



AGENDA REPORT

Meeting Date: November 4, 2010
Item Number: F-12
To: Honorable Mayor & City Council
From: Cheryl Friedling, Deputy City Manager for Public Affairs
Subject: APPROVAL OF AMENDMENT NO. 2 OF THE LICENSE AGREEMENT BETWEEN JT BRANDS AND THE CHAMBER OF COMMERCE
Attachments: 1. Copy of Amendment No. 2 to License Agreement

RECOMMENDATION

Pursuant to the Beverly Hills Shield License Approval Protocol, Staff and the Branding and Licensing Committee, recommends that the City Council provide its approval of Amendment No. 2 to the License Agreement between JT Brands and the Beverly Hills Chamber of Commerce.

INTRODUCTION

The City is the owner of the BEVERLY HILLS SHIELD DESIGN trademark ("Shield"). In March 2007, the City entered into a license agreement with the Beverly Hills Chamber of Commerce to permit the Chamber to be a licensee and promote both brand enhancing and revenue generating opportunities for the Shield. In June 2008, JT Brands and the Chamber executed a global exclusive sublicense agreement for the use of the Shield for Class 3 products, which include cosmetics, make-up and perfume ("JT Brands Agreement").

As further discussed below, the parties desire to amend the JT Brands Agreement to adjust the schedule of payments, the term of the contract and the minimum guarantees. The Beverly Hills Shield License Approval Protocol requires that the City Council approve any sublicense agreement with a term of more than four years.

DISCUSSION

As stated above, in June 2008 the first major license agreement was completed for the license of the Shield for cosmetics, perfume and make-up. The perfume line was recently unveiled this month at Greystone Mansion. Unfortunately, over the last two years the global economy has been in a deep recession. This created hurdles in executing production of a new product in the luxury market as retailers deferred introduction of new lines. In addition, there were research and development issues in the design and production of the perfume bottles. Consequently, the launch in market of the perfume and beauty products has had to be rescheduled.

JT Brands has timely paid the minimum guarantees; however, because of the delay of the launch of product, they have requested a realignment of the royalty schedule. The City, Chamber and Bradford Licensing Inc. (the licensing agent) met with JT Brands over the last several months and brought forward a proposal to the Branding and Licensing Subcommittee (Council Members Krasne and Mirisch) for their consideration on October 6, 2010. That proposal provides relief in deferring the some portion of the guarantee to later quarters in the agreement, extends the agreement for one year, fully recaptures the deferred revenue and adds \$400,000 to the overall minimum guarantee revenue. The Subcommittee recommended approval of the amendment, and further recommended that the amendment also be approved by the full Council pursuant to the Beverly Hills Shield License Approval Protocol.

FISCAL IMPACT

By extending the term of the contract to first quarter 2015 the total gross minimum guarantees payable under the agreement will increase from \$1,276,327 to \$1,676,331. As indicated these guarantees are paid in accordance with existing royalty sharing agreements with the Chamber of Commerce and Bradford.

Cheryl Friedling
Deputy City Manager *cf*

Approved By

Attachment 1

AMENDMENT NO 2 TO LICENSE AGREEMENT

This Amendment No 2 is hereby entered into this 18th of October 2010 (“effective date”) to that certain license agreement between the Beverly Hills Chamber of Commerce and Civic Association, a corporation of the State of California, with its principal place of business at 239 South Beverly Drive, Beverly Hills, California, 90212 (hereinafter referred to as “LICENSOR”) and J.T. Brands, Inc., a corporation of California, with its principal place of business at 200 Pine Avenue, Long Beach, California (hereinafter referred to as “LICENSEE”) entered into on June 26, 2008 as amended on September 1, 2009 (collectively the “License Agreement”).

WHEREAS, LICENSOR, the licensed rights holder for the BEVERLY HILLS SHIELD DESIGN trademark pursuant to an agreement with the City of Beverly Hills;

WHEREAS, LICENSOR and LICENSEE are parties to a certain License Agreement and wish to amend said License Agreement in certain respects without modifying, changing or otherwise amending any other provisions of said License Agreement;

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises and undertakings contained herein and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties, each intending to be legally bound hereby, hereby promise and mutually agree as follows:

Section 1. Section 3.1 (“Term”) of the License Agreement shall be amended to read as follows:

“The term (“Term”) of this Agreement shall commence on June 1, 2008 and shall terminate on December 31, 2014 (“Termination Date”), unless sooner terminated in accordance with the provisions of this Agreement.”

Section 2. Schedule E (“Royalties and Projected Wholesale Sales”) attached to the License Agreement is hereby amended and replaced with a new Schedule E as attached to this Amendment No. 2 to the License Agreement as Attachment 1.

Section 3. This Amendment No. 2 to the License Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. There are no agreements or understandings between the Parties and no representations by either Party to the other as an inducement to enter into this Amendment No. 2 to the License Agreement, except as may be expressly set forth herein.

