



AGENDA REPORT

Meeting Date: May 4, 2010
Item Number: F-8
To: Honorable Mayor & City Council
From: Scott Miller, Director of Administrative Services and CFO
Noel Marquis, Assistant Director of Administrative Services - Finance
Subject: **APPROVAL OF AN AGREEMENT WITH CITY NATIONAL BANK FOR A LINE OF CREDIT OF UP TO \$20,000,000 TO FUND THE CITY'S ALTERNATIVE RETIREE MEDICAL PROGRAM (ARMP)**
Attachments: Agreement

RECOMMENDATION

Staff recommends that the City Council approve an agreement with City National Bank for a line of credit of up to \$20,000,000 at an interest rate not-to-exceed 6.5% per annum for a period of not more than 12 years to fund the City's Alternative Retiree Medical Program (ARMP). Staff further recommends that the City Council authorize the City Manager or Director of Administrative Services/CFO to sign all necessary documents and forms to complete this transaction after review and approval of the City Attorney.

INTRODUCTION

At the December 15, 2009 City Council meeting staff presented the Alternative Retiree Medical Program (ARMP) for City Council review and approval. Generally the ARMP allows the non-safety, vested/partially vested and non-vested employees who are eligible under their Employee Associations' MOU or Compensation Plan to choose an alternative to their current Retiree Medical Plan, with similar features and benefits as the program that new employees (those employees hired on or after January 1, 2010) will receive including: portability, allowance for beneficiaries to receive some benefits when the employee passes, allows employees to have the City make contributions from the one-time program transition amount to any number of City tax deferred compensation plans or even a cash retention bonus (as allowed under the tax rules), and in the process updates an outdated "golden handcuff" benefit and makes it more attractive to newer generational employees while saving the City millions of dollars.

DISCUSSION

Since this is the first program of its kind with the City of Beverly Hills, staff has no indications of how many employees will sign up for the program. In the last year, several agencies outside of California have offered a similar type of program with program participation reaching levels of 10%-70%. Many of these were Counties and Special Districts in Ohio, Michigan, and Florida. They presented their programs at several professional organization conferences.

However, because one state's laws may differ significantly from the laws of other states and since these changes were part of bigger OPEB liability program changes for these other governmental agencies; we need to be careful in assuming similar results in the City's proposed program. Certain Southern California cities have also offered similar programs. The latest being the City of Ontario. They reached a participation rate of 45%.

Of the Cities we reviewed, the financing of these programs have come from both internal as well as external financing. Since the City of Beverly Hills has never had a program like this before, we have no certainty as to what the participation level will be. Employee surveys and other such gauges are not reliable and hard to convert when looking for predictable results. We feel the first phase of the program may be slow since most employees are leery of change, but the second phase likely will produce more participation.

To allow the fullest participation possible by employees, staff has negotiated a "line of credit" financing with City National Bank for the ARMP. This "line" allows the City to fund the program up to \$20,000,000 at an interest rate not-to-exceed 6.5% annually and for a period of no more than 12 years.

FISCAL IMPACT

This agreement provides the City with a line of credit of up to \$20,000,000 at an interest rate not-to-exceed 6.5% annually for a period of not more than 12 years for the purpose of funding an alternative program for City employees (except public safety Police and Fire) currently eligible for retiree medical coverage.



Noel Marquis

Finance Approval



Scott G. Miller

Approved By



CREDIT AGREEMENT

This Credit Agreement (the "Agreement"), dated as of May 4, 2010, is between **City National Bank**, a national banking association ("**CNB**") and **City of Beverly Hills**, a California general law city ("**Borrower**").

1. **DEFINITIONS.** As used in this Agreement, these terms have the following meanings:

1.1 "**Borrower's Loan Account**" means the statement of daily balances on the books of CNB in which will be recorded Loans made by CNB to Borrower, payments made on such loans, and other appropriate debits and credits as provided by this Agreement. CNB will provide a statement of account for Borrower's Loan Account at least ten (10) days prior to due date, which statement will be accepted by and conclusively binding upon Borrower unless it notifies CNB in writing to the contrary, within ten (10) days of receipt of such statement, or twenty (20) days after sending of such statement if Borrower does not notify CNB of its non-receipt of the statement. Statements regarding other credit extended to Borrower will be provided separately.

