



AGENDA REPORT

Meeting Date: September 21, 2010
Item Number: F-12
To: Honorable Mayor & City Council
From: Brenda A. Lavender, Real Estate & Property Manager
Subject: Amendment To Lease for W Steak Beverly Hills, LLC.
Attachments: 1. Amendment to Lease

RECOMMENDATION

It is recommended that the City Council approve the Amendment to Lease by and between the City of Beverly Hills and W Steak Beverly Hills. A copy of the lease is on file with the City Clerk. W Steak is located at 445 N. Canon Drive.

INTRODUCTION

This amendment reduces the monthly base rent and common area expenses by 50% for a period of 18 months. The current rent and common area expenses are \$39,017.92 monthly and this amends the rent to \$19,508.96 effective August 1, 2010.

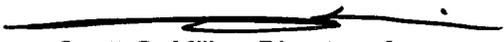
DISCUSSION

W Steak like many retailers and restaurants is experiencing financial difficulties and a general decline in business because of the down turn in the economy. The City Council has agreed to restructure the rent in the form of a rent reduction for a period of 18 months to allow the restaurant a limited period to recover and to continue to operate. This amendment to the lease allows the restaurant to reduce the operating overhead and to reinvest that capital into the operation of the business.

The tenant will continue to be responsible for the operation and maintenance of the restaurant during the 18 month period. As a part of the rent reduction, W Steak must post a letter of credit or cash deposit equaling the reduction (\$351,161.28) as security during the 18-month period. In months six and twelve of the reduction period \$117,053.76 will be returned to the tenant pending full performance of the lease. The balance of the letter of credit \$117,053.76 will remain on account through the end of the lease term – 8/31/2018.

FISCAL IMPACT

The fiscal impact of this amendment is a (\$351,161.28) reduction in revenue over the 18 month period. Following the 18-month rent reduction the rental rate would return to the current lease rate.


Scott G. Miller, Director of
Administrative Services, CFO
Approved By

Attachment 1

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)

The undersigned Lessor declares that this Amendment to Lease is exempt from Recording Fees pursuant to California Government Code Section 27383 and is exempt from documentary transfer taxes pursuant to California Revenue and Taxation Code Section 11922.

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE (this "**Amendment**") is made and entered into as of September 21, 2010, by and between the CITY OF BEVERLY HILLS, a California municipal corporation ("City"), and W STEAK BEVERLY HILLS, LLC, a California limited liability company ("Tenant").

RECITALS

A. City and Tenant executed that certain Lease dated March 13, 2007 (the "**Lease**"). The Lease affects a portion of the building located at 445 N. Canon Drive, Beverly Hills, California (the "**Property**"). Capitalized terms used herein but not defined shall have the meaning set forth in the Lease.

B. City and Tenant executed and recorded a Memorandum of Lease for the Lessee on May 16, 2007 as Document No. 20071196762 in the Official Records of Los Angeles County, California (the "**Official Records**").

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. **Payment/CAM Deferral.** Commencing on August 1, 2010 and continuing until February 29, 2012 (the "**Rent Reduction Period**"), the payments of Minimum Annual Rent (which is payable in monthly installments under Section 5.1 of the Lease) shall be reduced to \$17,612.00 per month for such Rent Reduction Period and deferred and the Annual CAM Payment (which is payable in monthly installments under Section 11.5 of the Lease) shall be

reduced to \$ 1,896.96 per month during such Rent Reduction Period and deferred, but the reductions shall bear simple interest at the rate of five percent (5%) per annum, compounded annually, and repayment of the reductions and such interest will be deferred until the expiration or earlier termination of the Lease, provided that such deferred sums be forgiven (i.e., shall never become due and payable) if (i) an Event of Default by Tenant under Section 17.1(i) or (ii) of the Lease does not occur on or before February 29, 2012; (ii) Tenant does not fail to cure a default described in Section 17.1(i) or (ii) of the Lease within the applicable cure period if Landlord gives written notice to Tenant of such a default prior to or on February 29, 2012; and (iii) no event or circumstance described in Sections 17.1(iii), (iv) or (v) of the Lease occurs that is not promptly and diligently cured by Tenant after written notice from Landlord given on or before February 29, 2012. If any of the conditions to forgiveness in the preceding clauses (i), (ii) and (iii) are not satisfied, then the deferred rent shall immediately become due and payable.

