



## AGENDA REPORT

**Meeting Date:** May 17, 2011  
**Item Number:** F-7  
**To:** Honorable Mayor & City Council  
**From:** Brenda A. Lavender, Real Estate & Property Manager  
**Subject:** SIXTH AMENDMENT TO LEASE AND GUARANTY OF LEASE BY AND BETWEEN THE CITY OF BEVERLY HILLS AND KAZUMI KIM DBA KABUKI BEAUTY SALON  
**Attachments:**  
1. Sixth Amendment to Lease  
2. Guaranty of Lease

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### **RECOMMENDATION**

It is recommended that the City Council approve the Sixth Amendment to Lease and Guaranty of Lease by and between the City of Beverly Hills and Kazumi Kim dba Kabuki Beauty Salon. A copy of the Amendment and Guaranty is on file with the City Clerk. Kabuki Beauty Salon is located at 313 N. Crescent Drive.

### **INTRODUCTION**

This amendment is for City owned retail space in the Crescent Drive property. The agreement reduces the monthly rent by 10% from \$4,006.00 monthly to \$3,605.40 for the last seven months of the current lease term. The agreement also extends the term of the lease by two (2) years and substitutes Mrs. Kazumi Kim as the lease signor and guarantor replacing the former signor Mr. Henry Kim who passed away in November 2010.

Kabuki Beauty Salon is one of the long-standing Crescent Drive Tenants; the original lease for the salon was approved in 1982.

### **DISCUSSION**

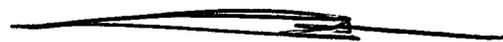
Kabuki Beauty Salon is one of the City's Crescent Drive Tenants with below market rental rates. The City has continued its commitment to the community by providing below market rental rates to businesses such as Kabuki Beauty Salon so that these businesses are able to stay in the City and provide quality community services.

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The economy continues to affect the salon financially, and Mrs. Kim is challenged to keep the business open. Without the City's support and willingness to work with this Tenant the salon would have to close.

**FISCAL IMPACT**

The fiscal impact of this request is a \$400.60 reduction of monthly revenue and \$2,804.20 over the seven (7) month period for which the rent reduction is granted. There are no out of pocket costs for the City.



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, California 90210  
Attn: City Clerk

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

### SIXTH AMENDMENT TO LEASE

THIS SIXTH AMENDMENT TO LEASE (this "**Amendment**") is made and entered into as of May 17, 2011, by and between the CITY OF BEVERLY HILLS ("**Lessor**") and KAZUMI KIM (dba Kabuki Beauty Salon) ("**Lessee**").

### RECITALS

A. Lessor and Henry Kim executed that certain Lease dated November 16, 1982 (the "**Original Lease**"). The Original Lease was amended by that certain unrecorded First Amendment to Lease dated as of November 20, 1990, executed by Lessor and Lessee (the "**First Amendment**"); that certain unrecorded Second Amendment to Lease dated as of November 18, 1997 (the "**Second Amendment**"); that certain unrecorded Third Amendment to Lease dated as of November 16, 1999 (the "**Third Amendment**"), and that certain Fourth Amendment to Lease dated as of July 20, 2004 that was recorded on September 23, 2004 as Document No. 04-2451905 in the Official Records of Los Angeles County, California (the "**Fourth Amendment**"), and that certain Fifth Amendment to Lease dated as of June 3, 2010 recorded on July 16, 2010 as Document No. 20100976562 in such Official Records (the "**Fifth Amendment**"). The Original Lease, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, and the Fifth Amendment, is hereinafter referred to as the "**Lease**."

B. The Lease affects a portion ("**Premises**") of the building located at 333 North Crescent Drive, Beverly Hills, California (the "**Property**").

C. Henry Kim is deceased. Henry Kim did not have a will and Kazumi Kim is his sole surviving relative. Kazumi Kim has been operating Kabuki Beauty Salon in the Premises during the entire term of the Lease.