1.2 "**Closing Date**" shall mean the earlier of the date all conditions set forth in Section 4.1 for the first extension of Credit under this Agreement are satisfied, or the first disbursement of a Loan occurs.

1.3 "**Commitment**" means CNB's commitment to make the Loans in the aggregate principal amount outstanding at any one time of up to Twenty Million Dollars (\$20,000,000.00).

1.4 "**Covenant Compliance Certificate**" shall be in the form attached hereto as Exhibit A.

1.5 "**Debt**" means, at any date, the aggregate amount of, without duplication, (a) all obligations of Borrower for borrowed money; (b) all obligations of Borrower evidenced by bonds, debentures, notes or other similar instruments; (c) all obligations of Borrower to pay the deferred purchase price of property or services; (d) all capitalized lease obligations of Borrower; (e) all obligations or liabilities of others secured by a lien on any asset of Borrower, whether or not such obligation or liability is assumed; (f) all obligations guaranteed by Borrower; (g) all obligations of Borrower, direct or indirect, for letters of credit; and (h) any other obligations or liabilities which are required by generally accepted accounting principles to be shown as debt on the balance sheet of Borrower.

1.6 "**Demand Deposit Account**" means Borrower's demand deposit account no. 101-119963 maintained with CNB.

1.7 "**GAAP**" means generally accepted accounting principles and practices, consistently applied.

1.8 **“Liquid Assets”** shall mean the sum of cash, cash equivalents and Marketable Securities held in Borrower’s general fund, excluding (i) any assets upon which there is any security interest, lien or encumbrance, and (ii) any securities or accounts which are not readily convertible into cash (such as restricted stock or hedge funds).

1.9 **“Loan”** or **“Loans”** means one or more of the Loans extended by CNB to Borrower under Section 2.

1.10 **“Loan Documents”** means, individually and collectively, this Agreement and all other contracts, instruments, addenda and documents executed in connection with or related to the extensions of credit under this Agreement.

1.11 **“Marketable Securities”** shall mean “margin stock” as defined in Regulation U of the Federal Reserve Board; mutual funds; and bonds and other debt securities of United States corporations not falling within the definition of “margin stock” with a credit quality rating of at least A by Standard & Poor’s or A-2 by Moody’s; commercial paper with a credit quality rating of at least A-2 by Standard & Poor’s or P-2 by Moody’s; obligations issued by or guaranteed by the United States government or agencies thereof; and obligations of any state, territory, municipality or other local governmental subdivision or entity of the United States, with a credit quality rating of at least A by Standard & Poor’s or A-2 by Moody’s.

1.12 **“Net Revenue”** shall mean Borrowers income from all sources less all cash expenses of Borrower.

1.13 **“Obligations”** means all present and future liabilities and obligations of Borrower to CNB hereunder, now existing or hereafter owing, matured or unmatured, direct or indirect, absolute or contingent, joint or several, including any extensions and renewals thereof and substitutions therefor.

1.14 **“Person”** means any individual or entity.

1.15 **“Potential Event of Default”** means any condition that with the giving of notice or passage of time or both would, unless cured or waived, become an Event of Default.

1.16 **“Proforma Budget”** means Borrower’s annual budget which is in compliance with the Governmental Accounting Standards Board (GASB) and the California Constitution and State law as adopted by the City Council of the City of Beverly Hills, including the five (5) years Capital Projects spending plan, the GANN Limit calculations and resolution, the Investment Policies and the Financial Policies of the City of Beverly Hills.

1.17 **“Termination Date”** means the date CNB may, at its option, terminate this Agreement pursuant to the Section entitled “CNB’s Remedies”; the date of any such termination will become the Termination Date as that term is used in this Agreement.

1.18 **“Treasury Interest Rate”** shall be the Yield to maturity of that U.S. Treasury Bond or Note (as made available by Bloomberg LP or if not available from such other information service available to CNB, dated on the Interest Rate Determination Date), maturing closest to the date which is ten (10) years after (i) the Closing Date for Loans made between the Closing Date up to July 31, 2010, (ii) July 31, 2010 for Loans made July 31, 2010 and later.

