into a Lease dated as of August 18, 2008 and amended said Lease by a First Amendment to Lease dated as of April 7, 2009 (as so amended, said Lease is hereinafter referred to as the "Lease").

B. Landlord and Tenant executed a Memorandum of Lease dated April 7, 2009 recorded on July 21, 2009 as Document No. 20091104298 in the Official Records of the County of Los Angeles, California.

C. Landlord and Tenant desire to further amend the Lease.

NOW, THEREFORE, in consideration of the foregoing recitals, and the covenants and conditions contained herein, and for other consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Capitalized terms used in this First Amendment but not defined herein shall have the meanings set forth in the Lease.

2. Term. Section 1(d) of the Lease is hereby deleted and is replaced with the following:

“(d) Term: One Hundred Eighty-One (181) months, commencing upon the “Commencement Date” (as defined in Section 3 below), as it may be extended pursuant to Section 3 below.”

3. Monthly Rent. Section 1(e) of the Lease is hereby deleted and is replaced with the following:

“(e) Monthly Rent: Tenant shall pay as Monthly Rent the sums set forth in the column below titled “Monthly Rent,” which equals the sum of (i) rent for the restaurant and wine bar portion of the Premises and (ii) rent for the office portion of the Premises:

Months During Term	Restaurant/Wine Bar Rent	Office Rent	Monthly Rent
1-6	\$0.00	\$0.00	\$0.00
7-26	\$96,786.00	\$9,352.00	\$106,138.00
27-38	\$100,173.51	\$9,679.32	\$109,852.83
39-50	\$103,679.58	\$10,018.10	\$113,697.68
51-62	\$107,308.37	\$10,368.73	\$117,677.10
63-75	\$112,673.79	\$10,887.17	\$123,560.96
76-86	\$116,617.37	\$11,268.22	\$127,885.59
87-98	\$120,698.98	\$11,662.60	\$132,361.58
99-110	\$124,923.44	\$12,070.80	\$136,994.24
111-122	\$129,295.76	\$12,493.27	\$141,789.03
123-134	\$135,760.55	\$13,117.94	\$148,878.49
135-146	\$140,512.17	\$13,577.06	\$154,089.23
147-158	\$145,430.10	\$14,052.26	\$159,482.36
159-170	\$150,520.15	\$14,544.09	\$165,064.24
171-181	\$155,788.35	\$15,053.13	\$170,841.48

4. Rent Commencement Date. The first sentence of Section 5(a) of the Lease is hereby deleted and is replaced with the following sentence:

“Commencing on the date that is six (6) calendar months after the Commencement Date, Tenant shall pay to Landlord, at 455 N. Rexford Drive, Suite 240, Cashier’s Office, Beverly Hills, California 90210, the Monthly Rent described in Section 1(e) in monthly installments in advance, on or before the first day of each and every calendar month during the Term.”

5. Percentage Rent. The following is hereby added to the Lease as a new Section 5(e):

“(e) (i) , Tenant shall pay to Landlord as additional rent a sum (“Percentage Rent”) equal to five percent (5%) of the amount by which the aggregate

“Gross Sales” (as hereinafter defined) for each calendar year exceeds the Breakpoint until such time as Landlord receives a total of two hundred and fifty thousand dollars (\$250,000) in Percentage Rent. Tenant’s obligations to pay Percentage Rent shall commence April 1, 2010 (the fifth full calendar month following the Commencement Date) and continue each month thereafter. Tenant shall have no further obligation to pay Percentage Rent upon the earlier of Landlord’s receipt of a total of two hundred and fifty thousand dollars (\$250,000) in Percentage Rent or upon termination of this Lease.

(ii) As used herein, the term “Breakpoint” shall mean Thirteen Million and 00/100 Dollars (\$13,000,000). Since the first year is a partial year, the Breakpoint for the first year shall be prorated by multiplying the Breakpoint by a fraction, the numerator of which is the number of days from April 1, 2010 through December 31, 2010, and the denominator of which is three hundred sixty-five (365). For any partial year thereafter, the Breakpoint shall be prorated by multiplying the Breakpoint by a fraction, the numerator of which is the number of days during such partial calendar year, and the denominator of which is three hundred sixty-five (365).

(iii) Tenant shall furnish or cause to be furnished to Landlord a statement of the monthly Gross Sales of Tenant within thirty (30) days after the end of each calendar month and a statement of the annual Gross Sales of Tenant within thirty (30) days after the end of each Comparison Year. Such statements shall be in a form acceptable to Landlord. Such statements shall be certified as accurate by the Chief Financial Officer of Tenant. Within thirty (30) days after the end of the first calendar month in each Comparison Year during the Term that Tenant’s Gross Sales exceed the Breakpoint, and within thirty (30) after the end of each calendar month thereafter, Tenant shall pay to Landlord the Percentage Rent owed for the immediately preceding month.

(iv) In the event of the termination or earlier expiration of this Lease, Tenant shall remain obligated to deliver a statement of Gross Sales for the final partial year of the Term and to pay to Landlord any Percentage Rent due by Tenant under this Lease with respect thereto, and the provisions of this Section shall survive the termination or earlier expiration of this Lease for such purpose.

