



AGENDA REPORT

Meeting Date: July 7, 2009
Item Number: G-12
To: Honorable Mayor & City Council
From: Brenda A. Lavender, Real Estate & Property Manager
Subject: APPROVAL OF AN AMENDMENT TO LEASE BETWEEN THE CITY OF BEVERLY HILLS AND MELIKS, INC., A CALIFORNIA CORPORATION DBA KELLY'S COFFEE AND FUDGE FACTORY.
Attachments: 1. Amendment to Lease

RECOMMENDATION

Staff recommends approval of the Amendment to Lease with Meliks, Inc dba Kelly's Coffee and Fudge Factory at the 444 N. Rexford Drive – Public Library location. This lease amendment changes the rent structure of the agreement to provide financial assistance to the tenant to install a new dedicated air conditioning system.

INTRODUCTION

An Amendment to Lease has been prepared for City Council's approval. This amendment delays the increase of base rent for three (3) years. During the first year of the 3 year rental reduction the tenant will be required to purchase and install a dedicated air conditioning unit at this location. The amendment also grants Tenant with an additional option to extend the lease for a period of five (5) years at the then prevailing market rent.

DISCUSSION

Kelly's Coffee opened for business in October of 2006 at their Rexford location inside the Beverly Hills Public Library. The initial construction of the coffee shop did not include the installation of an air conditioning unit to service the shop. After short period of operation, it was apparent that the building's air conditioning unit was not designed to service the coffee shop's higher demand for cooling. The shop operator has investigated various methods for providing the additional cooling required and it has been determined that the best course of action is to install a dedicated air conditioning unit that would only service the coffee shop. With the addition of the dedicated unit, the shop will dramatically increase the flow of air well as control the air conditioning provided

to the shop. Kelly's Coffee will be responsible for the cost of purchasing, installing, and the ongoing maintenance of the air conditioning unit. The installation will be completed in compliance with code. City Staff will work with Kelly's Coffee to ensure proper installation and integration within the building structure.

FISCAL IMPACT

The fiscal impact of this deal is the delay of revenue that could be realized from CPI adjustment to the base rent during the three (3) year period that the City will not increase the rent. Based on the average CPI adjustment of 3% the City is deferring receipt of approximately \$3,960 over the 3 year period. It is important to note that the amended lease does extend the term of the lease to allow for the reimbursement of the deferred rent.



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)

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE (this "**Amendment**") is made and entered into as of July ____, 2009, by and between the CITY OF BEVERLY HILLS, a California municipal corporation ("City"), and MELIKS, INC., a California corporation (dba "Kelly's Coffee and Fudge Factory") ("Tenant").

RECITALS

A. City and Tenant executed that certain City of Beverly Hills Retail Lease dated June 29, 2006 (the "**Lease**"). The Lease affects a portion of the building located at 444 N. Rexford Drive, Beverly Hills, California (the "**Property**").

B. A Memorandum of Lease dated June 27, 2006 was recorded on September 7, 2006 as Document No.062001523 in the Official Records of Los Angeles County, California.

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

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. Monthly Base Rent Reduction. The Monthly Base Rent from March 3, 2010 through March 3, 2013 shall be \$3,654. On each anniversary of March 3, 2013 the monthly rent shall be adjusted as described in Section 4(ii) of the Lease.

2. Additional Extension Option. Provided that Tenant is not in default under the Lease beyond any applicable cure period at the time of exercise of the option to extend described below or at any time thereafter prior to the commencement of the Second Option Term (as hereinafter defined), Tenant shall have the option to extend the initial term of this Lease for one (1) additional period of five (5) years ("Second Option Term") commencing at the end of the Option Term, only by giving Landlord written notice at least six (6) months but not more than eighteen (18) months before the expiration of the Option Term. All of the terms, covenants,

conditions, provisions and agreements applicable to the initial term shall be applicable to the Second Option Term, except that the monthly rent payable during the Second Option Term shall be increased in accordance with Section 4(ii) and 4(iii) below (and all references therein to "Option Term" shall mean the Option Term and the Second Option Term so that, in addition to the annual adjustments, monthly rent for the Second Option Term shall be adjusted to fair market rent as of the beginning of the Second Option Term). All references in this Lease to the "Term" shall be deemed to mean the initial term as extended by the Option Term and Second Option Term, if applicable.

3. Dedicated HVAC System. On or before November 30, 2009, Tenant shall, at Tenant's sole cost and expense, install in the Premises a dedicated HVAC System serving the Premises. The design of the HVAC System shall be subject to Landlord approval. Tenant shall obtain all applicable permits and approvals for the installation and shall install the HVAC System in accordance with all applicable laws.

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: _____
Nancy Krasne, 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



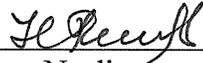
Scott Miller, Director of Administrative Services/CFO

TENANT:

MELIKS, INC.,
a California corporation

By: 

Karo Alex Sayadyan,
President

By: 

Goar Nazliyan,
Chief Financial 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 Los Angeles)

On June 1, 2009 before me, Tereza Grigoryan, Notary Public
(insert name and title of the officer)

personally appeared Karo Sayadyan

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 *Tereza Grigoryan*
Signature of Notary Public

(Seal)



ACKNOWLEDGMENT

State of California)
County of Los Angeles)

On June 1, 2009 before me, Tereza Grigoryan / Notary Public
(insert name and title of the officer)

personally appeared Gvar Nazliyan

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 *Tereza Grigoryan*
Signature of Notary Public

(Seal)

