



AGENDA REPORT

Meeting Date: November 17, 2009
Item Number: F-7
To: Honorable Mayor & City Council
From: Brenda A. Lavender, Real Estate & Property Manager
Subject: APPROVAL OF MEMORANDUM OF LEASE AND SECOND AMENDMENT TO LEASE BETWEEN THE CITY OF BEVERLY HILLS AND THRIFTY PAYLESS, INC.

Attachments: 1. Memorandum of Lease and Second Amendment to Lease

RECOMMENDATION

Staff recommends approval of the Memorandum of Lease and Second Amendment to Lease with Thrifty Payless, Inc. dba Rite Aid at 463 N. Bedford Drive. This second amendment extends the terms of the lease for three (3) years and two (2) months.

INTRODUCTION

A Memorandum of Lease and Second Amendment to Lease has been prepared for City Council's approval. Thrifty Payless, Inc dba Rite Aid is a long-standing tenant at this location. This amendment extends the term of the lease by three (3) years and reduces the base rent by 10% for the first year of the term. Two (2) months have been added to the term of the lease to cover the 10% rent reduction.

DISCUSSION

Staff has worked with Thrifty Payless to extend this lease with a shorter term. This short-term deal provides an interim solution to falling rental rates. At the expiration of the term if the City agrees to extend the lease term it will be at 95% of the then current Fair Market Rental Rate.

FISCAL IMPACT

The fiscal impact of this deal is rental revenue of \$482,922.00 annually. There is no out of pocket cost for the City.

A handwritten signature in black ink, appearing to read "Scott G. Miller". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott G. Miller, Director of
Administrative Services, CFO

Approved By

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Beverly Hills
455 North Rcxford Drive
Beverly Hills, California 90210
Attn: City Clerk

[Space Above For Recorder's Use Only]

The undersigned Lessor declares that this Memorandum of Lease and Second Amendment to Lease is exempt from Recording Fees pursuant to California Government Code Section 27383.

MEMORANDUM OF LEASE AND SECOND AMENDMENT TO LEASE

THIS MEMORANDUM OF LEASE AND SECOND AMENDMENT TO LEASE (the "Amendment"), is dated as of _____, 2009 (this "Amendment"), and is entered into by and between the **CITY OF BEVERLY HILLS**, a municipal corporation ("City") and **THRIFTY PAYLESS, INC.**, a California corporation ("Tenant"), for certain premises located at 463 North Bedford Drive, Beverly Hills, California (the "Premises").

RECITALS:

- A. City and Tenant's predecessor in interest, Pay Less Drug Stores Northwest, Inc., entered into that certain Lease dated for reference as of July 5, 1989 as amended by a First Amendment to Lease dated July 16, 1991 (collectively and as amended, the "Lease") for approximately 14,850 rentable square feet (the "Premises").
- B. Tenant and City wish to record this Amendment in order to give record notice of the Lease and extend the term of the Lease, now scheduled to expire on January 31, 2010.
- C. All capitalized terms used in this Amendment shall have the same meaning as in the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

- 1. Term. The term of the Lease is hereby extended for a period of thirty-eight (38) months commencing on February 1, 2010 and expiring on March 31, 2013.
- 2. Rent. From and after February 1, 2010, through the remainder of the Lease term as hereby extended, Rent shall be payable in the following amounts:

<u>Period</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
February 1, 2010 – March 31, 2011	\$482,922.00	\$40,243.50

April 1, 2011 – March 31, 2012
April 1, 2012 – March 31, 2013

Rent rate prior to such period, as
adjusted per Section 2(b) below

(b) On April, 2011 and April, 2012 (each, an “Adjustment Date”), the then-current Rent shall be increased by the lesser of : (i) the percentage increase in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor (“Bureau”) for the Los Angeles-Anaheim-Riverside Metropolitan Area or successor thereto (“CPI”) during the year ending on the applicable Adjustment Date, as determined by Landlord by dividing the CPI published 3 months prior to the applicable Adjustment Date by the CPI published 15 months prior to the applicable Adjustment Date; or (ii) five percent (5%). (If the CPI is converted to a different standard reference base or otherwise revised, the determination shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau, or if the Bureau should fail to publish the same, then with the use of such conversion factor, formula or table for converting the CPI as may be published by any nationally recognized publisher of similar statistical information. If the CPI ceases to be published and there is no successor thereto, then such other index selected by Landlord and Tenant in good faith shall be used.)

3. Extension Option. (a) Tenant shall have the option to further extend the term of the Lease for one (1) additional ten (10) year period (“Additional Option Period”), commencing April 1, 2013 and expiring on March 31, 2023 by giving written notice of the extension no earlier than April 1, 2012 and no later than October 1, 2012. If Tenant exercises such option, Tenant shall pay rent to City during the Additional Option Period as follows:

<u>Period</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
April 1, 2013 – March 31, 2023	95% of Fair Market Rent (as defined in Section 3(b) below)	

