



## AGENDA REPORT

**Meeting Date:** May 4, 2010  
**Item Number:** F-10  
**To:** Honorable Mayor & City Council  
**From:** Brenda Lavender, Real Estate & Property Manager   
**Subject:** MEMORANDUM OF LEASE; AMENDMENT OF LEASE BY AND BETWEEN THE CITY OF BEVERLY HILLS AND LAKESHORE ENTERTAINMENT GROUP, LLC.  
**Attachments:** 1. Memorandum of Lease; Amendment of Lease

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### RECOMMENDATION

It is recommended that the City Council approve the Memorandum of Lease; Amendment of Lease by and between The City of Beverly Hills and Lakeshore Entertainment Group, LLC. A copy of the lease is on file with the City Clerk. Lakeshore is located at 9268 West Third Street.

### INTRODUCTION

Lakeshore has leased this single story building from the City since March of 2005. The current lease expired on March 31, 2010 and Lakeshore did not have an option to extend the term. This amendment extends the term of the lease in one-year increments, for a total of five (5) years and increase the base rent.

### DISCUSSION

As a part of this lease extension, the monthly rental increases from \$46,889.52 to \$86,202. There is no down time for the space and no out of pocket costs for the City.

### FISCAL IMPACT

The fiscal impact of this lease is increased revenue of \$471,749.76 for the first year, which is the difference between the old rental rate and the new rental rate.



Scott G. Miller, Director of  
Administrative Services, CFO

Approved By

# **Attachment 1**

Memorandum of Lease;  
Amendment of Lease

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of Beverly Hills  
Office of the City Manager  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attn: City Clerk

(space above line for recorder's use)

**MEMORANDUM OF LEASE; AMENDMENT OF LEASE**

THIS MEMORANDUM OF LEASE; AMENDMENT OF LEASE (this "**Amendment**") is made and entered into as of April 20, 2010, by and between the CITY OF BEVERLY HILLS, a California municipal corporation ("**City**"), and LAKESHORE ENTERTAINMENT GROUP, LLC, a California limited liability company ("**Tenant**").

**RECITALS**

- A. City and Tenant executed that certain City of Beverly Hills Lease dated March 1, 2005 (the "**Lease**"). The Lease affects the building located at 9268 West Third Street, Beverly Hills, California (the "**Property**").
- B. A Memorandum of Lease was not recorded; consequently, City and Tenant are executing and recording this document as a Memorandum of Lease for the Lease.
- C. City and Tenant also desire to amend the Lease as hereinafter set forth.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual covenants and terms hereof and in the Lease, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Tenant agree as follows:

1. Memorandum of Lease. Landlord has leased the Property to Tenant for the terms, and on the other terms and conditions, set forth in the Lease. The terms of the Lease, as modified below, are incorporated herein by reference.

2. Lease Amendments.

2.1 Automatic Annual Extensions of Term; City and Tenant Termination Option. The Term of the Lease is hereby extended from April 1, 2010 to March 31, 2011 and shall continue thereafter on a year by year basis until March 31, 2015 (i.e., the term shall be automatically extended in increments of one year) unless the City or Tenant have terminated as provided in Section 2.1.1 or 2.1.2, respectively.

2.1.1 City Termination. If the City or any related or affiliated public entity has entered into a written agreement with a third party contractor to demolish the Property and construct a new building at 9268 West Third Street in Beverly Hills (“**Agreement**”), and the Agreement by its terms requires that demolition of the Property shall commence within eight (8) months after the date of the Agreement (subject to delays for events beyond the control of the contractor but not caused by the City), then the City shall have the right, in its sole and absolute discretion, to terminate the Lease at any time upon six (6) calendar months prior written notice to Tenant (the “City Termination Notice”) in addition to any other rights City may have to terminate the Lease under the terms of the Lease. The City shall not allow occupancy of the Property by any tenant, licensee or occupant from the time of Tenant’s surrender of the Property following such notice until substantial completion of a new building at 9268 West Third Street in Beverly Hills; provided, however, that if City terminates the Lease pursuant to a City Termination Notice, but demolition of the Property does not occur for any reason pursuant to such Agreement (as it may be amended in good faith), then Landlord shall so notify Tenant in writing, and Tenant may elect by written notice to City (the “Re-Occupancy Notice”) given within sixty (60) days after City gives a Re-Occupancy Opportunity Notice to Tenant (the “Re-Occupancy Opportunity Notice”), to re-occupy the Premises under the terms of the Lease (and Section 2.2 below) that would have been applicable from and after the date of Tenant’s Re-Occupancy Notice if the Lease had not been terminated by City. If Tenant gives a Re-Occupancy Notice, the City’s rights of termination under this Section 2.1.1 shall continue in effect (i.e., such that the City may again terminate the Lease after entering into a new Agreement) and the Tenant’s rights to further Re-Occupancy Opportunity Notices shall continue until the Property is demolished pursuant to an Agreement (such that it no longer can be occupied by Tenant). If City gives a Re-Occupancy Opportunity Notice, but Tenant does not timely give a Re-Occupancy Notice in response, or if the Lease otherwise terminates, then City, affiliates of City and/or third parties may lease, license or otherwise occupy the Leased Premises. City Termination Notices and Re-Occupancy Opportunity Notices may be given by the City Manager and shall not require further approval or other action by the City Council.