2. LOANS.

2.1 **Commitment** means CNB's commitment to make up to five (5) Loans, up to and including January 31, 2011, in the aggregate principal amount of up to the amount of the Commitment.

2.1.1 Interest on Loans.

(a) The Loans made on or after the Closing Date but before July 31, 2010, shall bear interest at the Treasury Interest Rate, as it exists on the Closing Date, plus two and fifty five hundredths percent (2.55%) payable on each January 31 and July 31, commencing July 31, 2010.

(b) The Loans made on or after July 31, 2010, shall bear interest at the Treasury Interest Rate as it exists on July 31, 2010, plus two and fifty five hundredths percent (2.55%) payable on each January 31 and July 31, commencing January 31, 2011.

2.1.2 **Procedure for Loans.** Each Loan shall be made by CNB at the written request of anyone who is authorized in writing by Borrower to request Loans until written notice of the revocation of such authority is received by CNB.

2.1.3 Payment of Loans.

(a) The Loans made on or after the Closing Date but before July 31, 2010, shall be payable in twenty three (23) equal bi-annual installments, equal to the amount outstanding on July 31, 2010, divided by twenty three (23), due July 31 and January 31 of each year, the first payment to be due January 31, 2011, and the final payment of remaining unpaid principal due and payable on January 31, 2022.

(b) The Loans made on or after July 31, 2010, shall be payable in twenty one (21) equal bi-annual installments, equal to the amount outstanding on January 31, 2011, divided by twenty one (21), due January 31 and July 31 of each year, the first payment to be due January 31, 2012, and the final payment of remaining unpaid principal due and payable on January 31, 2022.

2.1.4 Prepayment of Loans.

(a) The Loans made on or after the Closing Date but before July 31, 2010, may be prepaid only when accompanied by a Prepayment Fee calculated as follows:

(i) For amounts prepaid during the period from the Closing Date through July 31, 2011 an amount equal to three percent (3%) of the amount prepaid;

(ii) For amounts prepaid during the period from July 31, 2011, through July 31, 2012, an amount equal to two percent (2%) of the amount prepaid;

(iii) For amounts prepaid during the period from July 31, 2012, through July 31, 2015, an amount equal to one percent (1%) of the amount prepaid;

(iv) Amounts prepaid thereafter shall not be subject to a Prepayment Fee.

(b) The Loans made on or after July 31, 2010 may be prepaid only when accompanied by a Prepayment Fee calculated as follows:

(i) For amounts prepaid during the period from July 31, 2010, through January 31, 2012 an amount equal to three percent (3%) of the amount prepaid;

(ii) For amounts prepaid during the period from January 31, 2012, through January 31, 2013, an amount equal to two percent (2%) of the amount prepaid;

(iii) For amounts prepaid during the period from January 31, 2013, through January 31, 2016, an amount equal to one percent (1%) of the amount prepaid;

(iv) Amounts prepaid thereafter shall not be subject to a Prepayment Fee.

(c) Loans prepaid shall be applied to principal payments due in inverse order of maturity.

2.2 Loans and Payments. All payments will be in United States Dollars and in immediately available funds. Interest will be computed on the basis of a 360 day year, actual days elapsed. All payments of principal, interest, fees and other charges on the Loans will be made by charging, and Borrower hereby authorizes CNB to charge, the Demand Deposit Account for the amount of each such payment. Borrower must have sufficient collected balances in the Demand Deposit Account in order that each such payment will be available when due. CNB is authorized to note the date, amount and interest rate of each Loan and each payment of principal and interest on CNB's books and records, which notations will constitute presumptive evidence of the accuracy of the information noted. Any Loan will be conclusively presumed to have been made to or for the benefit of Borrower when CNB, in its sole discretion, believes that the request therefor has been made by authorized persons (whether in fact that is the case), or when the Loan is deposited to the Demand Deposit Account, regardless of whether any Person other than Borrower may have authority to draw against such account.

