



## AGENDA REPORT

**Meeting Date:** July 24, 2012  
**Item Number:** G-2  
**To:** Honorable Parking Authority  
**From:** Brenda A. Lavender, Real Estate & Property Manager  
**Subject:** THIRD AMENDMENT TO LEASE, MEMORANDUM OF THIRD AMENDMENT TO LEASE AND GUARANTY OF LEASE BY AND BETWEEN FORWARD BEVERLY HILLS, INC DBA KELLER WILLIAMS REALTY AND THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS.

**Attachments:**

1. Third Amendment to Lease
2. Memorandum of Third Amendment to Lease
3. Guaranty of Lease

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### **RECOMMENDATION**

Staff recommends approval of the Third Amendment to Lease, Memorandum of Third Amendment to Lease and Guaranty of Lease by and between The Parking Authority of the City of Beverly Hills and Forward Beverly Hills, Inc., dba Keller Williams Realty. Keller Williams Realty Beverly Hills office is located in the Beverly/Canon Building at 439 N. Canon Drive where they lease the entire 3<sup>rd</sup> floor.

### **INTRODUCTION**

A Third Amendment to Lease, Memorandum of Third Amendment to Lease and a Guaranty of Lease with Forward Beverly Hills have been prepared for Parking Authority approval. The amendment extends the term of the lease for five (5) years, provides an \$118,215 tenant improvement allowance (\$7.50/SF), and three months of free rent.

### **DISCUSSION**

Forward Beverly Hills, Inc., dba Keller Williams Realty has been a tenant at the Beverly/Canon building for seven (7) years where they lease the 3<sup>rd</sup> floor of the building approximately 15,762 rentable square feet. The starting rental rate for the lease term is \$3.69 per square foot and will increase by 3% annually starting month 24, plus Common Area Maintenance fees of \$630.45 monthly.

**FISCAL IMPACT**

The fiscal impact of the lease extension is \$697,941.36 which is offset by the tenant improvement allowance of (\$118,215), and free rent of (\$174,485.35), for net revenue of \$405,241.01.

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

The Parking Authority will be advised if agreement is not signed by Tuesday.

# **Attachment 1**

### **THIRD AMENDMENT TO LEASE**

This THIRD AMENDMENT TO LEASE (this "Amendment") is dated as of July 24, 2012 (the "Effective Date") and is entered into by and between THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS, a parking authority established pursuant to the Parking Law of 1949 of the State of California ("Landlord"), and FORWARD BEVERLY HILLS, INC., a California corporation, doing business as "Keller Williams Realty" ("Tenant").

#### **RECITALS**

- A. The City of Beverly Hills (predecessor-in-interest to Landlord) and Tenant are parties to that certain Office Lease dated as of December 21, 2004 as amended by that certain First Amendment to Lease dated October 17, 2006 and that certain Second Amendment to Lease dated February 17, 2009 (the "Existing Lease"). All capitalized terms used herein but not herein defined shall have the meanings ascribed to such terms in the Existing Lease.
- B. The City of Beverly Hills has conveyed the Building containing the Premises to Landlord.
- C. Landlord and Tenant desire to amend the Existing Lease upon and subject to the terms and conditions set forth herein.
- D. The Existing Lease, as amended hereby, is hereinafter referred to as the "Lease".

#### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree that the Existing Lease is amended as of the Effective Date above as follows:

1. Extension of Term. The term of the Lease is hereby extended to June 30, 2017 (the "Expiration Date").
2. Free Rent Period; Adjustment of Rent. From July 1, 2012 through September 30, 2012, Tenant shall not be obligated to pay Minimum Annual Rent for the Premises. Commencing on October 1, 2012 Tenant shall pay Minimum Annual Rent in the amount of \$697,941.36 in equal monthly installments of \$58,161.78, in advance (on or before the first business day of each calendar month), without affect or deduction, to The Parking Authority of the City of Beverly Hills, 455 North Rexford Drive, Cashier's office, Beverly Hills, California 90210. The Minimum Annual Rent shall increase as follows:

<u>Period</u>	<u>Monthly Installment</u>
July 1, 2014 to June 30, 2015	\$59,906.63
July 1, 2015 to June 30, 2016	\$61,703.83
July 1, 2016 to June 30, 2017	\$63,554.94

3. Increase in Security Deposit. Concurrently with its execution and delivery of this Amendment, Tenant shall deposit an additional \$7,486.10 with Landlord which shall become part of the Security Deposit and shall be governed by Section 5(d) of the Lease.

4. Annual CAM Payment. Tenant shall not be obligated to make monthly payments of the Annual CAM Payment from July 1, 2012 through June 30, 2013. Commencing on July 1, 2013: (i) Tenant shall resume payments of the Annual CAM Payment which shall be \$7,565.76 (payable in equal monthly installments of \$630.48, without offset or deduction, as additional rent); (ii) the Initial CAM Date shall mean July 1, 2013; and (iii) the Annual CAM Payment shall be adjusted annually in accordance with Section 6(b) of the Lease.

5. Parking. Section 1(d) of the Lease is hereby revised to provide that Landlord shall have the right to relocate eighteen (18) of the twenty-eight (28) parking spaces in the Parking Structure to the parking structure owned by the City at 450 North Crescent (in the City of Beverly Hills) upon thirty (30) days' prior written notice from Landlord. Said notice shall constitute a covenant by Landlord that pedestrian access through the Wallis Annenberg Center for the Performing Arts is available or will be available at the end of the thirty (30) day period. Upon such relocation, Tenant shall pay to Landlord the prevailing rate charged by Landlord for parking passes for parking spaces in the 450 North Crescent parking garage and shall promptly return to Landlord 18 passes for parking in the Parking Structure.

