



AGENDA REPORT

Meeting Date: February 17, 2009
Item Number: F-13
To: Honorable Mayor & City Council
From: Brenda A. Lavender, Real Estate & Property Manager
Subject: Second Amendment to Lease and Memorandum of Second Amendment to Lease between Forward Beverly Hills, Inc dba Keller Williams Realty and the City of Beverly Hills.

Attachments:

1. Second Amendment to Lease
2. Memorandum of Second Amendment to Lease

RECOMMENDATION

Staff recommends approval of the Second Amendment to Lease and Memorandum of Second Amendment to Lease by and between the City of Beverly Hills and Forward Beverly Hills, Inc., dba Keller Williams Realty. Keller Williams Realty is an office tenant in our 439 N. Canon – N. Beverly/Canon Property.

INTRODUCTION

A Second Amendment to Lease and Memorandum of Second Amendment to Lease with Forward Beverly Hills have been prepared for City Council approval. The amendment defers base rent and common area maintenance charges for the months of December 2008 and January 2009 to the end of the lease term and extends the lease term from April 17, 2010 to June 17, 2010.

DISCUSSION

Forward Beverly Hills, Inc., dba Keller Williams Realty requested rental abatement for two (2) months because of the challenging state of the real estate economy and their difficult financial position. City Council's approval of the Second Amendment to lease will not abate the rent, but will defer payment to the end of the lease term which is the period of April 18, 2010 through June 17, 2010. The Second Amendment to Lease will also terminate all of Tenant's future options to extend the lease term.

Meeting Date: February 17, 2009

FISCAL IMPACT

The fiscal impact of the extension of this lease is a reduction of annual revenue for Fiscal Year 2008/09 of \$109,481.92 and an increase of annual revenue for Fiscal Year 2009/10 of \$116,385.20.



Scott G. Miller, Director of
Administrative Services, CFO
Approved By

SECOND AMENDMENT TO LEASE

This SECOND AMENDMENT TO LEASE (this "Amendment") is made as of _____, 200__ (the "Effective Date") by and between CITY OF BEVERLY HILLS, a municipal corporation ("Landlord"), and FORWARD BEVERLY HILLS, INC., a California corporation, doing business as Keller Williams Realty ("Tenant").

RECITALS

- A. Landlord and Tenant are parties to that certain Office Lease dated as of December 21, 2004, and that certain First Amendment to Lease dated October 17, 2006 (the "Existing Lease").
- B. All capitalized terms used herein but not herein defined shall have the meanings ascribed to such terms in the Existing Lease.
- C. Landlord and Tenant desire to amend the Existing Lease upon and subject to the terms and conditions set forth herein.
- D. The Existing Lease, as amended hereby, is hereinafter referred to as the "Lease".

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree that the Existing Lease is amended as of the Effective Date as follows:

1. Extension of Term. The term of the Lease is hereby extended to April 14, 2012 (the "Expiration Date").
2. Termination of Extension Option. Section 3(b) of the Lease is hereby deleted. Tenant shall have no right to extend the term of the Lease (which expires on the Expiration Date).
3. Rent and CAM Charges. No Minimum Annual Rent or Annual CAM Payment shall be payable for the months of December, 2008 and January, 2009. The minimum Annual Rent and Annual CAM Payment for the period from February 15, 2012 through April 14, 2012 shall be at the Minimum Annual Rent rate and Annual CAM Payment rate in effect as of February 14, 2012.
4. Guaranty. Landlord's obligations under this Amendment are expressly conditioned on delivery to Landlord, concurrently with Tenant's execution and delivery of this Amendment, of both: (i) a Second Amendment to Guaranty of Lease (the "Guaranty Amendment"), in the form attached hereto as Schedule 1, executed by David Bailey, an unmarried man, and Paul Morris, an unmarried man, jointly and severally (collectively, "Guarantor"); and (ii) a Memorandum of Second Amendment to Lease in a form reasonably acceptable to Landlord, and duly executed by Tenant and acknowledged.

