



## AGENDA REPORT

**Meeting Date:** January 5, 2010  
**Item Number:** F-5  
**To:** Honorable Mayor & City Council  
**From:** Brenda A. Lavender, Real Estate & Property Manager   
**Subject:** **APPROVAL OF FIFTH AMENDMENT TO LEASE BETWEEN THE CITY OF BEVERLY HILLS AND FEDEX OFFICE AND PRINT SERVICES, INC., A TEXAS COPORATION**  
**Attachments:** 1. Fifth Amendment to Lease

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### RECOMMENDATION

Staff recommends approval of the Fifth Amendment to Lease with FedEx Office and Print Services at 461 North Bedford Drive, Beverly Hills. The Fifth Amendment updates the corporate name of the company and extends the term of the lease by one year.

### INTRODUCTION

The Fifth Amendment to Lease has been prepared for City Council approval. FedEx expresses interest to extend its lease by one year from January 31, 2010 to January 31, 2011.

### DISCUSSION

FedEx has been a tenant of the City of Beverly Hills since June 1982. Over the years, the company has operated under other legal names, most recently as FedEx Kinko's. At this time, FedEx has again changed its legal name. The new business name is FedEx Office and Print Services, a Texas Corporation. In addition to changing its corporate name on its lease with the City, the company is also extending its lease by one year.

### FISCAL IMPACT

The Fiscal impact of this transaction is \$81,629.88. There are no out of pocket costs for the City.

  
Scott G. Miller, Director of  
Administrative Services, CFO

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Approved By

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

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

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[Space Above For Recorder's Use Only]

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

### **FIFTH AMENDMENT TO LEASE**

THIS FIFTH AMENDMENT TO LEASE (this "**Amendment**") is dated as of \_\_\_\_\_, 2010, and is entered into by and between the CITY OF BEVERLY HILLS, a municipal corporation ("**Lessor**") and FEDEX OFFICE AND PRINT SERVICES, INC., a Texas corporation ("**Lessee**").

### **RECITALS**

A. Lessor and Lessee entered into that certain Lease Agreement dated December 7, 1982 and amended it by amendments dated October 20, 1992, May 5, 1998, June 5, 2001 and May 23, 2006 (recorded August 25, 2006 as Document 061904831) (the "**Lease**"). The Lease affects a portion of the building located at 461 North Bedford Drive, Beverly Hills, California (the "**Premises**").

B. On November 15, 2007, Lessee filed a Certificate of Conversion with the Texas Secretary of State, converting its incorporation from the State of Delaware to the State of Texas.

C. On June 2, 2008, Lessee filed a Certificate of Amendment with the Texas Secretary of State and deleted the word "Kinko's" from its legal name and became legally known as "FedEx Office and Print Services, Inc., a Texas corporation."

D. Lessor and Lessee now desire to amend the Lease in order to, among other things, extend the term of the Lease, as more specifically set forth below.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, and the covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. Extension of Term. Section 2 of the Lease is hereby amended to extend the expiration of the term of the Lease from January 31, 2010 to January 31, 2011.

2. Rent. The following is hereby added to the end of Section 3A of the Lease:

“The fixed minimum rent shall be Six Thousand Eight Hundred and Two Dollars and 49/100 (\$6,802.49) per month commencing on February 1, 2010.”

3. Brokers. Lessee shall indemnify, defend and hold City harmless from and against any claims that may be asserted against City by any real estate broker, salesperson or finder in connection with this Amendment. Lessor represents and warrants that Lessor has not engaged any real estate broker, salesperson or finder in connection with this Amendment.

4. Representations and Warranties of Lessee. Lessee hereby represents and warrants to Lessor as of the date hereof that: (a) to the best of Lessee’s knowledge, Lessee is not in default under the Lease, and (b) Lessee has not committed any act or omission that, after notice or the passage of time, or both, would constitute a default or event of default under the Lease.

5. Surrender. Notwithstanding anything in the Lease to the contrary, Lessee’s only obligation when surrendering the Premises to Lessor will be to leave the Premises in a broom-clean condition and make any repairs required by any removal of the exterior signage.

6. 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.

7. Continuing Effect. Except as specifically modified hereby, the Lease shall remain unaffected and unchanged. The Lease is hereby ratified and affirmed by Lessor and Lessee and remains in full force and effect as modified hereby.

8. 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, Lessor and Lessee have executed this Amendment as of the date and year first above written.

**LESSOR:**

CITY OF BEVERLY HILLS,  
a municipal corporation

By: \_\_\_\_\_  
Nancy Krasne, Mayor

ATTEST:

\_\_\_\_\_  
Byron Pope, City Clerk

APPROVED AS TO FORM:

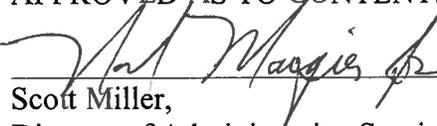
  
\_\_\_\_\_  
Laurence S. Wiener, City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Roderick J. Wood, ICMA-CM, City  
Manager

**LESSEE:**

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Scott Miller,  
Director of Administrative Services/CFO

FEDEX OFFICE AND PRINT SERVICES,  
INC., a Texas corporation

By:   
\_\_\_\_\_  
Print Name: Norman McLeod  
Title: VP of Development & Real Estate

Approved  
  
\_\_\_\_\_  
as to legal terms

**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 Texas )  
 )  
County of Dallas )

On November 20, 2009 before me, Miroslava Tixi, notary public  
(insert name and title of the officer)

personally appeared Norman McLeod, VP of Development & Real Estate

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 Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)  
Signature of Notary Public