D. Lessor and Lessee now desire to amend the Lease.

## A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, the rents to be paid hereunder and of the covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. Temporary Rent Reduction. As of May 1, 2011, monthly rent under Section 4 of the Lease shall be reduced to \$3,605.40, and such reduction shall continue until November 30, 2011.
2. Extension of Lease Term. The term of the Lease is hereby extended to November 30, 2013. On December 1, 2011, the monthly rent under Section 4 of the Lease shall increase to \$4,006.00 and shall be adjusted on each anniversary of December 1, 2011 by the increased in the Index over the previous year in accordance with Section 4.B of the Lease.
3. Representations and Warranties of Lessee. Lessee hereby represents and warrants to Lessor as of the date hereof that (a) Lessee is not in default under or in breach of the terms and conditions of the Lease and (b) Lessee has not committed any act or omission that, after notice or the passage of time, or both, would constitute an event of default under the Lease.
4. 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.
5. 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 Lessor and Lessee and remains in full force and effect as modified hereby.
6. 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:

APPROVED AS TO FORM:

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

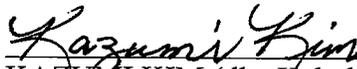
  
\_\_\_\_\_  
Laurence S. Wiener, City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Jeffrey Kolin, ILMA-CM, City Manager

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

**LESSEE:**

  
\_\_\_\_\_  
KAZUMI KIM (dba Kabuki Beauty Salon)

ACKNOWLEDGMENT

State of California )  
County of Los Angeles )

On May 4, 2011 before me, Gwen Crane  
(insert name and title of the officer)

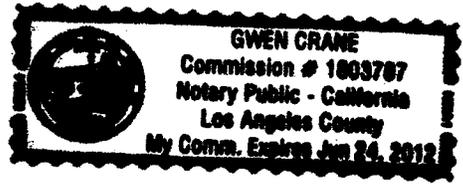
personally appeared Hazumi Kim

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 Gwen Crane (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

# **Attachment 2**

## GUARANTY OF LEASE

This GUARANTY OF LEASE (the "Guaranty") is executed concurrently with that certain Sixth Amendment to Lease dated May 17, 2011 between the CITY OF BEVERLY HILLS, a municipal corporation, as landlord ("Landlord"), and KAZUMI KIM, an individual ("Tenant"), as tenant (the "Lease Amendment"). Capitalized terms used in this Guaranty but not defined shall have the same definitions as set forth in the Lease Amendment, and Guarantor hereby acknowledges that the term "Landlord" shall include all successors to the interest of Landlord in the Premises.

In order to induce Landlord to enter into the Lease Amendment with Tenant, KAZUMI KIM ("Guarantor") has agreed to execute and deliver this Guaranty to Landlord. Guarantor acknowledges that Landlord would not enter into the Lease Amendment if Guarantor did not execute and deliver this Guaranty to Landlord, and that this Guaranty is intended to apply in the event the Lease Amendment is not enforceable for any reason.

1. **Guaranty.** In consideration of the execution of the Lease by Landlord and as a material inducement to Landlord to execute the Lease Amendment, Guarantor hereby irrevocably, unconditionally, guarantees the full, timely and complete: (a) payment of all rent and other sums payable to Landlord under the Lease, and any amendments or modifications thereto by agreement or course of conduct, and (b) performance of all obligations to be performed by the tenant under the Lease, and any amendments or modifications thereto by agreement or course of conduct. The payment of those amounts and performance of those obligations shall be conducted in accordance with all terms, covenants and conditions set forth in the Lease, without deduction, offset or excuse of any nature and without regard to the enforceability or validity of the Lease, or any part thereof, or any disability of Tenant. This Guaranty is a guaranty of payment and performance, and not of collection.