Section 4. If any party should bring any legal action or proceeding relating to this Amendment No. 2 to the License Agreement (including, without limitation, any action or proceeding to interpret or enforce any provision hereof), the party in whose favor a judgment or decision is rendered shall be entitled to recover reasonable attorneys' fees and expenses from the other. The parties agree that any legal action or proceeding or agreed-upon arbitration or mediation shall be filed in and shall occur in the County of Los Angeles.

Section 5. The laws of the State of California shall govern this Amendment No. 2 to the License Agreement.

Section 6. Except as specifically amended by this Amendment No. 2 to the License Agreement, the terms set forth in the License Agreement shall remain in full force and effect. Unless otherwise amended herein, capitalized terms used in this Amendment No. 2 to the License Agreement but not defined shall have the meaning ascribed thereto in the License Agreement.

Section 7. This Amendment No. 2 to the License Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 2 to the License Agreement as of the day and year first written above.

(“LICENSOR”)

BEVERLY HILLS CHAMBER OF COMMERCE
AND CIVIC ASSOCIATION

By: _____
Name: Daniel Walsh
Title: Executive Director

By: _____

(“LICENSEE”)

JT BRANDS, INC.

By: _____
Name: Geoffrey Thompson
Title: President

By: _____
Name:
Title: Secretary

APPROVED:

CITY OF BEVERLY HILLS

By: _____
Name: Cheryl Frielding
Title: Deputy City Manager, Public Affairs

BRADFORD LICENSING ASSOCIATES

Name: Michelle Minieri
Title: President

ATTACHMENT 1

EXHIBIT E BEVERLY HILLS SHIELD - JT BRANDS DEAL TERMS

*Terms indicate the following assumptions:
 Registration costs absorbed by Client
 Worldwide availability of Marks in Int'l Class 3
 Timely approvals

Royalty Rate Sliding Scale		
<u>Total Wholesale Sales</u>	<u>Royalty Rate</u>	<u>Projected Slide Quarter</u>
\$0 - \$2,999,999	6%	n/a
\$3,000,000 - \$14,999,999	5%	Q1 2012
\$15,000,000 +	4%	Q3 2013

Year 1
July 1, 2008 - December 31, 2009
Projected Wholesale (WS) Sales: n/a

<u>Selling Quarter</u>	<u>Projected Quarterly WS Sales</u>	<u>Royalty Rate</u>	<u>Payment Due Date</u>	<u>Guarantee Payment Due</u>	<u>Total Term to Date WS Sales</u>
Q3 2008	n/a	n/a	Upon Signing	\$12,656.25 (ADVANCE)	n/a
Q4 2008	n/a	n/a	1-Oct-08	\$12,656.25 (ADVANCE)	n/a
Q1 2009	n/a	6%	1-Apr-09	\$ 12,656.25	n/a
Q2 2009	n/a	6%	1-Jul-09	\$ 18,984.36	n/a
Q3 2009	n/a	6%	1-Oct-09	\$ 25,312.50	n/a
Q4 2009	n/a	6%	1-Jan-10	\$ 25,312.50	n/a

Year 1 Payment Schedule		
<u>Payment Due Date</u>	<u>For Selling Quarter</u>	<u>Amount</u>
Upon Execution	n/a	\$ 12,656.25
1-Oct-08	n/a	\$ 12,656.25
1-Apr-09	Q1 2009	\$ 12,656.25
1-Jul-09	Q2 2009	\$ 18,984.36
1-Oct-09	Q3 2009	\$ 25,312.50
Total Guarantee Paid Year 1:		\$ 82,266
Total Guarantee Paid Term to Date:		\$ 82,266

Year 2
January 1, 2010 - December 31, 2010
Projected Wholesale Sales: \$ 755,207

<u>Selling Quarter</u>	<u>Projected Quarterly WS Sales</u>	<u>Royalty Rate</u>	<u>Payment Due Date</u>	<u>Guarantee Payment Due</u>	<u>Total Term to Date WS Sales</u>
Q1 2010	\$ 421,875	6%	1-Apr-10	\$ 25,313	\$ 421,875
Q2 2010	\$ 83,333	6%	1-Jul-10	\$ 5,000	\$ 505,208
Q3 2010	\$ 83,333	6%	1-Oct-10	\$ 5,000	\$ 588,541
Q4 2010	\$ 166,666	6%	1-Jan-11	\$ 10,000	\$ 755,207

Year 2 Payment Schedule		
<u>Payment Due Date</u>	<u>For Selling Quarter</u>	<u>Amount</u>
1-Jan-10	Q4 2009	\$25,312.50
1-Apr-10	Q1 2010	\$25,312.50
1-Jul-10	Q2 2010	\$5,000.00
1-Oct-10	Q3 2010	\$5,000.00
Total Guarantee Paid Year 2:		\$60,625.00
Total Guarantee Paid Term to Date:		\$142,890.61

Year 3
January 1, 2011 - December 31, 2011
Projected Wholesale Sales: \$ 1,747,717