5. Brokers. Tenant and Landlord each will indemnify, defend and hold the other harmless from and against any and all costs, expenses or liabilities for commissions or other compensation or charges claimed by any broker or agent based on dealings with the indemnifying party with respect to this Amendment.

6. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

7. Binding on Successors. The provisions of this Amendment shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.

8. Ratification. The provisions set forth in this Amendment shall be deemed part of the Lease and shall supersede, to the extent appropriate, any contrary provisions of the Existing Lease. In the event of any conflict between the Existing Lease and this Amendment, this Amendment shall prevail. Except as hereby amended, the Existing Lease shall remain unmodified and in full force and effect, and, as hereby amended, is ratified and confirmed. From and after the Effective Date, any reference to the term "Lease" in the Existing Lease shall be deemed to refer to the Existing Lease as modified by this Amendment.

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

“LANDLORD”

CITY OF BEVERLY HILLS,
a municipal corporation

By: _____
Barry Brucker,
Mayor

ATTEST:

(SEAL)
Byron Pope
City Clerk

APPROVED AS TO FORM:



Laurence S. Wiener
City Attorney

APPROVED AS TO CONTENT:

Roderick J. Wood
City Manager



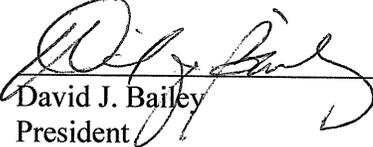
Scott G. Miller
Director of Administrative Services/CFO

“TENANT”

FORWARD BEVERLY HILLS, INC.,
a California corporation

By: 

Paul M. Morris
Chief Executive Officer

By: 

David J. Bailey
President

SCHEDULE 1

SECOND GUARANTY AMENDMENT

(See Attached.)

SECOND AMENDMENT TO GUARANTY OF LEASE

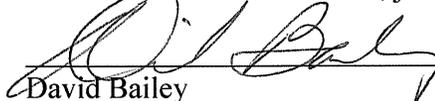
This SECOND AMENDMENT TO GUARANTY OF LEASE (the "Guaranty Amendment") is made by DAVID BAILEY, an unmarried man, and PAUL MORRIS, an unmarried man (collectively, "Guarantor"), in favor of CITY OF BEVERLY HILLS, a municipal corporation ("Landlord"), in connection with that certain Second Amendment to Lease entered into concurrently herewith (the "Second Lease Amendment"). The Lease Amendment is (i) regarding that certain Office Lease dated December 21, 2004 as amended by a First Amendment to Lease dated October 17, 2006 (the "Existing Lease") pursuant to which Landlord leased to FORWARD BEVERLY HILLS, INC., a California corporation, doing business as Keller Williams Realty ("Tenant"), certain Premises (as more particularly defined in the Lease, and referred to in this Guaranty Amendment as the "Existing Premises") within the building located at 439 N. Canon Drive, Beverly Hill, California, and (ii) provides, among other things, that as a material inducement to and in consideration of Landlord entering into the Existing Lease, Guarantor executed a Guaranty of Lease and a First Amendment to Guaranty of Lease (the "Existing Guaranty") of even date with the Existing Lease, and as a material inducement to and in consideration of Landlord entering into the Second Lease Amendment, Landlord having indicated that it would not enter into the Lease Amendment without the execution of this Guaranty Amendment, Guarantor does hereby agree with Landlord as follows:

1. By executing this Guaranty Amendment, Guarantor hereby acknowledges that it has read the Second Lease Amendment and consents to the terms thereof. Guarantor further confirms and agrees that the Existing Guaranty shall continue to apply to the Existing Lease as amended by the Second Lease Amendment, and shall continue to guaranty those obligations of Tenant accruing under the Existing Lease as specifically set forth therein subject to any express limitations in the Existing Guaranty. Except as hereby amended, the Existing Guaranty shall remain unmodified and in full force and effect, and, as hereby amended, is ratified and confirmed. Guarantor acknowledges and agrees that the Existing Guaranty is not otherwise impaired or affected by this Guaranty Amendment.

