



AGENDA REPORT

Meeting Date: April 21, 2011
Item Number: G-9
To: Honorable City Council
From: Brenda Lavender, Real Estate & Property Manager
Subject: MEMORANDUM OF LEASE, AND FIFTH AMENDMENT TO LEASE BY AND BETWEEN THE CITY OF BEVERLY HILLS AND S-FER INTERNATIONAL, INC DBA FERRAGAMO.
Attachments: 1. Memorandum of Lease, and Fifth Amendment To Lease

RECOMMENDATION

It is recommended that the City Council approve the Memorandum of Lease, and Fifth Amendment to Lease by and between the City of Beverly Hills and S-Fer International, Inc dba Ferragamo. A copy of the lease is on file with the City Clerk. Ferragamo is located at 355 N. Rodeo Drive.

INTRODUCTION

This amendment with Ferragamo is for the City owned retail space at the Rodeo/Brighton property. Ferragamo has leased this location since 1990. This amendment extends the terms of the lease by twelve (12) years at a starting rental rate of \$166,666.67 monthly, and adds one additional option to extend the lease for an additional five (5) year period.

DISCUSSION

There is no down time with this deal. Ferragamo will have the right to remodel the store anytime after the 25th month of the new term and to close the store during the actual construction for up to three (3) months. Ferragamo's rent would be abated during the construction closure however; the lease term would also be extended by the abated period up to three months.

FISCAL IMPACT

The Fiscal impact of the lease transaction would be annual revenue of \$2,000,000. The City is not responsible for a broker commission or tenant improvement allowance on this deal, so there are no out of pocket costs.

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

Attachment 1

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned Lessor declares that this Memorandum of Lease, and Fifth 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.

MEMORANDUM OF LEASE, AND FIFTH AMENDMENT TO LEASE

THIS MEMORANDUM OF LEASE, AND FIFTH AMENDMENT OF LEASE (this "Amendment") is dated as of _____, 2011, and is entered into by and between the CITY OF BEVERLY HILLS, a municipal corporation ("Lessor") and S-FER INTERNATIONAL, INC., a New York corporation ("Lessee").

RECITALS

- A. Lessor and Lessee entered into a Lease dated March 20, 1990 and amended it by a First Amendment to Lease dated August 13, 1991, a Second Amendment to Lease dated November 17, 1992, a Third Amendment to Lease dated June 17, 1997, and a Fourth Amendment to Lease dated October 7, 1997 (the "Lease") for space described on the attached Exhibit "A" (the "Premises") in the building (the "Building") owned by Lessor located at 355 North Rodeo Drive, Beverly Hills, California; and
- B. The current expiration date of the Lease is April 14, 2011.
- C. Lessor and Lessee now desire to record a memorandum of the Lease, and also desire to extend and otherwise amend the Lease as more specifically set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the covenants 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. Memorandum of Lease. The Lease is incorporated herein by reference. The Lease term has commenced and it expires on April 14, 2011 but is being extended under Section 2 below. The Lease affects the portion of the improvements at 355 N. Rodeo Drive in Beverly Hills, California more particularly described on Exhibit "A".

2. Extension of Lease Term; Extension Options. The term of the Lease is hereby extended to April 14, 2023, and all extension options in the Lease are hereby deleted. Notwithstanding the foregoing, the term shall be further extended as described in Section 3 below (if applicable), and Tenant shall have the option to further extend the term for five (5) years each by giving written notice to Landlord of the extension at least six (6) months but not more than one (1) calendar year prior to the expiration of the then-current term.

3. Monthly Rent. The Monthly Rent for the period from April 15, 2011 through April 14, 2023 shall be as follows:

<u>Year</u>	<u>Monthly Rent</u>
1	\$166,666.67
2	\$171,666.67
3	\$176,816.67
4	\$182,121.17
5	\$187,584.80
6	\$193,212.35
7	\$199,008.72
8	\$204,978.98
9	\$211,128.35
10	\$217,462.20
11	\$223,986.06
12	\$230,705.65

If Tenant remodels after May 1, 2013 and prior to April 15, 2016, gives Landlord at least nine (9) months' prior written notice of its remodeling/construction schedule and closure dates, and then closes in accordance with such schedule for up to three (3) months for the remodeling, then no Monthly Rent shall be payable commencing on April 15, 2016 and continuing for the number of days of the closure, and the April 14, 2023 expiration date for the Term shall be extended for the same number of days of such closure (not exceeding three (3) months). Tenant shall be permitted to close for up to three (3) months for remodeling during the period specified above provided Tenant gives Landlord at least nine (9) months prior written notice of its remodeling/construction schedule and closure dates.