<u>Selling Quarter</u>	<u>Projected Quarterly WS Sales</u>	<u>Royalty Rate</u>	<u>Payment Due Date</u>	<u>Guarantee Payment Due</u>	<u>Total Term to Date WS Sales</u>
Q1 2011	\$ 210,933	6%	1-Apr-11	\$ 12,656	\$ 966,140
Q2 2011	\$ 314,900	6%	1-Jul-11	\$ 18,894	\$ 1,281,040
Q3 2011	\$ 421,883	6%	1-Oct-11	\$ 25,313	\$ 1,702,924
Q4 2011	\$ 800,000	6%	1-Jan-12	\$ 48,000	\$ 2,502,924

<u>Year 3 Payment Schedule</u>		
<u>Payment Due Date</u>	<u>For Selling Quarter</u>	<u>Amount</u>
1-Jan-11	Q4 2010	\$ 10,000
1-Apr-11	Q1 2011	\$ 12,656
1-Jul-11	Q2 2011	\$ 18,894
1-Oct-11	Q3 2011	\$ 25,313
Total Guarantee Paid Year 3:		\$ 66,863.00
Total Guarantee Paid Term to Date:		209,753.61

Year 4
January 1, 2012 - December 31, 2012
Projected Wholesale Sales: \$ 4,800,000

<u>Selling Quarter</u>	<u>Projected Quarterly WS Sales</u>	<u>Royalty Rate</u>	<u>Payment Due Date</u>	<u>Guarantee Payment Due</u>	<u>Total Term to Date WS Sales</u>
Q1 2012	\$ 900,000	5%	1-Apr-12	\$ 45,000	\$ 3,402,924
Q2 2012	\$ 1,100,000	5%	1-Jul-12	\$ 55,000	\$ 4,502,924
Q3 2012	\$ 1,100,000	5%	1-Oct-12	\$ 55,000	\$ 5,602,924
Q4 2012	\$ 1,700,000	5%	1-Jan-13	\$ 85,000	\$ 7,302,924

Year 4 Payment Schedule		
<u>Payment Due Date</u>	<u>For Selling Quarter</u>	<u>Amount</u>
1-Jan-12	Q4 2011	\$ 48,000
1-Apr-12	Q1 2012	\$ 45,000
1-Jul-12	Q2 2012	\$ 55,000
1-Oct-12	Q3 2012	\$ 55,000
Total Guarantee Paid Year 4:		\$ 203,000
Total Guarantee Paid Term to Date:		412,753.61

Year 5
January 1, 2013 - December 31, 2013
Projected Wholesale Sales: \$ 12,229,925

<u>Selling Quarter</u>	<u>Projected Quarterly WS Sales</u>	<u>Royalty Rate</u>	<u>Payment Due Date</u>	<u>Guarantee Payment Due</u>	<u>Total Term to Date WS Sales</u>
Q1 2013	\$ 2,300,000	5%	1-Apr-13	\$ 115,000	\$ 9,602,924
Q2 2013	\$ 2,700,000	5%	1-Jul-13	\$ 135,000	\$ 12,302,924
Q3 2013	\$ 3,375,000	4%	1-Oct-13	\$ 135,000	\$ 15,677,924
Q4 2013	\$ 3,854,925	4%	1-Jan-14	\$ 154,197	\$ 19,532,849

Year 5 Payment Schedule		
<u>Payment Due Date</u>	<u>For Selling Quarter</u>	<u>Amount</u>
1-Jan-13	Q4 2012	\$ 85,000
1-Apr-13	Q1 2013	\$ 115,000
1-Jul-13	Q2 2013	\$ 135,000
1-Oct-13	Q3 2013	\$ 135,000
Total Guarantee Paid Year 5:		\$ 470,000
Total Guarantee Paid to Date:		882,753.61

Year 6
January 1, 2014 - January 15, 2015
Projected Wholesale Sales: \$ 15,984,500

<u>Selling Quarter</u>	<u>Projected Quarterly WS Sales</u>	<u>Royalty Rate</u>	<u>Payment Due Date</u>	<u>Guarantee Payment Due</u>	<u>Total Term to Date WS Sales</u>
Q1 2013	\$ 3,996,125	4%	1-Apr-14	\$ 159,845	\$ 23,528,974
Q2 2013	\$ 3,996,125	4%	1-Jul-14	\$ 159,845	\$ 27,525,099
Q3 2013	\$ 3,996,125	4%	1-Oct-14	\$ 159,845	\$ 31,521,224
Q4 2013	\$ 3,996,125	4%	1-Jan-15	\$ 159,845	\$ 35,517,349

Year 6 Payment Schedule		
<u>Payment Due Date</u>	<u>For Selling Quarter</u>	<u>Amount</u>
1-Jan-14	Q4 2013	\$ 154,197
1-Apr-14	Q1 2014	\$ 159,845
1-Jul-14	Q2 2014	\$ 159,845

1-Oct-14	Q3 2014	\$	159,845
1-Jan-15	Q4 2014	\$	159,845
Total Guarantee Paid Year 6:		\$	793,577
Total Guarantee Paid to Date:			1,676,330.61