2. **Landlord's Rights.** Landlord may perform any of the following acts at any time during the Lease Term, without notice to or assent of Guarantor and without in any way releasing, affecting or impairing Guarantor's obligations or liabilities under this Guaranty: (a) alter, modify or amend the Lease by agreement or course of conduct, (b) grant extensions or renewals of the Lease, (c) assign or otherwise transfer its interest in the Lease, the Project, or this Guaranty, (d) consent to any transfer or assignment of Tenant's or any future tenant's interest under the Lease, (e) if applicable, release Guarantor, or amend or modify this Guaranty with respect to Guarantor, without releasing or discharging any other Guarantor from any of such Guarantor's obligations or liabilities under this Guaranty, (f) take and hold security for the payment of this Guaranty and exchange, enforce, waive and release any such security, (g) apply such security and direct the order or manner of sale thereof as Landlord in its sole discretion, deems appropriate, and (h) foreclose upon any such security by judicial or nonjudicial sale, without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the indebtedness has been paid.

3. **Tenant's Default.** Upon any breach or default by the tenant under the Lease, Landlord may proceed immediately against Guarantor to enforce any of Landlord's rights or remedies against Guarantor pursuant to this Guaranty, the Lease, or at law or in equity without notice to or demand upon either Guarantor. This Guaranty shall not be released, modified or

affected by any failure or delay by Landlord to enforce any of its rights or remedies under the Lease or this Guaranty, or at law or in equity.

4. **Guarantor Waivers.** Guarantor hereby waives (a) presentment, demand for payment and protest of non-performance under the Lease, (b) notice of any kind including, without limitation, notice of acceptance of this Guaranty, protest, presentment, demand for payment, default, nonpayment, or the creation or incurring of new or additional obligations of Tenant to Landlord, (c) any right to require Landlord to enforce its rights or remedies against Tenant under the Lease, or otherwise, or against Guarantor, prior to proceeding against Guarantor, or otherwise, (d) any right to require Landlord to proceed against any security held from Tenant or any other party, (e) any right of subrogation and or other right or remedy of Guarantor against Landlord or any such security, whether resulting from an election by Landlord, or otherwise, (f) the benefit of any statute of limitations affecting the liability of Guarantor under this Guaranty or applicable to this Guaranty; and (g) without limiting the foregoing waivers, all of rights and defenses provided by California Civil Code Sections 2809, 2810, 2815, 2819, 2845, 2849, 2850, and any similar or analogous statutes of California or any other jurisdiction. Any part payment by Tenant or other circumstance which operates to toll any statute of limitations as to Tenant shall operate to toll the statute of limitations as to any Guarantor.

5. **Separate and Distinct Obligations.** Guarantor acknowledges and agrees that such Guarantor's obligations to Landlord under this Guaranty are separate and distinct from Tenant's obligations to Landlord under the Lease. The occurrence of any of the following events shall not have any effect whatsoever on Guarantor's obligations to Landlord hereunder, each of which obligations shall continue in full force or effect as though such event had not occurred: (a) the commencement by Tenant of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended or replaced, or any other applicable federal or state bankruptcy laws, as now constituted or hereafter amended or replaced, or any other applicable federal or state bankruptcy, insolvency or other similar law (collectively, the "Bankruptcy Laws"), (b) the consent by tenant to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or similar official of Tenant or for any substantial part of its property, (c) any assignment by Tenant for the benefit of creditors, (d) the failure of Tenant generally to pay its debts as such debts become due, (e) the taking of corporate action by Tenant in the furtherance of any of the foregoing; or (f) the entry of a creed or order for relief by a court having jurisdiction in respect of Tenant in any involuntary case under the Bankruptcy Laws, or appointing a receiver, liquidator, assignee, custodian, trustee sequestrator (or similar official) of Tenant or for any substantial part of its property, or ordering the winding-up or liquidation of any of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days. The liability of Guarantor under this Guaranty is not and shall not be affected or impaired by any payment made to Landlord under or related to the Lease for which Landlord is required to reimburse Tenant pursuant to any court order or in settlement of any dispute, controversy or litigation in any bankruptcy, reorganization, arrangement, moratorium or other federal or state debtor relief proceeding. If, during any such proceeding, the Lease is assumed by Tenant or any trustee, or thereafter assigned by Tenant or any trustee to a third party, this Guaranty shall remain in full force and effect with respect to the full performance of Tenant, any such trustee or any such third party's obligations under the Lease. If the Lease is terminated or rejected during any such proceeding, or if any of the events described

in Subparagraphs (a) through (f) of this Paragraph 6 occur, as between Landlord and Guarantor, Landlord shall have the right to accelerate all of Tenant's obligations under the Lease and Guarantor's obligations under this Guaranty. In such event, all such obligations shall become immediately due and payable by Guarantor to Landlord. Guarantor waives any defense arising by reason of any disability or other defense of Tenant or by reason of the cessation from any cause whatsoever of the liability of Tenant.