2.3 Default Interest Rate. From and after written notice by CNB to Borrower of the occurrence of an Event of Default (and without constituting a waiver of such Event of Default), the Loans (and interest thereon to the extent permitted by law) will bear additional interest at a fluctuating rate equal to five percent (5.0%) per annum higher than the interest rate provided for herein, until the Event of Default has been cured. All interest provided for in this Section will be compounded monthly and payable on demand.

3. TERM AND TERMINATION.

3.1 Establishment of Termination Date. The term of this Agreement will begin as of the Closing Date and continue until CNB may, at its option, terminate this Agreement pursuant to the section entitled "CNB's Remedies"; the date of any such termination will become the Termination Date as that term is used in this Agreement.

3.2 Obligations Upon the Termination Date. Borrower will, upon the Termination Date, repay the amount of the balance due as set forth in Borrower's Loan Account plus any accrued interest, fees and charges; and

3.3 Survival of Rights. Any termination of this Agreement will not affect the rights, liabilities and obligations of the parties with respect to any Obligations outstanding on the date of such termination.

4. CONDITIONS PRECEDENT.

4.1 **Extension of Credit.** The obligation of CNB to make any Loan or other extension of credit hereunder is subject to CNB's receipt of each of the following, in form and substance satisfactory to CNB, and duly executed as required by CNB:

4.1.1 All Loan Documents required by CNB, including but not limited to this Agreement and any guaranties required hereunder;

4.1.2 Such authorizations and resolutions approving and authorizing the execution, delivery and performance of this Agreement by Borrower and any other documents required pursuant to this Agreement, as may be required by CNB;

4.1.3 Evidence that the insurance required by this Agreement is in effect; and

4.1.4 A complete list of claims made against Borrower and evidence reasonably satisfactory to CNB, that if such claim(s) is adversely determined, it would not have a material adverse effect on the operations or condition, financial or otherwise, of Borrower.

4.2 **Conditions to Each Extension of Credit.** The obligation of CNB to make any Loan or other extension of credit hereunder will be subject to the fulfillment of each of the following conditions to CNB's satisfaction:

4.2.1 The representations and warranties of Borrower set forth in Section 5 will be true and correct on the date of the making of each Loan or other extension of credit with the same effect as though such representations and warranties had been made on and as of such date;

4.2.2 There will have occurred no Event of Default or Potential Event of Default; and

4.2.3 All other documents and legal matters in connection with the transactions described in this Agreement will be reasonably satisfactory in form and substance to CNB.

5. REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants (and each request for a Loan or other extension of credit will be deemed a representation and warranty made on the date of such request) that:

5.1 **Existence, Power and Authorization.** Borrower is duly organized, validly existing and in good standing under the laws of the state of California as a general law city. The execution, delivery and performance of all Loan Documents executed by Borrower are within Borrower's powers and have been duly authorized by the Borrower and do not require any further consent or approval by any Person.

5.2 **Binding Agreement.** The Loan Documents constitute the valid and legally binding obligations of Borrower, enforceable against Borrower in accordance with their terms.

5.3 **Other Agreements.** The execution and performance of the Loan Documents will not violate any provision of law or regulation (including, without limitation, Regulations X and U of the Federal Reserve Board) or any order of any governmental authority, court, or arbitration board or the organizational and governing documents of Borrower, or result in the breach of, constitute a default under, contravene any provisions of, or result in the creation of any security interest, lien, charge or encumbrance upon any of the assets of Borrower pursuant to any indenture or agreement to which Borrower or any of its properties is bound, except liens and security interests in favor of CNB.

5.4 **Litigation.** There is no litigation, tax claim, investigation or proceeding pending, threatened against or affecting Borrower or any of its properties which, if adversely determined, would have a material adverse effect on the operations or condition, financial or otherwise, of Borrower.

5.5 **Financial Condition.** Borrower's most recent financial statements, copies of which have been delivered to CNB, have been prepared in accordance with GAAP and are true, complete and correct and fairly present the financial condition of Borrower, including operating results, as of the accounting period referenced therein. There has been no material adverse change in the financial condition or business of Borrower since the date of such financial statements. Borrower has no material liabilities for taxes or long-term leases or commitments, except as disclosed in the financial statements.

