



AGENDA REPORT

Meeting Date: February 17, 2009
Item Number: F-14
To: Honorable Mayor & City Council
From: Brenda A. Lavender, Real Estate & Property Manager
Subject: Second Amendment to Lease and Memorandum of Lease between Allan Brooks dba Al's Newsstand and the City of Beverly Hills
Attachments:

1. Second Amendment to Lease
2. Memorandum of Lease

RECOMMENDATION

Staff recommends approval of the Second Amendment to Lease and Memorandum of Lease by and between the City of Beverly Hills and Allan Brooks dba Al's Newsstand. Al's Newsstand has been a long-standing tenant of the City at 216 South Beverly Drive.

INTRODUCTION

A Second Amendment to Lease with Allan Brooks has been prepared for City Council approval. The amendment extends the term of lease by five (5) years without any loss in revenue or vacancy.

DISCUSSION

Allan Brooks' current lease expires March 31, 2009 and this Second Amendment to Lease will extend the term through March 31, 2014. This lease amendment retains our local newsstand which has been a long-standing community amenity.

FISCAL IMPACT

The fiscal impact of the extension of this lease is additional annual revenue of \$33,948 for the first year and then increased annually thereafter by CPI. There is no capital investment for the City.

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 _____, 2009 (the "Effective Date") by and between CITY OF BEVERLY HILLS, a municipal corporation ("Landlord"), and ALLAN BROOKS, an individual, doing business as "Al's Newsstand" ("Tenant").

RECITALS

- A. Landlord and Tenant are parties to that certain City of Beverly Hills Lease -- parking Structure, 216 South Beverly Drive dated as of October 11, 1988, 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 March 31, 2014 (the "Expiration Date").
2. Extension Options. Provided Tenant is not in default at the time it exercises an extension described herein and at the beginning of the applicable Extension Term (hereinafter defined), Tenant shall have two (2) options to further extend the term of the Lease for a period of five (5) years each (an "Extension Term"). Tenant may exercise each extension option by written notice to Landlord given at least six (6) months prior to the end of the then-current term, time being of the essences of this requirement. All of the terms of the lease shall apply to each Extension Term.
3. Monthly Rent. The monthly rent will be and remain \$2,829 per month until April 30, 2010, at which time it shall be increased as described in Section 4.3 of the Lease and shall thereafter be increased annually, including during any Extension Terms described in Section 3 above, as described in said Section 4.8).
4. 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.
5. 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.

6. 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.

7. 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.

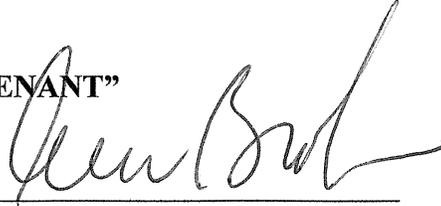
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IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date and year first above written.

“LANDLORD”

CITY OF BEVERLY HILLS,
a municipal corporation

“TENANT”



ALLAN BROOKS

By: _____

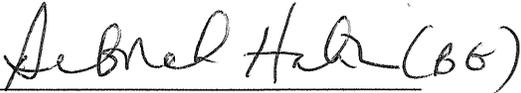
Barry Brucker,
Mayor

ATTEST:

_____ (SEAL)

Byron Pope
City Clerk

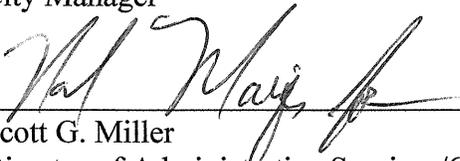
APPROVED AS TO FORM:



Laurence S. Wiener
City Attorney

APPROVED AS TO CONTENT:

Roderick J. Wood
City Manager



Scott G. Miller
Director of Administrative Services/CFO

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 LEASE

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is made as of _____, 2009, by and between the CITY OF BEVERLY HILLS, a California municipal corporation ("**City**"), and ALLAN BROOKS, an individual (doing business as "Al's Newsstand") ("**Tenant**").

RECITALS:

A. City and Tenant that certain City of Beverly Hills Lease dated as of October 11, 1988 and City and Tenant amended said Lease by a First Amendment dated January 5, 1999. Neither said lease nor first amendment of lease were recorded. The 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.

C. City and Tenant desire to record this Memorandum to give record notice of the Lease, as amended.

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 Lease and the Second Amendment are hereby incorporated herein by reference.

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

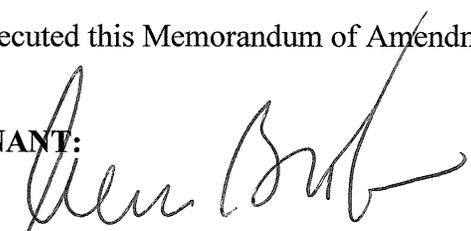
3. Counterparts. This Memorandum may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

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

TENANT:



ALLAN BROOKS

By:

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

ATTEST:

Byron Pope, City Clerk

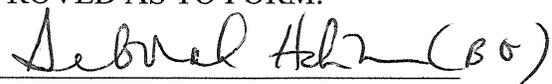
APPROVED AS TO CONTENT:

Roderick J. Wood, City Manager



Scott G. Miller, Director of Administrative Services/CFO

APPROVED AS TO FORM:



Laurence S. Wiener, City Attorney

ACKNOWLEDGMENT

State of California)
County of Los Angeles)

On February 4, 2009 before me, PATRICIA E. Ogden, notary public
(insert name and title of the officer)

personally appeared Alan Brooks,

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 Patricia E Ogden
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)