(a) Extension Term Rent. Within thirty (30) days after Tenant’s exercise of its extension option, Landlord shall in good faith (utilizing commercially reasonable and documented factors) determine the “Fair Market Rental Rate” of the Premises (meaning the fair market base or minimum rent for retail use of the Premises, which may include annual increases) as of the commencement of the Additional Option Period and Landlord shall notify Tenant in writing, of Landlord’s determination of the Fair Market Rental Rate. If Tenant disagrees with Landlord’s determination, then Tenant shall, within thirty (30) days after Landlord’s notice, notify Landlord in writing that Tenant disagrees with Landlord’s determination of the Fair Market Rental Rate, whereupon Landlord and Tenant shall promptly meet and endeavor in good faith to agree upon the Fair Market Rental Rate for the Additional Option Period. If Landlord and Tenant fail to reach agreement within thirty (30) days after Tenant’s notice of disagreement, then, within thirty (30) days thereafter, each party, at its own cost and by giving notice to the other party, shall appoint a licensed commercial real estate agent with at least seven (7) years full-time experience as a real estate agent active in the leasing of comparable retail space in the area of the Premises to determine the Fair Market Rental Rate for the Additional Option Period (and shall cause such agent to agree in writing to the terms of this Section). Until the Fair Market Rental Rate determination is completed, Tenant shall continue to pay Rent to Landlord at the rate immediately preceding the commencement of the Additional Option Period. After such Fair Market Rental Rate determination is completed and the Fair Market Rent Rate for the extension

term is established, Tenant shall promptly make payment to Landlord for any underpayment of Rent owing for prior months. If a party does not appoint an agent within the aforementioned thirty (30) day period, the single agent appointed shall be the sole agent and shall set the Fair Market Rental Rate for the Additional Option Period. If two (2) agents are appointed by the parties as stated above (which agents shall be respectively referred to as "Landlord's Agent" and "Tenant's Agent"), the agents shall meet within ten (10) days after the second agent has been appointed and attempt to agree upon the Fair Market Rental Rate for the Additional Option Period. If Landlord's Agent and Tenant's Agent are unable to agree on such Fair Market Rental Rate within ten (10) business days after the second agent has been appointed, they shall, within ten (10) business days after the last day the two (2) agents were to have set such Fair Market Rental Rate: (i) notify all of the parties in writing as to their respective Fair Market Rental Rate determinations, and (ii) select a third agent (the "Third Agent") who shall be a licensed commercial real estate agent meeting the qualifications stated above. If Landlord's Agent and Tenant's Agent are unable to agree on the Third Agent within such ten (10) business day period, or the third agent does not agree in writing to the terms of this Section 5(c), then either Landlord or Tenant may request the President of the BOMA Chapter including the area of the Project to select a Third Agent meeting the qualifications stated in this subsection. Each of the parties shall bear the costs of its own agent and one-half (1/2) of the cost of appointing the Third Agent and of paying the Third Agent's fee.

No agent shall be employed by, or otherwise be engaged in business with, or affiliated with, Landlord or Tenant.

Within ten (10) days after the selection of the Third Agent, the Third Agent shall notify all of the parties in writing as to the Third Agent's determination of the Fair Market Rental Rate for the Additional Option Period. The final Fair Market Rental Rate determination shall be the average of the two determinations that are closest in amount.

Each agent shall hear, receive and consider such information as Landlord and Tenant each care to present regarding the determination of Fair Market Rental Rate for the Additional Option Period and each agent shall have access to the information used by each other agent. Upon determination of the Fair Market Rental Rate for the Additional Option Period, the agents shall immediately notify the parties hereto in writing of such determination.

Notwithstanding anything herein to the contrary, Tenant shall have the right, within fifteen (15) days after such Fair Market Rental Rate determination is delivered to Tenant, to withdraw its exercise of its extension option by giving written notice thereof to Landlord, and, within ten (10) days' after written demand from Landlord, to Tenant shall pay the fees and expenses of Landlord's appraiser and any third appraiser which may have been appointed.

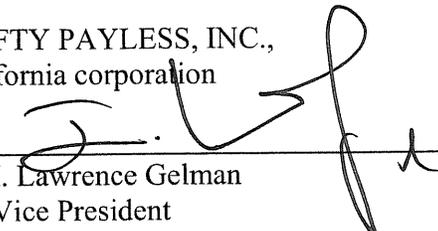
4. Incorporation. Except as modified herein, all other terms and conditions of the Lease shall continue in full force and effect and Tenant and Landlord hereby ratify and confirm their obligations thereunder. The parties acknowledge that as of the date of this Amendment, neither party (i) is in default under the terms of the Lease; (ii) has any defense, set off or counterclaim to the enforcement by the other party of the terms of the Lease; and (iii) is not aware of any action or inaction by the other party that would constitute a default by such party under the Lease.

5. Counterparts. This Amendment may be executed in one or more counterparts, each of which, when taken together, shall constitute one agreement.

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

TENANT:

THRIFTY PAYLESS, INC.,
a California corporation

By: 
I. Lawrence Gelman
Vice President

LANDLORD:

CITY OF BEVERLY HILLS,
a municipal corporation

By: _____
Nancy Krasne, Mayor

ATTEST:

Byron Pope, City Clerk

APPROVED AS TO FORM:

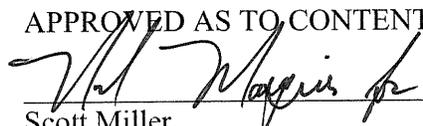


Laurence S. Wiener, City Attorney

APPROVED AS TO CONTENT:

Roderick J. Wood, ICMA-CM,
City Manager

APPROVED AS TO CONTENT:



Scott Miller,
Director of Administrative Services/CFO

ACKNOWLEDGMENT

Commonwealth of Pennsylvania)
County of Cumberland)
)

On September 24, 2009 before me, Linda L. Brown
(insert name and title of the officer)

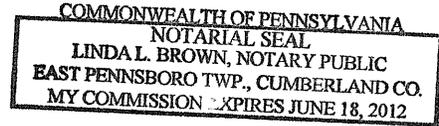
personally appeared I. Lawrence Gelman,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s)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

WITNESS my hand and official seal.

Signature _____ (Seal)
Signature of Notary Public