2.1.2 Tenant Termination. Prior to March 31, 2015, Tenant shall have the right, in its sole and absolute discretion, to elect not to renew the Lease for any year provided Tenant gives Landlord six (6) calendar months’ written notice prior to the expiration of the then-current renewal year to the City, in addition to any other rights Tenant may have to terminate the Lease under the terms of the Lease.

2.2 Extension Option. Provided Tenant is not in default under the Lease beyond any applicable cure period at the time of exercise of the option to extend provided herein or at any time thereafter prior to the commencement of the Option Term (as hereinafter defined), and provided the Lease is then in effect, Tenant shall have the option to extend the term of the Lease from April 1, 2015 until March 31, 2020 (the “**Option Term**”) by giving Landlord written notice of the extension no earlier than April 1, 2014 and no later than September 30, 2014. All of the terms of the Lease shall be applicable to the Option Term, except that the Base Rent payable during the Option Term shall be increased in accordance with Section 2.3 below.

2.3 Monthly Rent. Commencing on April 1, 2010, Base Rent shall increase to \$86,202 per month (which is \$4.50 per square foot) and shall thereafter be adjusted annually pursuant to Section 5.1 of the Lease. In the event Tenant exercises its right to extend the term under Section 2.2 above, then effective on the first day of the Option Term, Base Rent shall be increased to the amount equal to the fair market rent for the Premises as of the commencement of the subject Option Term, which shall be determined as hereafter set forth, and then Base Rent shall be subsequently adjusted on each anniversary thereof pursuant to Section 5.1 of the Lease;

provided, however, in no event shall the Base Rent, at the commencement of the Option Term be less than the Base Rent in effect immediately prior to the Option Term. If Tenant exercises its option to extend under Section 2.2 above, then Landlord shall give Tenant written notice of the fair market rent as determined by Landlord. If Tenant objects to Landlord's determination, Tenant shall, within ten (10) days after Landlord's notice, notify Landlord in writing of the reasons for Tenant's disagreement with Landlord's determination, whereupon Landlord and Tenant shall meet and attempt to resolve such disagreement. If Tenant fails to timely give such notice, Landlord's determination shall be conclusive and binding. In the event that Landlord and Tenant are unable to agree within thirty (30) days following Tenant's notice, then the fair market rent shall be determined by an independent real estate broker in the manner provided below. Until the fair market determination is completed, Tenant shall continue to pay Base Rent at the same rate as immediately preceding the commencement of the applicable Option Term, and after such fair market determination is completed, Tenant shall promptly make payment to Landlord for any underpayments owing for prior months plus ten percent (10%) single interest (but no greater than the maximum rate of interest permitted by law). The process for determining the fair market rent shall be as follows: An independent real estate broker with no less than ten (10) years of significant experience representing landlords and tenants in office leasing transactions in Los Angeles County, California chosen by Landlord shall, in good faith, determine the fair market rent based on comparable premises in the City of Beverly Hills ("**First FMV Determination**"), and shall forward the resulting fair market determination to Tenant. If the First FMV Determination is deemed unacceptable by Tenant, then Tenant shall so advise Landlord in writing within ten (10) business days after receipt of the First FMV Determination (specifying the reasons for disagreement) and Tenant shall then have the right to engage an independent real estate broker with no less than ten (10) years of significant experience representing landlords and tenants in office leasing transactions in Los Angeles County, California to determine, in good faith, the fair market rent for the Premises based on comparable premises in the City of Beverly Hills ("**Second FMV Determination**"), and the resulting fair market determinations shall be forwarded to Landlord. If the Second FMV Determination is unacceptable to Landlord, then Landlord shall so advise Tenant within ten (10) business days after receipt of the Second FMV Determination, and the first independent real estate broker and second independent real estate broker shall together choose a third independent real estate broker with no less than ten (10) years of significant experience representing landlords and tenants in leasing transactions in Los Angeles County, California who shall select the determination that it believes is the closest to the actual fair market rental rate for the Premises (without any discussion with the other brokers) and shall notify Landlord and Tenant of its selection within ten (10) days after its receipt of the First FMV Determination and Second FMV Determination. The fair market rent (*i.e.*, the new Base Rent) shall be the determination so selected by the third broker. The cost of the first broker and First FMV Determination shall be borne by Landlord. The cost of the second broker and the Second FMV Determination shall be borne by Tenant. The cost of the third broker shall be shared equally between Landlord and Tenant.