Within thirty (30) days after receipt of Lessee's extension of the term during the Option Exercise Window, Lessor will deliver a written statement of Lessor's determination of the prevailing fair market rental rate for the Premises, based on the criteria set forth below (the

“Fair Market Rental Rate”). If Lessee exercises the Extension Option, Monthly Rent for the first year of the Extension Term shall be adjusted as of the first day of the Extension Term to ninety percent (90%) of such Fair Market Rental Rate, and on each anniversary of the first day of the Extension Term, the Monthly Rent shall be increased by three percent (3%). As used in this Lease, references to the “Term” of this Lease shall mean the Term as the same may be extended by the Extension Term, as the context may require.

The Fair Market Rental Rate for the first full year of the Extension Term shall be determined as follows:

i. If Lessee objects to Lessor’s determination of the Fair Market Rental Rate for the Premises, then Lessee shall, within ten (10) business days after receipt of Lessor’s notice, notify Lessor in writing that Lessee disagrees with Lessor’s determination, whereupon Lessor and Lessee shall discuss and endeavor in good faith to agree upon the Fair Market Rental Rate. If Lessor and Lessee fail to reach agreement within twenty (20) days after Lessee’s notice, then, within twenty (20) days thereafter, each party, at its own cost and by giving notice to the other party, shall appoint a licensed real estate broker with at least seven (7) years experience as a real estate broker active in the leasing of retail space or appraising retail properties in the City of Beverly Hills and surrounding areas, but not then or previously employed or engaged by either party for any other purpose, to determine the Fair Market Rental Rate for the Extension Term. The Fair Market Rental Rate shall be based on prevailing rates for leases of retail space similar to and in the vicinity of the Premises, but shall not take into account or afford Lessee with any savings to Lessor by virtue of Lessor’s not having to pay additional Lessee improvement or inducement costs, or pay additional brokers commissions, upon such extension, and shall not reflect the value added to the Premises by virtue of improvements made by Lessee at its expense. Until the Fair Market Rental Rate determination is completed, Lessee shall continue to pay to Lessor the amount of Monthly Rent due immediately preceding the commencement of the Extension Term. After the Fair Market Rental Rate determination is completed and the Fair Market Rental Rate for the Extension Term is established, Lessee shall make payment to Lessor for any underpayment of Monthly Rent owing for prior months within ten (10) days after written demand from Lessor. If a party does not appoint a broker within the aforementioned period, the single broker appointed shall determine the Fair Market Rental Rate for the Extension Term. If there are two (2) brokers appointed by the parties as stated above, the brokers shall, within twenty (20) days after the second agent has been appointed, discuss and attempt to determine the Fair Market Rental Rate for the Extension Term. If they are unable to agree on such Fair Market Rental Rate within twenty (20) days after the second broker has been appointed, they shall, within ten (10) days: (i) notify all of the parties in writing as to their respective Fair Market Rental Rate determinations, and (ii) select a third broker who shall be a licensed commercial real estate agent meeting the qualifications stated above. If Lessor’s broker and Lessee’s broker are unable to agree on the third broker within such ten (10) day period, then either Lessor or Lessee may request the President of the BOMA Chapter including the area of the Project to select a third broker meeting the qualifications stated in this subsection. Each of the parties shall bear one-half (1/2) of the cost of appointing the third broker and the third broker’s fee.

ii. Within ten (10) business days after the selection of the third broker, the third broker shall notify both parties in writing as to which of the two determinations

is closest to the Fair Market Rental Rate for the Extension Term, and ninety percent (90%) of the Fair Market Rental Rate determination so selected by the third broker shall be the Monthly Rent for the first year of the Extension Term.

iii. Each broker shall consider such information as Lessor and Lessee timely presents regarding the determination of Fair Market Rental Rate of the, and each broker shall be given access to the information used by each other broker.