(v) “Gross Sales”, as used in this Lease, shall mean the gross selling price of all food, beverages, merchandise, and services sold in or from the Premises by Tenant, its subtenants, licensees and concessionaires, whether for cash or on credit excluding therefrom the following, provided they are documented in Tenant’s accounting records made available to Landlord and, if applicable, Tenant’s tax returns: (i) sales taxes, excise taxes or gross receipts taxes imposed by governmental entities upon the sale of merchandise or services, but only if paid by Tenant to the respective governmental entities; (ii) proceeds from the sale of fixtures, equipment or property which are not stock in trade; (iii) the selling price of all merchandise returned by customers and accepted for full credit; (iv) interest or other charges paid by customers for extension of credit; (v) receipts from vending machines used solely by Tenant’s employees; (vi) proceeds of insurance received by Tenant, except for business interruption insurance proceeds that is based on loss of income from the items included in “Gross Sales”; (vii) value of meals furnished to Tenant’s employees and incident to their

employment; (viii) tips, gratuities and service charges paid by patrons of Tenant directly to employees of Tenant or turned over by Tenant to employees of Tenant; (ix) refunds for items returned to vendors or manufacturers; (x) credit card charges that are uncollectible and counterfeit currency or unnegotiable check (which must first be included in Gross Sales but may be deducted from Gross Sales for the period in which the charge becomes uncollectible); (xi) direct expenses of credit card sales by Tenant to the issuers of such credit cards; and (xii) donations or discounts to non-profit organizations; (xiii) the sales of any books; and (xiv) the sales of gift certificates that do not, by their terms, expire and are not included in income under Tenant's accrual accounting method until they are redeemed, but such sales shall be included in "Gross Sales" when such gift certificates are redeemed (the "Exclusions from Gross Sales"). Tenant shall use its reasonable and good faith efforts to maximize Gross Sales from the Premises.

6. In the event of a conflict or inconsistency between the terms and conditions of the Lease and the terms and conditions of this Second Amendment, the terms and conditions of this Second Amendment shall prevail and control.

7. Except as specifically modified by this Second Amendment, the Lease shall remain unaffected and unchanged. The Original Lease is hereby ratified and affirmed by Tenant and remains in full force and effect as modified hereby.

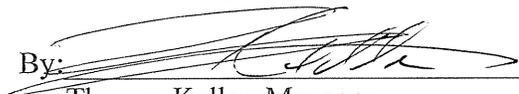
8. This Second Amendment may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Lease as of the date first above written.

TENANT:

BOUCHON BEVERLY HILLS, L.P.,
a California limited partnership
(dba: Bouchon Beverly Hills)

By: Bouchon Beverly Hills, LLC,
a California limited liability company,
the sole general partner

By: 

Thomas Keller, Manager

LANDLORD:

ATTEST:

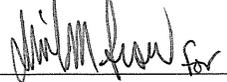
_____(Seal)
Byron Pope
Secretary to Board of Directors

THE PARKING AUTHORITY
OF THE CITY OF BEVERLY HILLS,
a parking authority established pursuant to the
Parking Law of 1949 of the State of California

By: _____
Nancy Krasne
Chairman of Board of Directors

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

By:  _____
Laurence S. Wiener
Authority Counsel

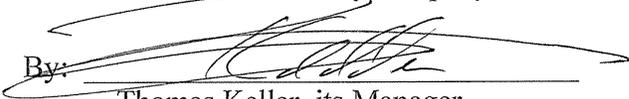
By: _____
Jeffrey Kolin, CCM,
Executive Director

By:  _____
Scott Miller,
Chief Financial Officer

REAFFIRMATION BY GUARANTORS

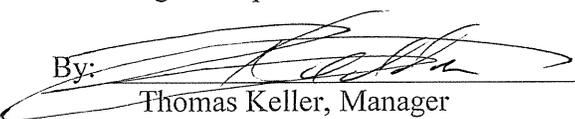
The undersigned guarantors under that certain Guaranty of Lease dated as of August 18, 2008 (“Guaranty”) in regard to the Lease by and between The Parking Authority Of The City Of Beverly Hills and Bouchon Beverly Hills, L.P. dated as of August 18, 2008, as amended (“Lease”), hereby: (i) approve the foregoing Second Amendment to Lease; (ii) agree that the Second Amendment to Lease shall not release or waive either of the undersigned’s obligations under the Guaranty; and (iii) agree that the Guaranty and all obligations therein are hereby reaffirmed and shall remain in full force and effect and apply to the Lease as modified by the foregoing Second Amendment to Lease.

Dated: 2/22, 2010 SHAMUS & PEABODY, LLC,
a California limited liability company

By: 
Thomas Keller, its Manager
6540 Washington Street
Yountville, CA

Dated: 2/22, 2010 BOUCHON, L.P.,
a California limited partnership

By: Bouchon , LLC,
a California limited liability company,
the sole general partner

By: 
Thomas Keller, Manager
6540 Washington Street
Yountville, CA

ACKNOWLEDGMENT

State of New Jersey)
California)
County of Bergen)

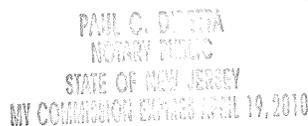
On 02/22/2010 before me, PAUL C. DiBetta Notary Public
(insert name and title of the officer)

personally appeared Thomas Keller

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 [Handwritten Signature]
Signature of Notary Public

(Seal)

ACKNOWLEDGMENT

State of California)
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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 _____
Signature of Notary Public

(Seal)