2. Required Tenant Notice. On or before July 31, 2011 but no earlier than May 1, 2011 specifying Tenant shall deliver to City a written notice (the "Tenant Notice"): (i) as to whether Tenant will remain open for the remainder of the Term of the Lease and comply with the Lease; and (ii) the names of all direct or indirect investors in Tenant who invested after July 1, 2010. Failure to timely give such notice shall constitute an Event of Default under the Lease.

3. City Marketing of Space. At any time after an Event of Default by Tenant, and, whether or not Tenant is then in default, if Tenant gives a Tenant Notice that indicates that Tenant does not intend to remain open or does not intend to otherwise comply with the Lease, then City shall have the right to market the Premises for lease, including placing "for lease" signs on the Premises and giving tours of the Premises to prospective tenants.

4. Additional Security Deposit. As a condition to the effectiveness of this Amendment, Tenant shall, on or before September 28, 2010, deliver an additional cash deposit to City in the amount of Three Hundred Fifty-One Thousand One Hundred Sixty-One and 28/100 Dollars (\$351,161.28) (the "Additional Security Deposit"). The Additional Security shall constitute an additional security deposit under the Lease and shall be governed by and subject to the terms and requirements of Article 8 of the Lease, except that: (i) provided Tenant is in compliance with Sections 1, 2 and 3 above as of February 29, 2011, City shall return One Hundred Seventeen Thousand Fifty-Three and 76/100 of the Additional Security Deposit (without interest) to Tenant; and (ii) provided Tenant is in compliance with Sections 1, 2 and 3 above as of August 1, 2011, City shall return another One Hundred Seventeen Thousand Fifty-Three and 76/100 of the Additional Security Deposit (without interest) to Tenant. City shall not be obligated to pay any interest on any security deposit (including the Additional Security Deposit).

5. City Right to Liquidated Damages (Including Furniture and Fixtures and Liquor License). If an Event of Default by Tenant occurs under Section 17.1(i) or (ii) of the Lease, or if an event or circumstance described in Section 17.1(iii), (iv) or (v) of the Lease occurs and is not promptly and diligently cured by Tenant after written notice by Landlord and as a consequence, Landlord terminates the Lease, or if Tenant ceases its business at the Premises (whether voluntarily or involuntarily), then Landlord shall be entitled to: (i) retain any unapplied balance of the Security Deposit and the Additional Security Deposit; (ii) all furniture, fixtures and equipment in the Premises free and clear of all claims and liens; and (iii) an assignment of the

liquor license for the Premises and/or business in the Premises, free and clear of all claims and liens, and Tenant shall promptly execute and acknowledge, or cause to be executed and acknowledged, at Tenant's cost, all bills of sale, assignments, ABC forms, escrow agreements and other documents necessary or convenient for transfer of title to furniture, fixtures and equipment and the liquor license to City or City's designee and will promptly deposit with City, upon written demand by City, for future deposit into the liquor license escrow, as required to transfer the liquor license.