5.6 **No Violations.** Borrower is not in violation of any law, ordinance, rule or regulation to which it or any of its properties is subject.

5.7 **Use of Proceeds.** Borrower will use the proceeds of the Loans solely to fund payments due to retirees under Borrower's Alternative Retirement Medical Program.

6. AFFIRMATIVE COVENANTS. Borrower agrees that until payment in full of all Obligations, Borrower will comply with the following covenants:

6.1 **Books and Records.** Borrower will maintain, in accordance with sound accounting practices, accurate records and books of account. CNB may, at any reasonable time, inspect, audit, and make extracts from, or copies of, all books, records and other data, inspect any of Borrower's properties. Borrower will furnish CNB with all information regarding the business or finances of Borrower promptly upon CNB's request.

6.2 **Financial Statements.** Borrower will furnish to CNB on a continuing basis:

6.2.1 Within one hundred and eighty (180) days after the close of Borrower's fiscal year, a copy of the annual audit report for Borrower, including therein a balance sheet, income statement, reconciliation of net worth and statement of cash flows, with notes thereto, the balance sheet, income statement and statement of cash flows to be audited by a certified public accountant experienced in municipal auditing, certified by such accountant to have been prepared in accordance with GAAP accompanied by a Covenant Compliance Certificate;

6.2.2 As soon as available, any written report pertaining to material items involving Borrower's internal controls submitted to Borrower by Borrower's independent certified public accountants in connection with each annual or interim special audit of the financial condition of Borrower made by such accountants;

6.2.3 Within thirty (30) days the end of each of Borrower's fiscal years, for the next fiscal year, a Proforma Budget; and

6.2.4 Such additional information, reports and/or statements as CNB may, from time to time, reasonably request.

6.3 **Insurance.** Borrower will maintain insurance of the types and in amounts customarily carried in its lines of business, including, but not limited to, fire, public liability, property damage, business interruption and worker's compensation,

6.4 **Notice.** Borrower will promptly advise CNB in writing of (a) the occurrence of any Event of Default or Potential Event of Default; and (b) any other matter that might reasonably be expected to materially or adversely affect Borrower's financial condition, property or business.

6.5 **Fair Labor Standards Act.** Borrower will comply with the requirements of, and all regulations promulgated under, the Fair Labor Standards Act of 1938 (29 U.S.C. Code § 201 et seq.).

6.6 **Legal Existence.** Borrower will maintain its legal existence and all of its rights, privileges and franchises necessary or desirable in the normal course of its business.

6.7 **Compliance with Law.** Borrower comply with all requirements of all applicable laws, rules, regulations, orders of any governmental agency and all material agreements to which they are a party.

6.8 **Financial Tests.** Borrower will maintain:

6.8.1 A credit quality rating of at least A by Standard & Poor's, A2 by Moody's and A by Fitch;

6.8.2 Liquid Assets as of the end of each fiscal year in an amount at least equal to principal and interest due on the Obligations during the next fiscal year; and

6.8.3 A ratio of Net Revenue for a fiscal year just ending plus cash and cash equivalents held at the end of such fiscal year to principal and interest due on the Obligations during the next fiscal year of at least 1.25 to 1.

7. NEGATIVE COVENANTS. Borrower agrees that until payment in full of all Obligations and termination of any right to future advances hereunder, Borrower will not do any of the following, without CNB's prior written consent:

7.1 **Borrowing.** Create, incur, assume or permit to exist any Debt, except (a) Debt to CNB, (b) subordinated Debt, (c) Debt incurred in the ordinary course of operations.

7.2 **Contingent Liabilities.** Assume, guarantee, endorse, contingently agree to purchase or otherwise become liable for the obligation of any Person other than as required under California law, except (a) by the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business, and (b) contingent liabilities in favor of CNB.

7.3 **Investments.** Purchase or acquire the obligations or stock of, or any other interest in, any partnership, joint venture, limited liability company or corporation, except as permitted by California law.

7.4 **Involuntary Liens.** Permit any involuntary liens to arise with respect to any property or assets including but not limited to those arising from the levy of a writ of attachment or execution, or the levy of any state or federal tax lien which lien will not be removed within a period of one hundred and twenty (120) days.

