



AGENDA REPORT

Meeting Date: March 11, 2009
Item Number: F-10
To: Honorable Mayor & City Council
From: Brenda A. Lavender, Real Estate & Property Manager
Subject: NINTH AMENDMENT TO LEASE BETWEEN THE CITY OF BEVERLY HILLS AND LUCERNE HARDWARE CO.
Attachments: 1. Ninth Amendment to Lease

RECOMMENDATION

Staff recommends approval of the Ninth Amendment to Lease by and between the City of Beverly Hills and Lucerne Hardware Co., a California corporation. Lucerne Hardware has been a long-standing tenant of the City at 333 North Crescent Drive. Lucerne Hardware is the only hardware store in the city of Beverly Hills and provides an invaluable service to the community.

INTRODUCTION

A Ninth Amendment to Lease with Lucerne Hardware Co has been prepared for City Council approval. The amendment extends the term of lease by six (6) years with an option to renew for an additional five (5) years. Lucerne Hardware is a long standing business in the city servicing the community's hardware and handyman service needs.

DISCUSSION

Lucerne Hardware's current lease expires October 31, 2009 and this Ninth Amendment to Lease will extend the term through October 31, 2015, with a five (5) year option that could further extend the lease through October 31, 2020. This lease amendment retains our long-term tenant and the only hardware store in the city. The rental rate has been reduced through October 31, 2010 because of the economy and to enable the hardware store to upgrade all of the cash registers and the computerized inventory system.

FISCAL IMPACT

The fiscal impact of this lease extension is a reduction in revenue of \$6,392.35 through the end of the 2008/09 budget year. The reduction in rent is reflective of the current economy, in which many independent hardware stores are not able to continue operating. Through the downturn in the economy the City remains committed to the community and retaining our local services. There is no capital investment for the City.



Scott G. Miller, Director of
Administrative Services, CFO

Approved By

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)

NINTH AMENDMENT TO LEASE

THIS NINTH AMENDMENT TO LEASE (this "**Amendment**") is made and entered into as of _____, 2009, by and between the CITY OF BEVERLY HILLS, a California municipal corporation ("City"), and LUCERNE HARDWARE CO., a California corporation ("Tenant"), with respect to the following recitals:

RECITALS

A. City and Tenant executed that certain Lease dated November 1, 1988 (the "**Original Lease**"). The Original Lease was amended by that letter dated December 22, 1988, executed by City and Tenant (the "**First Amendment**"); that certain Amendment to Lease dated as of September 8, 1992, executed by City and Tenant (the "**Second Amendment**"); that certain Third Amendment to Lease dated March 7, 1995, executed by City and Tenant (the "**Third Amendment**"); that certain Fourth Amendment to Lease dated January 16, 1996, executed by City and Tenant (the "**Fourth Amendment**"); that certain Fifth Amendment to Lease dated as of February 4, 1997, executed by City and Tenant (the "**Fifth Amendment**"); that certain Sixth Amendment to Lease dated as of September 22, 1998, executed by City and Tenant (the "**Sixth Amendment**"); that certain Seventh Amendment to Lease dated as of January 4, 2000, executed by City and Tenant (the "**Seventh Amendment**"); and that certain Eighth Amendment to Lease dated April 13, 2004, recorded on May 25, 2004 as Document No. 041341231 in the Official Records of Los Angeles County, California (the "**Eighth Amendment**"). The Original Lease, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment and the Eight Amendment are collectively referred to herein as the "**Lease**" and (except for the Eight Amendment) was not recorded. The Lease affects a portion of the building located at 333 North Crescent Drive, Beverly Hills, California (the "**Property**").

B. City and Tenant now desire to amend the Lease as provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, the rents to be paid hereunder and of the covenants and conditions

contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Tenant agree as follows:

1. Extension of Initial Term. Section 3 of the Lease is hereby amended to extend the lease term to October 31, 2010.
2. Monthly Rent During Initial Term. The Monthly Rent from February 1, 2009 through October 31, 2010 shall be \$8,110.80 (which includes storage space rent). Section 4D of the Lease is hereby deleted.
3. Extension Terms; Extension Term Monthly Rent. Tenant shall have options (“**Extension Options**”) to extend the Term for two (2) consecutive extended term(s) of five years each (the “**Extension Terms**”); however, each such option shall be personal to the Tenant and may not be assigned to or exercised by any assignee or subtenant of Tenant. Tenant may exercise an Extension Option only by delivery to City of written notice given no later than six (6) months nor earlier than twelve (12) months prior to expiration of the then-current Term. The Monthly Rent shall be adjusted at the beginning of the first Extension Term (November 1, 2010) to \$9,389.27 and on every second anniversary of that date (*i.e.*, November 1, 2012, and if there is a Second Extension Term, then also on November 1, 2014, November 1, 2016 and November 1, 2018) (each, an “**Adjustment Date**”), as follows:

The base for computing the adjustment will be the Consumer Price Index for All Urban Consumers for the Los Angeles Anaheim-Riverside Metropolitan Area published by the United States Department of Labor, Bureau of Labor Statistics (“Index”), which is published for the twenty-seventh (27th) month preceding the applicable Adjustment Date (“Beginning Index”). If the Index published for the third (3rd) month preceding that Adjustment Date (“Extension Index”) is less than or equal to the Beginning Index, the Monthly Rent shall not be adjusted. If the Extension Index is more than the Beginning Index but less than 105% of the Beginning Index, the Monthly Rent shall be adjusted to an amount determined by multiplying the Monthly Rent in effect immediately prior to that Adjustment Date by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. If the Extension Index is equal to or more than 105% of the Beginning Index, the Monthly Rent shall be adjusted to an amount equal to 105% of the Monthly Rent in effect immediately prior to that Adjustment Date.

If the Index is changed so that the base year differs from that used for the Beginning Index, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

4. 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.

5. 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.

6. 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.

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

CITY:

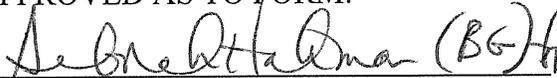
CITY OF BEVERLY HILLS,
a municipal corporation

By: _____
Barry Brucker, Mayor

ATTEST:

Byron Pope, City Clerk

APPROVED AS TO FORM:



Laurence S. Wiener, City Attorney

APPROVED AS TO CONTENT

Roderick J. Wood, City Manager

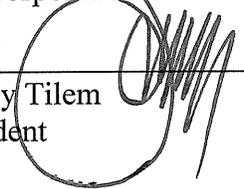
APPROVED AS TO CONTENT



Scott Miller, Director of Administrative Services/CFO

TENANT:

LUCERNE HARDWARE CO.,
a California corporation

By:  _____
Jeffrey Tilem
President

REAFFIRMATION

The undersigned (“**Guarantor**”) has reviewed the Ninth Amendment to Lease to which this Reaffirmation is attached (the “**Amendment**”) and hereby consents to the execution and delivery of the Amendment by Tenant, and Guarantor further agrees that the execution and delivery of the Amendment by Tenant shall not impair, limit, abrogate or reduce in any manner or to any extent, the obligations of Guarantor under that certain Guaranty of Lease dated March 7, 1995, executed by Guarantor in favor of City, and that such Guaranty of Lease guarantees the Lease as so amended.

Guarantor acknowledges and agrees that, notwithstanding the execution and delivery of the Amendment by Tenant, (a) Guarantor remains liable under the Guaranty to the fullest extent as if the terms and conditions of the Original Lease were as reflected in the Lease as modified by the Amendment, (b) each of the terms and conditions of, and waivers contained in, the Guaranty remain unmodified and in full force and effect, and (c) Guarantor hereby renews, reaffirms, ratifies and confirms the Guaranty.

Guarantor acknowledges that City would not enter into the Amendment without the execution and delivery of this Reaffirmation.

The execution, delivery and performance by Guarantor of this Reaffirmation is within Guarantor’s powers and have been duly authorized by all necessary action by or on behalf of Guarantor. This Reaffirmation shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of laws principles. This Reaffirmation shall inure to the benefit of City and its successors and assigns, and shall be binding upon Guarantor and his respective successors and assigns.

IN WITNESS WHEREOF, Guarantor has executed this Reaffirmation as of Feb
17, 2009.

GUARANTOR:



JOSEPH N. TILEM

ACKNOWLEDGMENT

State of California)
)
County of LOS ANGELES)

On FEBRUARY 17 2009 before me, Joni M. Sand, Notary Public
(insert name and title of the officer)

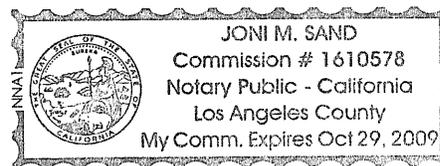
personally appeared JEFFREY TILEM

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 Joni M. Sand (Seal)
Signature of Notary Public



Ninth Amendment to Lease

ACKNOWLEDGMENT

State of California)
)
County of LOS ANGELES)

On FEBRUARY 17, 2009 before me, Joni M. Sand, Notary Public
(insert name and title of the officer)

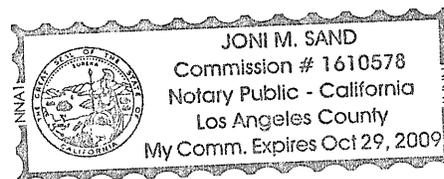
personally appeared JOSEPH N. TILEM

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WITNESS my hand and official seal.

Signature Joni M. Sand (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