6. **Subordinations.** All existing and future liability and indebtedness of Tenant to Guarantor shall be subordinated to all obligations owed to Landlord under this Guaranty. Until all of Tenant's obligations under the Lease are fully and indefeasibly performed, Guarantor: (a) will not have (and hereby waive) any right of offset or subrogation against Tenant by reason of any payments or acts performed by Guarantor under this Guaranty; and (b) subordinate any and all liability and indebtedness of Tenant to Guarantor now existing or hereafter arising to Tenant's obligations to Landlord under the Lease.

7. **Successors and Assigns.** This Guaranty binds Guarantor's personal representatives, heirs, executors, administrators, and successors, and shall inure to the benefit of Landlord and its successors and assigns. Guarantor shall not assign its obligations under this Guaranty, and any purported assignment shall be void and shall not relieve Guarantor of any liability under this Guaranty.

8. **Encumbrances.** If Landlord's interest in the Project or the Lease, or the rents, issues or profits therefrom, are subject to any deed of trust, mortgage or assignment for security, Guarantor's acquisition of Landlord's interest in the Project or Lease shall not affect any of Guarantor's obligations under this Guaranty. In such event, this Guaranty shall nevertheless continue in full force and effect for the benefit of any mortgages, beneficiary, trustee or assignee or any purchaser at any sale by judicial foreclosure or under any private power of sale, and their successors and assigns.

9. **Bankruptcy of Tenant; Guarantor's Obligations.** Guarantor shall not commence, or join with any other person or entity in commencing, any bankruptcy, reorganization or insolvency proceeding against Tenant. Guarantor shall file in any bankruptcy of Tenant or other proceeding relating to Tenant in which the filing of claims is required or permitted by law all claims that Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor, and Guarantor hereby assigns to Landlord all such claims (and shall also assign in writing such claims to Landlord as they are filed), and Guarantor hereby also assigns to Landlord all right to payment and distributions to which Guaranty might be entitled. Landlord shall have the sole right to accept or reject any plan proposed in any such proceeding and to take any other action that a person or entity filing a claim may take.

10. **Financial Condition of Tenant.** Guarantor assumes the responsibility to remain informed of the financial condition of Tenant and of all other circumstances bearing upon the risk of Tenant's default, which reasonable inquiry would reveal, and agree that Landlord shall have no duty to advise Guarantor of information known to it regarding such condition or any such circumstances.

11. **Landlord's Reliance.** Landlord shall not be required to inquire into the powers of Tenant or the officers, employees, partners or agents acting or purporting to act on its behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

12. **Review of Lease.** Guarantor represents and warrants to Landlord that such Guarantor has received a copy of the Lease, has read the Lease, and understands the terms of the Lease.

13. **Financial Statements.** Guarantor will, upon ten (10) business days' prior written notice from Landlord, provide Landlord with current fiscal year financial statements, financial statements for up to two years prior to such current financial statement year and such other financial information as may be requested by Landlord (which may include a certification of the Guarantor's net worth and liquidity). Such statements will be prepared in accordance with generally accepted accounting principles.

14. **Governing Law Jurisdiction and Venue.** Guarantor agrees that the laws of the State of California will govern all questions with respect to this Guaranty (without regard to conflict of laws rules) and that any suit, action, or proceeding arising directly or indirectly from this Guaranty, the Lease, or the subject matter of either will be litigated only in courts located within Los Angeles County; Guarantor irrevocably consents to the jurisdiction of any local, state, or federal court located within Los Angeles County. Without limiting the generality of the foregoing, Guarantor waives and agrees not to assert by way of motion, defense, or otherwise in any suit, action, or proceeding any claim that Guarantor is not personally subject to the jurisdiction of such courts, that such suit, action, or proceeding is brought in an inconvenient forum, or that the venue of such action, suit, or proceeding is improper.