TENANT HEREBY STIPULATES AND AGREES THAT GIVEN THE CURRENT MARKET FOR RESTAURANT SPACE, CITY'S DAMAGES IN THE EVENT OF AN EVENT OF DEFAULT BY TENANT WOULD BE DIFFICULT AND IMPRACTICAL TO DETERMINE AND THAT THE COSTS AND STAFF RESOURCES NECESSARY TO SUE FOR DAMAGES OR DEFEND SUCH A SUIT ARE DIFFICULT TO CLEARLY ASCERTAIN. BOTH CITY AND TENANT WISH TO AVOID THE COSTS AND LENGTHY DELAYS THAT WOULD RESULT IF CITY FILED A LAWSUIT TO COLLECT ITS DAMAGES FOR A BREACH BY TENANT. CONSEQUENTLY, CITY AND TENANT HEREBY AGREE THAT THE SECURITY DEPOSIT AND ADDITIONAL SECURITY DEPOSIT DESCRIBED IN SECTION 4 ABOVE, THE FURNITURE, FIXTURES AND EQUIPMENT IN THE PREMISES AND THE LIQUOR LICENSE SHALL CONSTITUTE LIQUIDATED DAMAGES FOR THE BENEFIT OF CITY, AND CITY SHALL HAVE NO OTHER RIGHT TO DAMAGES UPON AN EVENT OF DEFAULT BY TENANT, AND HEREBY WAIVES ALL RIGHTS IT MAY HAVE (PROVIDED SUCH LIQUIDATED DAMAGES ARE RECEIVED AND RETAINED BY CITY) TO SUE TENANT FOR DAMAGES UPON AN EVENT OF DEFAULT BY TENANT UNDER THE LEASE; PROVIDED, HOWEVER, **NOTWITHSTANDING THE FOREGOING, THIS LIQUIDATED DAMAGES PROVISION SHALL NOT LIMIT CITY'S RIGHT TO (I) RECEIVE REIMBURSEMENT FOR OR RECOVER DAMAGES IN CONNECTION WITH ANY INDEMNITY; (II) RECOVER ATTORNEYS' FEES AND COURT COSTS; (III) OBTAIN INJUNCTIONS OR OTHER EQUITABLE RELIEVE (EXCLUDING DAMAGES); (IV) OBTAIN POSSESSION OF THE PREMISES BY AN UNLAWFUL DETAINER ACTION.**

THE PARTIES ACKNOWLEDGE THAT SUCH LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671. THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

CITY'S INITIALS



TENANT'S INITIALS

TENANT HEREBY EXPRESSLY WAIVES THE TERMS OF SECTION 1951.2 OF THE CALIFORNIA CIVIL CODE TO THE EXTENT THEY CONFLICT WITH THIS SECTION.

TENANT HEREBY WAIVES THE PROVISIONS OF SECTION 1950.7 OF THE CALIFORNIA CIVIL CODE, AND AGREES THAT THE FOREGOING PROVISIONS OF THIS SECTION SHALL GOVERN LANDLORD'S USE AND RETURN OF THE SECURITY DEPOSIT AND ADDITIONAL SECURITY DEPOSIT.

6. Execution and Delivery of Liquor License Transfer Forms. Concurrently with Tenant's execution and delivery of this Amendment, Tenant shall execute and deliver to City (and acknowledged, if indicated) the liquor license transfer and escrow forms provided by City or City's counsel to Tenant or to Tenant's counsel prior to the date hereof, which the City shall then hold and shall not file with the California ABC or any other applicable governmental authority unless or until an Event of Default by Tenant occurs.

7. 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.

8. 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.

9. 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.

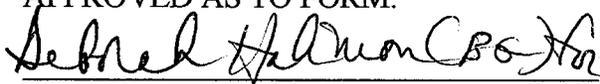
CITY:

CITY OF BEVERLY HILLS,
a municipal corporation

By: _____
Jimmy Delshad, Mayor

ATTEST:

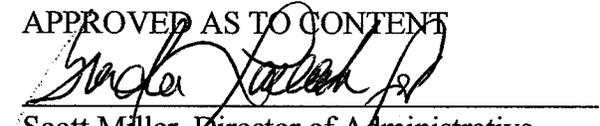
Byron Pope, City Clerk

APPROVED AS TO FORM:


Laurence S. Wiener, City Attorney

APPROVED AS TO CONTENT

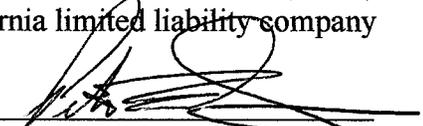
Jeffrey Kolin, City Manager

APPROVED AS TO CONTENT


Scott Miller, Director of Administrative Services/CFO

TENANT:

W STEAK BEVERLY HILLS, LLC,
a California limited liability company

By: 

Peter Zwiener, Manager

ACKNOWLEDGMENT

State of California)
County of Los Angeles)

On Sept. 15, 2010 before me, R.C. Berris, Notary Public
(insert name and title of the officer).

personally appeared Peter Zwiener

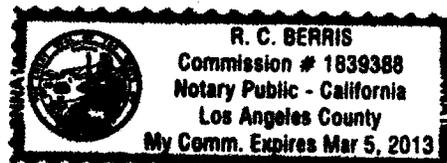
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), 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]
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)

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 _____)

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