7.5 **Event of Default.** Default under any document or instrument evidencing Debt incurred under any indenture, agreement or other instrument under which such Debt may be issued and fail to cure the default within the applicable cure period, if any, or any event to occur under any of the foregoing which would permit any holder of the Debt outstanding thereunder to declare the same due

and payable before its stated maturity, whether or not such acceleration occurs or such default be waived.

8. EVENTS OF DEFAULT.

8.1 **Events of Default.** The occurrence of any of the following will constitute an Event of Default under this Agreement:

8.1.1 Borrower fails to pay when due any installment of principal or interest or any other amount payable under the Loan Documents that is not cured within five (5) business days after written notice;

8.1.2 Any Person which is a party to any Loan Document fails to perform or observe any of the terms, provisions, covenants, conditions, agreements or obligations contained in the Loan Documents, and fails to cure the same within thirty (30) days after written notice;

8.1.3 The entry of an order for relief or the filing of an involuntary petition with respect to Borrower under the United States Bankruptcy Code, which, if involuntary is not dismissed within sixty (60) days, the appointment of a receiver, trustee, custodian or liquidator of or for any part of the assets or property of Borrower, which is not dismissed within ninety (90) days;

8.1.4 Any financial statement, representation or warranty made or furnished by Borrower in connection with the Loan Documents proves to be in any material respect incorrect and misrepresents Borrower's ability to pay its Debts as they become due; or

8.1.5 Any Person obtains an order or decree in any court of competent jurisdiction enjoining or prohibiting Borrower or CNB or either of them from performing this Agreement, and such proceedings are not dismissed or such decree is not vacated within sixty (60) days after the granting thereof.

8.2 **Notice of Default and Cure of Potential Events of Default.** Except with respect to the Events of Default specified in Subsections 1, 2, 3, or 5 above, and subject to the provisions of the Section entitled "Additional Remedies", CNB will give Borrower at least twenty (20) days' written notice of any event which constitutes or, with the lapse of time would become an Event of Default, during which time Borrower will be entitled to cure same.

8.3 **CNB's Remedies.** Upon the occurrence of an Event of Default, at the sole and exclusive option of CNB, and upon written notice to Borrower, CNB may (a) declare the principal of and accrued interest on the Loans immediately due and payable in full, whereupon the same will immediately become due and payable; (b) terminate this Agreement as to any future liability or obligation of CNB, (c) exercise its rights and remedies under the Loan Documents and applicable laws.

9. MISCELLANEOUS.

9.1 **Reimbursement of Costs and Expenses.** Borrower will reimburse CNB for all costs and expenses relating to this Agreement including, but not limited to, filing, recording or search fees and other out-of-pocket expenses, and reasonable attorneys' fees and expenses expended or incurred by CNB (or allocable to CNB's in-house counsel) in administering the Loan Documents after the Closing Date or collecting any sum which becomes due CNB under the Loan Documents, irrespective of whether suit is filed, or in the protection, perfection, preservation or enforcement of any and all rights of CNB in connection with the Loan Documents, including, without limitation, the fees and costs incurred in any out-of-court work-out or a bankruptcy or reorganization proceeding.

9.2 **Dispute Resolution.**

9.2.1 **Mandatory Arbitration.** At the request of CNB or Borrower, any dispute, claim or controversy of any kind (whether in contract or tort, statutory or common law, legal or equitable) now existing or hereafter arising between CNB and Borrower and in any way arising out of, pertaining to or in connection with: (a) this Agreement, and/or any renewals, extensions, or amendments thereto; (b) any of the Loan Documents; (c) any violation of this Agreement or the Loan Documents; or (d) any incidents, omissions, acts, practices or occurrences arising out of or related to this Agreement or the Loan Documents causing injury to either party whereby the other party or its agents, employees or representatives may be liable, in whole or in part, will be resolved through final and binding arbitration conducted at a location determined by the arbitrator in Los Angeles, California, and administered by the American Arbitration Association ("AAA") in accordance with the California Arbitration Act (California Code of Civil Procedure §1280 et. seq.) and the then existing Commercial Rules of the AAA. Judgment upon any award rendered by the arbitrator(s) may be entered in any state or federal courts having jurisdiction thereof.