15. **Returned Payments Do Not Satisfy Obligations.** If a claim is made on Landlord at any time (whether before or after payment or performance in full of any obligation of Guarantor, and whether such claim is asserted in a bankruptcy proceeding or otherwise) for repayment or recovery of any amount or other value received by Landlord (from any source) in payment of, or on account of, any obligation of Guarantor under this Guaranty, and if Landlord repays such amount, returns value, or otherwise becomes liable for all or part of such claim by reason of (a) any judgment, decree, or order of any court or administrative body or (b) any settlement or compromise of such claim, then the Guarantor will remain jointly and severally liable to Landlord for the amount so repaid or returned or for which Landlord is liable to the same extent as if such payments or value had never been received by Landlord, despite any termination of this Guaranty or the termination of the Lease or cancellation of any document evidencing any obligation of the Guarantor under this Guaranty.

16. **Entire Agreement.** This Guaranty will constitute the entire agreement between Guarantor and Landlord with respect to the subject matter of this Guaranty and supersedes all prior agreements, understandings, negotiations, representations, and discussions, whether verbal or written, of the parties pertaining to that subject matter. Guarantor is not relying on any representations, warranties, or inducements from Landlord that are not expressly stated in this Guaranty.

17. **Waiver of Guaranty Provisions.** No provision of this Guaranty or right of Landlord under it may be waived, nor may Guarantor be released from any obligation under this Guaranty, except by a writing duly executed by an authorized officer of Landlord. The waiver or failure to enforce any provision of this Guaranty will not operate as a waiver of any other breach of such provision or any other provisions of this Guaranty, nor will any single or partial exercise of any right, power, or privilege preclude any other or further such exercise or the exercise of any other right, power, or privilege.

18. **Severability.** If any provision of this Guaranty is determined to be illegal or unenforceable, all other provisions will nevertheless be effective.

19. **Time of Essence.** Time is strictly of the essence under this Guaranty and any amendment, modification, or revision of this Guaranty.

20. **Authority.** Each individual executing this Guaranty on behalf of Guarantor represents and warrants that he or she is duly authorized to execute and deliver this Guaranty on behalf of the entity in accordance with its governing documents, and that this Guaranty is binding on the entity in accordance with its terms.

21. **Attorneys' Fees.** If Landlord participates in an action against a Guarantor arising out of or in connection with this Guaranty or a Guarantor participates in any such action against the Landlord, the prevailing party will be entitled to have and recover from the other party reasonable attorneys' fees, collection costs, and other costs incurred in, and in preparation for, the action, arbitration, mediation or bankruptcy. Sums owed to Landlord under this Section shall be part of the obligations of Guarantor under this Guaranty.

22. **Notices.** Any notice, request, demand, instruction, or other communication to be given under this Guaranty must be in writing and must be delivered by certified mail, return receipt requested, or by personal delivery, or by reputable overnight messenger (such as Federal Express) for overnight delivery, addressed as follows:

To Landlord:	As set forth in the Lease.
To Guarantor:	Kazumi Kim 7534 W. 88 <sup>th</sup> Street Los Angeles, CA 90045

Notices shall be deemed given: (a) if delivered by certified mail, then on the date shown on the receipt as the date of delivery or date acceptance of delivery was refused; (b) if personally served, then upon receipt or refusal to accept delivery, as indicated by written confirmation of the person delivering the notice; or (c) twenty-four (24) hours after delivery to a reputable overnight delivery service unless otherwise indicated on the records of the delivery service as being delivered on a later date (in which case delivery shall be deemed to have occurred on such later date). Any party may change its address(es) for notices upon fifteen (15) days' prior written notice to the other.

**IN WITNESS WHEREOF,** Guarantor has caused this Guaranty of Lease to be executed and delivered as of the date first above written.

**GUARANTOR:**

By: *Kazumi Kim*  
Kazumi Kim,  
an individual