4. Parking. Lessor shall supply four parking passes granting the non-exclusive right to four (4) spaces in the parking structure at 440 N. Camden Drive ("Parking Structure"), all at prevailing market rates and on the same terms as the general public. Lessee shall also pay Lessor's standard charges for the actual parking passes. Lessor will use reasonable efforts to provide Lessee with permits for such additional parking spaces as Lessee may reasonably require for its employees in the parking facilities located at 225 North Crescent Drive, 333 North Crescent Drive, 9361 Dayton Way, or such other parking facilities owned and/or leased by Lessor as Lessor may designate from time to time, on the terms and conditions of Lessor's standard form parking permit agreement, as such agreement may be changed from time to time by Lessor. The monthly permit fee for such parking spaces shall be the standard monthly fee charged by Lessor from time to time for spaces in those facilities. The monthly permit fees and parking card charges for such parking spaces shall be payable concurrently with the monthly rent under the Lease, and shall be deemed additional rent.

5. Holiday Decorating. Lessee acknowledges that the City of Beverly Hills ("City") has a significant interest in promoting retail sales in the City in order to maximize sales tax revenues and otherwise benefit both the City and the retail businesses in the City. During the winter shopping/holiday season ("Winter Shopping Season") established or identified by the Beverly Hills Chamber of Commerce (the "Chamber") which begins the Friday after Thanksgiving and continues through the end of the year, Lessee shall: (i) reasonably participate in the extended hours recommended, established or identified for the winter shopping season by the Chamber and (ii) reasonably decorate the Premises for the Winter Shopping Season at Lessee's cost.

6. Default. A default by Lessee hereunder shall constitute a default by Lessee under the Lease.

7. Brokers. Lessor and Lessee each represent and warrant that except for Cushman and Wakefield of California ("Broker") (which represents Lessee), it has had no dealings with any real estate broker, or agent in connection with the negotiation of this Lease, and that it knows of no real estate broker or agent who is or might be entitled to a commission or fee in connection with this Lease. In the event of any other claim for broker's or finder's fees or commissions in connection with this Lease, Lessor shall indemnify, hold harmless and defend Lessee from and against any and all liability, claims, demands, damages and costs (including, without limitation, reasonable attorneys' fees and other litigation expenses) on account of such claim if it shall be based upon any statement, representation or agreement claimed to have been made by Lessor, and Lessee shall indemnify, hold harmless and defend Lessor from and against: (i) any and all liability, claims, demands, damages and costs (including, without limitation, reasonable attorneys' fees and other litigation expenses) on account of such claim if it shall be based upon

any statement, representation or agreement claimed to have been made by Lessee; and (ii) all fees, commissions and other sums payable to the Broker. Lessor shall not be responsible for payment of any fee or commission to the Broker.

8. 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.

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

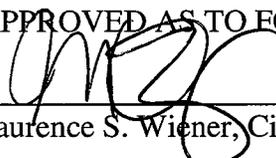
LESSOR:

CITY OF BEVERLY HILLS,
a municipal corporation

By: _____
Barry Brucker, 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 G. Miller, CFO/Director of
Administrative Services

LESSEE:

S-FER INTERNATIONAL, INC.,
a New York corporation

By: 
Print Name: THOMAS COSTELLO
Title: SVP OPERATIONS

ACKNOWLEDGMENT

State of ~~California~~ New Jersey)
County of ~~Los Angeles~~ Hudson)

On April 11, 2011, before me, Rachel L. Barnett, Admin. Assistant,
(insert name and title of the officer)

Notary Public, personally appeared Thomas Costello,
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~~ New Jersey that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Rachel L. Barnett **RACHEL L. BARNETT**
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 6/5/2014 (Seal)

ACKNOWLEDGMENT

State of California)
County of Los Angeles)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, 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)

REAFFIRMATION OF LEASE GUARANTY

Ferragamo USA Inc., a New York corporation (“Guarantor”), hereby consents to the foregoing “Memorandum of Lease, and Fifth Amendment of Lease” dated _____, 2011 between the City of Beverly Hills, as lessor, and S-Fer International, Inc., as lessee, and hereby agrees that the Guaranty of Lease dated in March, 1990 executed by Moda Imports, Inc. (which has changed its name to Ferragamo USA Inc.) shall not be reduced or impaired thereby, but shall apply to the Lease, as so amended, and Guarantor hereby reaffirms all of its obligations under, and the continuing effectiveness of, such Guaranty of Lease.

FERRAGAMO USA INC.,
a New York corporation (formerly known as Moda Imports, Inc.)