9.2.2 **Judicial Reference.** At the request of any party, a controversy or claim which is not submitted to arbitration will be determined by a reference in accordance with California Code of Civil Procedure §638 et. seq. If such an election is made, the parties will designate to the court a referee or referees selected under the auspices of the AAA in the same manner as arbitrators are selected in AAA-sponsored proceedings. The presiding referee of the panel, or the referee if there is a single referee, will be a retired judge. Judgment upon the award rendered by such referee or referees will be entered in the court in which such proceeding was commenced in accordance with California Code of Civil Procedure §644 and §645.

9.2.3 **Provisional Remedies, Self Help and Foreclosure.** No provision of this Agreement will limit the right of any party to obtain provisional or ancillary remedies such as injunctive relief or the appointment of a receiver from a court having jurisdiction before, during or after the pendency of any arbitration or referral. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies, or exercise of self help remedies will not constitute a waiver of the right of any party, including the plaintiff, to submit any dispute to arbitration or judicial reference.

9.2.4 **Powers and Qualifications of Arbitrators.** The arbitrator(s) will give effect to statutes of limitation, waiver and estoppel and other affirmative defenses in determining any claim. Any controversy concerning whether an issue is arbitratable will be determined by the arbitrator(s). The laws of the State of California will govern. The arbitration award may include equitable and declaratory relief. All arbitrator(s) selected will be required to be a retired judge licensed to practice law in the State of California and will be required to be experienced and knowledgeable in the substantive laws applicable to the subject matter of the controversy or claim at issue.

9.2.5 **Discovery.** The provisions of California Code of Civil Procedure Section 1283.05 or its successor section(s) are incorporated herein and made a part of this Agreement. Depositions may be taken and discovery may be obtained in any arbitration under this Agreement in accordance with said section(s).

9.2.6 **Miscellaneous.** The arbitrator(s) will determine which is the prevailing party and will include in the award that party's reasonable attorneys' fees and costs (including allocated costs of in-house legal counsel). Each party agrees to keep all controversies and claims and the arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law or regulation.

9.3 **Cumulative Rights and No Waiver.** All rights and remedies granted to CNB under the Loan Documents are cumulative and no one such right or remedy is exclusive of any other. No failure or delay on the part of CNB in exercising any power, right or remedy under any Loan Document will operate as a waiver thereof, and no single or partial exercise or waiver by CNB of any such power, right or remedy will preclude any further exercise thereof or the exercise of any other power, right or remedy.

9.4 **Applicable Law.** This Agreement will be governed by California law.

9.5 **Counterparts.** This Agreement may be signed in any number of counterparts which, when taken together, will constitute but one agreement.

9.6 **Indemnification.** Borrower will, at all times, defend and indemnify and hold CNB (which for purposes of this Section includes CNB's parent company and subsidiaries and all of their respective shareholders, directors, officers, employees, agents, representatives, successors, attorneys, and assigns) harmless from and against any and all liabilities, claims, demands, causes of action, losses, damages, expenses (including without limitation reasonable attorneys' fees, [which attorneys may be employees of CNB, or may be outside counsel]) costs, settlements, judgments or recoveries arising out of or resulting from (a) any breach of the representations, warranties, agreements or covenants made by Borrower herein; (b) any suit or proceeding of any kind or nature whatsoever against CNB arising from or connected with and default by Borrower under the transactions contemplated by the Loan Documents; and/or (c) any suit or proceeding that CNB may deem necessary or advisable to institute, in the name of CNB, Borrower or both, against any other Person to protect the rights of CNB hereunder or under any of the documents, instruments or agreements executed or to be executed pursuant hereto, including attorneys' fees and court costs and all other costs and expenses incurred by CNB (or allocable to CNB's in-house counsel), all of which will be charged to and paid by Borrower. Any obligation or liability of Borrower to CNB under this Section will survive the expiration or termination of this Agreement and the repayment of all Loans and the payment or performance of all other Obligations of Borrower to CNB.