2.4 Waiver of Relocation Benefits. Tenant acknowledges that Tenant first lawfully occupied the Property after City acquired the Property. As such, Tenant is a post-acquisition tenant as defined in Section 6034(b)(1) of Chapter 6 of Title 25 of the California Code of Regulations, which defines post-acquisition tenants as "those who lawfully occupy property only after a public entity acquires it, or who lawfully occupy property after the private acquisition of property by a person with a written agreement with a public entity for the purpose

of financing the purchase or development of the property. . .” Under the California Relocation Assistance Law (California Government Code Section 7260 et seq.) and the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations), post-acquisition tenants are not eligible for relocation assistance and benefits, other than advisory assistance to the extent determined by the displacing agency. City has informed Tenant that it will not provide any advisory assistance to Tenant at the time that Tenant is displaced from the Property under the terms of this Amendment. In consideration for this Amendment and based on Tenant's status as a post-acquisition tenant, Tenant hereby waives any and all relocation benefits and relocation advisory assistance, including but not limited to moving expenses, business re-establishment expenses, expenses relating to searching for a replacement business, under federal or state relocation laws or regulations, including without limitation, the Uniform Act and California Relocation Law or the Tenant acknowledges and agrees that City will have no further obligation to Tenant for relocation benefits or assistance under federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), if applicable, or under the California Relocation Law (Government Code Section 7260 et seq. ) and the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations).

Tenant's Initials 

2.5 Waiver and Release of Claims. In consideration for this Amendment, Tenant and its officers, directors and shareholders, employees, agents, and representatives hereby fully and forever release and discharge the City, and its officers, elected or appointed officials, attorneys, agents, representatives, employees, successors, and assigns, and each of them (collectively, the “**City Parties**”), each of whom are express third party beneficiaries of the Section from and all past, present or future claims, actions, losses, liabilities, causes of action, liens, demands, rights, damages, costs, attorney’s fees, interest, expenses, reimbursement and compensation of any nature whatsoever (collectively, “**Claims**”), whether known or unknown, disclosed or undisclosed, and whether or not anticipated, in any way related to the negotiation of a new lease between Tenant and City for space in the building at 331 Foothill Road and the related termination agreement by which the Lease would have terminated in connection with the new lease for space in the building at 331 Foothill Road, provided, however, that this release does not otherwise release or discharge any Claims against any City Parties in connection with, relating to or arising from the Lease itself as amended by this Amendment. In connection with the release of the Claims Tenant and anyone acting by or through it, waive any and all rights that they may have under the provisions of California Civil Code §1542, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

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

4. Continuing Effect. Except as specifically modified hereby, the Lease shall remain unaffected and unchanged by reason of this Amendment. The Lease is hereby ratified and affirmed by City and Tenant and remains in full force and effect as modified hereby.

5. Counterparts. This 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.

6. Attorneys' Fees. In the event either party shall institute any action or proceeding against the other party relating in any way to this Amendment on the Lease, the party not prevailing in such action or proceeding shall reimburse the prevailing party for its disbursements incurred in connection therewith and for its reasonable attorneys' fees and costs. In addition to the foregoing award of attorneys' fees and costs to the prevailing party, the prevailing party shall be entitled to its attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce the judgment.

7. Time of Essence. Time is of the essence of each and every provision of this Amendment in which time is a factor.

IN WITNESS WHEREOF, City and Tenant have executed this Amendment as of the date and year first above written.

**CITY:**

CITY OF BEVERLY HILLS,  
a municipal corporation

By: \_\_\_\_\_

Jimmy Delshad, Mayor

ATTEST:

APPROVED AS TO FORM:



Laurence S. Wiener, City Attorney

\_\_\_\_\_  
Byron Pope, City Clerk

APPROVED AS TO CONTENT

APPROVED AS TO CONTENT

\_\_\_\_\_  
Jeffrey C. Kolin, City Manager

  
\_\_\_\_\_  
Scott Miller, Director of Administrative Services/CFO

**TENANT:**

LAKESHORE ENTERTAINMENT GROUP, LLC,  
a California limited liability company

By: \_\_\_\_\_

  
Eric Reid, Chief Operating Officer

**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 \_\_\_\_\_ (Seal)  
Signature of Notary Public

**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 \_\_\_\_\_ (Seal)  
Signature of Notary Public

**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 \_\_\_\_\_ (Seal)  
Signature of Notary Public

**ACKNOWLEDGMENT**

State of California )  
 )  
County of Los Angeles )

On April 14, 2010 before me, Max N. Smerling  
(insert name and title of the officer)

personally appeared Eric Reid,

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 \_\_\_\_\_ (Seal)  
Signature of Notary Public