By: Thomas Costello
Print Name: THOMAS COSTELLO
Title: SUP OPERATIONS

ACKNOWLEDGMENT

State of ~~California~~ New Jersey)
County of ~~Los Angeles~~ Hudson)

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the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Rachel L. Barnett

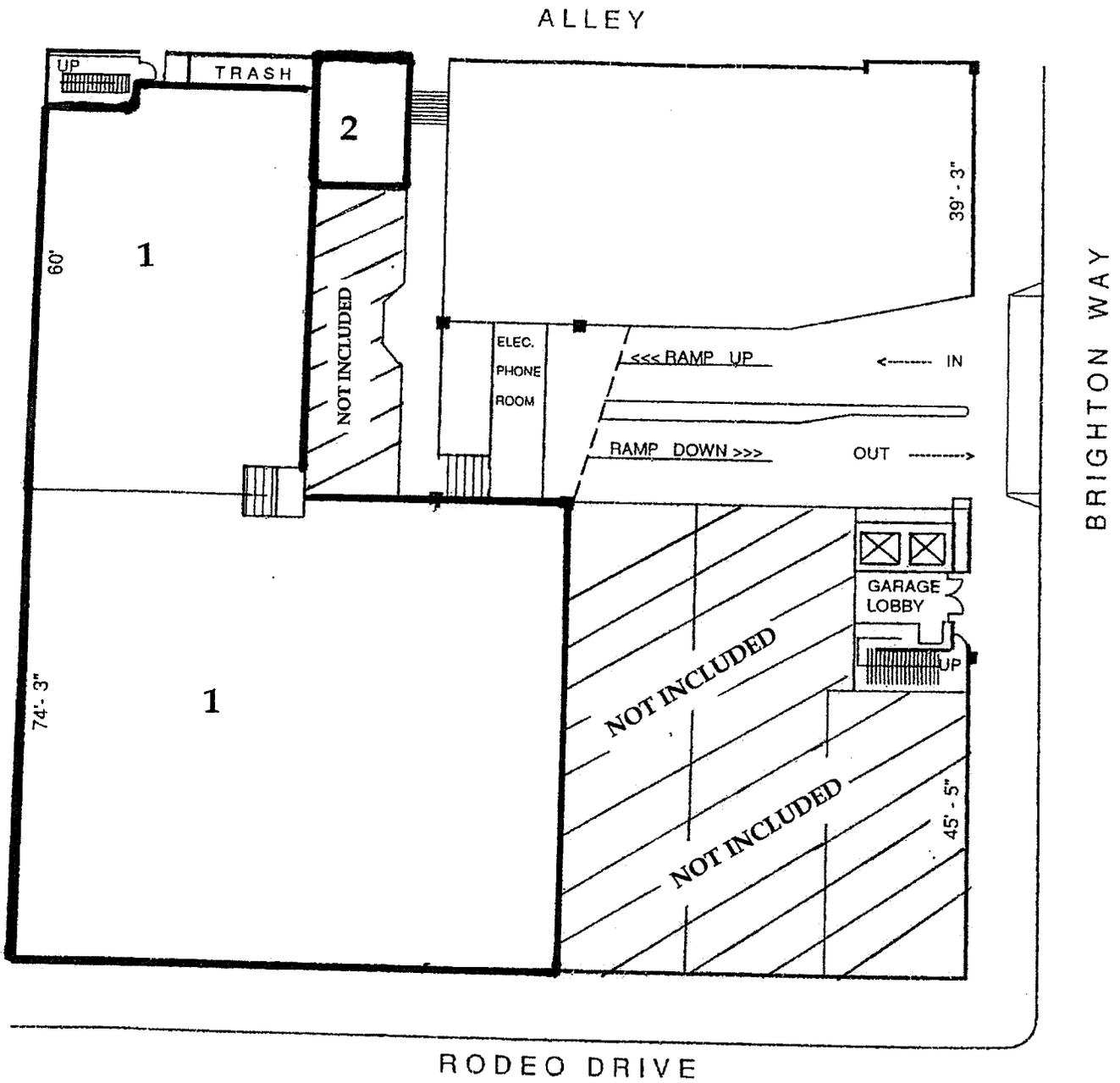
RACHEL L. BARNETT
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 6/5/2014

EXHIBIT "A"

DESCRIPTION OF PREMISES

(at 355 North Rodeo Drive,
Beverly Hills, California)

(Attached.)



- 1 - Store
- 2 - Storage