9.7 **Notices.** Any notice required or permitted under any Loan Document will be given in writing and will be deemed to have been given when personally delivered or when sent by the U.S. mail, postage prepaid, certified, return receipt requested, properly addressed. For the purposes hereof, the addresses of the parties will, until further notice given as herein provided, be as follows:

CNB: City National Bank
400 North Roxbury Drive, Second Floor,
Beverly Hills, CA 90210
Attention: Kevin McCarthy, Senior Vice President

with copy to: City National Bank, Legal Department
555 South Flower St., 18th Floor
Los Angeles, California 90071
Attention: Managing Counsel, Credit Unit

Borrower: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: Scott Miller, Chief Financial Officer

With a copy to: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: Byron Pope, City Clerk

9.8 **Assignments.** The provisions of this Agreement are hereby made applicable to and will inure to the benefit of CNB's successors and assigns and Borrower's successors and assigns; provided, however, that Borrower may not assign or transfer its rights or obligations under this Agreement without the prior written consent of CNB. Upon prior written notice to Borrower, CNB may assign this Agreement and its rights and duties hereunder. Subject to the foregoing, CNB reserves the right to sell, assign, transfer, negotiate, or grant participations in all or any part of, or any interest in CNB's rights and benefits hereunder. In connection therewith, CNB may disclose all documents and information which CNB now or hereafter may have relating to Borrower or Borrower's business.

9.9 **Headings.** Section headings in this Agreement are included for convenience of reference only and do not constitute a part of the Agreement for any purpose.

9.10 **Accounting Terms.** Except as otherwise stated in this Agreement, all accounting terms and financial covenants and information will be construed in conformity with, and all financial data required to be submitted will be prepared in conformity with and in compliance with the Governmental Accounting Standards Board (GASB) and the California Constitution and State law.

9.11 **Severability.** Any provision of the Loan Documents which is prohibited or unenforceable in any jurisdiction, will be, only as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability, but all the remaining provisions of the Loan Documents will remain valid.

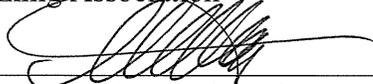
9.12 **Complete Agreement.** This Agreement, together with the other Loan Documents, constitutes the entire agreement of the parties and supersedes any prior or contemporaneous oral or written agreements or understandings, if any, which are merged into this Agreement. The other Loan

Documents are subject to the terms and conditions of this Agreement, and, in the event of a conflict between the other Loan Documents and this Agreement, the provisions of this Agreement shall control. This Agreement may be amended only in a writing signed by Borrower and CNB.

This Agreement is executed as of the date stated at the top of the first page at Beverly Hills, California.

CNB:

**City National Bank, a
National Banking Association**

By: 
Kevin McCarthy, Senior Vice President

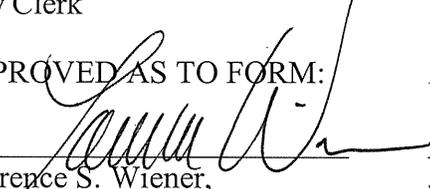
BORROWER:

**City Of Beverly Hills, a
Municipal Corporation**

By: _____
Jimmy Delshad, Mayor of the City of
Beverly Hills, California

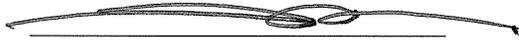
ATTEST:

Byron Pope
City Clerk

APPROVED AS TO FORM:

Laurence S. Wiener,
City Attorney

APPROVED AS TO CONTENT:

Jeffrey Kolin,
City Manager


Scott G. Miller, Director of Administrative Services/
Chief Financial Officer


Karl Kirkman, Risk Manager

3.4 Principal and interest due on the Obligations during the next fiscal year:

\$ _____

3.5 Ratio of 3.3 to 3.4 (3.3 divided by 3.4)

_____ to One (1)

Required: at least 1.25 to 1.0 at all times.

CERTIFICATION:

Each of the above stated information is true and correct as of the date hereof and Borrower has met each of the Conditions set forth in Section 4.2, and no Events of Default or Potential Events of Default presently exist.

I declare under penalty of perjury that the foregoing is true and correct.

Date: _____

(signature)