2. This Guaranty Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. The provisions of this Guaranty Amendment shall bind and inure to the benefit of the heirs, representatives, successors and assigns of Landlord and Guarantor, as applicable.

Executed as of _____, 200_.

DAVID BAILEY, an unmarried man, and PAUL MORRIS, an unmarried man, jointly and severally



David Bailey

Soc. Sec. No.: 569-15-7430



Paul Morris

Soc. Sec. No.: 170-60-8730

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

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 Memorandum of Second Amendment to Lease is exempt from Recording Fees pursuant to California Government Code Section 27383.

**MEMORANDUM OF
SECOND AMENDMENT TO LEASE**

THIS MEMORANDUM OF SECOND AMENDMENT TO LEASE (this "**Memorandum**") is made as of _____, 200_, by and between the CITY OF BEVERLY HILLS, a California municipal corporation ("**City**"), and FORWARD BEVERLY HILLS, INC., a California corporation d/b/a Keller Williams Realty ("**Tenant**").

RECITALS:

A. City and Tenant that certain Office Lease dated as of December 21, 2004, a memorandum of which was recorded in the Official Records of Los Angeles County, California ("**Official Records**"), on June 28, 2005, as Document No. 05-1523583, City and Tenant amended said Office Lease by a First Amendment dated October 17, 2006 evidenced by a Memorandum of Amendment of Lease dated October 11, 2006 recorded in the Official Records on March 8, 2007 as Document No. 2007-0512814. The Office Lease, as so amended, is hereinafter referred to as the "**Lease**".

B. City and Tenant have agreed to further amend the Lease on the terms, and subject to the conditions, set forth in that certain Second Amendment to Lease dated substantially concurrently herewith (the "**Second Amendment**"). Initially capitalized words and terms used herein without definition shall have the meanings set forth therefore in the Second Amendment.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Tenant agree as follows:

1. Second Amendment to Lease. The terms of the Second Amendment are hereby incorporated herein by reference, including the existence of the term of the Lease to April 14, 2012.

2. Purpose. This Memorandum is prepared for the purposes of recordation only and in no way modifies the terms and conditions of the Amendment. In the event any provision of this Memorandum is inconsistent with any term or condition of the Amendment, the term or condition of the Amendment shall prevail.

3. Counterparts. This Memorandum 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 Memorandum of Amendment to Lease as of the date first written above.

CITY:

CITY OF BEVERLY HILLS, a California municipal corporation

By: _____

Barry Brucker, Mayor of the City of Beverly Hills, California

ATTEST:

Byron Pope, City Clerk

APPROVED AS TO CONTENT:

Roderick J. Wood, City Manager

Scott G. Miller, Director of Administrative Services/CFO

APPROVED AS TO FORM:

Laurence S. Wiener, City Attorney

TENANT:

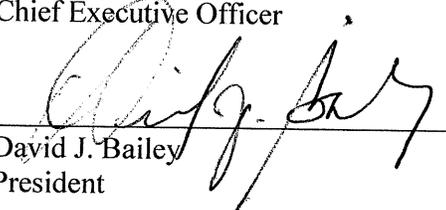
FORWARD BEVERLY HILLS, INC., a California corporation (d/b/a Keller Williams Realty)

By: _____



Paul Morris
Chief Executive Officer

By: _____


David J. Bailey
President

ACKNOWLEDGMENT

State of California)
County of Los Angeles)

On December 18, 2008 before me, Crystal L. Swiger, Notary Public
(insert name and title of the officer)

personally appeared Paul Morris, David J. Bailey

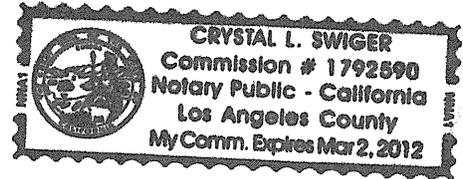
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) 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 Crystal L. Swiger
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)

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