6. Landlord Work. Landlord shall, at Landlord's cost and expense: (i) use commercially reasonable efforts to make repairs to stop leaks on Level P-1 of the Parking Structure by December 31, 2012, and (ii) repair exterior Building stucco by December 31, 2012, subject to delays beyond the control of Landlord (excluding financial hardship).

7. Tenant Sign Work. Tenant shall (with reasonable diligence) submit a detailed proposal to Landlord for upgrading Tenant's exterior sign(s), and Landlord shall not unreasonably withhold its consent to such proposal. Upon obtaining Landlord's consent, Tenant shall complete the upgrade at Tenant's cost and expense, and in accordance with applicable laws, on or before December 31, 2012, subject to delays beyond the control of Tenant (excluding financial hardship).

8. Guaranty. Concurrently with its execution and delivery of this Lease, Tenant shall deliver to Landlord an executed Guaranty of Lease in the form attached hereto as Exhibit "A", and upon Landlord's approval of this Amendment, the existing Guaranty of Lease executed by the Guarantor shall be of no further force or effect.

9. Recordable Memorandum of Amendment. Concurrently with its execution and delivery of this Amendment, Tenant shall execute and deliver to Landlord (with signatures duly acknowledged) a Memorandum of Third Amendment to Lease in the form attached hereto as Exhibit "B".

10. Additional Improvement Allowance for Alterations; Prevailing Wages.

(a) Alterations paid for in whole or in part with funds provided by Landlord are a "public work" under Section 1720 of the California Labor Codes and Tenant agrees that Tenant shall: (i) pay prevailing wages for all such Alterations in accordance with Section 1720, et seq. of the California Labor Code; (ii) otherwise comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6 and 1813 of the California Labor Code and all other applicable laws and regulations with respect to prevailing wages with respect to such Alterations; and (iii) obtain payment and performance bond(s) for such Alterations.

(b) Improvements to the Premises by Tenant shall be subject to Section 10 of the Lease.

(c) Landlord agrees to contribute up to the sum of One Hundred Eighteen Thousand Two Hundred Fifteen and No/100 Dollars (\$118,215.00) for the actual costs of design and construction of Alterations (the "Alteration Allowance"). In no event shall any unused portion of the Alteration Allowance be paid to Tenant or credited against any obligation payable by Tenant under the Lease.

Subject to the retainage described below, Landlord shall pay to Tenant the Alteration Allowance for the actual costs of Alterations in monthly installments, within thirty (30) days after Tenant delivers written request to Landlord for payment describing the applicable work (together with any additional supporting documentation reasonably requested by Landlord), subject to the satisfaction of the following conditions:

(i) All building permits for the Alterations have been issued by the applicable governmental authorities and copies of such building permits have been delivered to Landlord;

(ii) Tenant has submitted to Landlord (i) all invoices for that portion of the Alterations for which payment is requested; and (ii) appropriate conditional lien releases and waivers from any and all contractors and materialmen that provided services or installed supplies to or for the account of Tenant (unconditional as to any work for which a disbursement of the Alteration Allowance was previously made) (provided that no lien releases shall be required of the architect, project manager and other consultants unless they have filed a preliminary notice); and

(iii) Tenant has completed that portion of the Alterations described on the invoices submitted for which the installment payment is requested; and

(iv) Tenant is not in default of any provisions of the Lease (provided that once all defaults are cured, the disbursement will then be made, if Landlord has not terminated this Lease).

Landlord shall be entitled to retain ten percent (10%) of each requested installment for the costs of the Alterations.

Landlord shall pay a final payment of the Alteration Allowance equal to ten percent (10%) of the costs of the Alterations (*i.e.*, the retention described above) for the actual costs of Alterations within thirty (30) days after Landlord's receipt of Tenant's written request thereof, together with documentation sufficient (in Landlord's reasonable determination) to establish that items (i) through (vi) below have been satisfied:

(i) All required inspections of the Alterations by the applicable governmental agencies have taken place and the completed Alterations have passed all such inspections;

(ii) Tenant has completed the Alterations;

(iii) Tenant has received a Certificate of Occupancy (if applicable);

(iv) Tenant has submitted to Landlord (i) all invoices and proof of payment for all of the Alterations evidencing expenditures by Tenant of any amount equal to or greater than the amount of the Alteration Allowance; and (ii) appropriate final lien releases and waivers, conditioned only upon final payment of the applicable sum specified therein, from any and all contractors and materialmen which provided services or installed supplies to or for the account of Tenant with respect to the Alterations;

(v) Tenant is not in default of any provisions of the Lease beyond applicable notice and cure periods.

(vi) All statutory lien periods have expired without the filing of a lien.

With its request for final payment, Tenant shall submit to Landlord (i) final, unconditional lien releases and waivers from any and all contractors and materialmen which provided services or installed supplies to or for the account of Tenant with respect to the Alterations; and (ii) "as built" drawings for the Alterations.

Landlord will not charge Tenant any supervisory or administrative fees in connection with the Alterations but Tenant will pay the actual costs incurred by Landlord for engaging a consultant (and all permit fees) to review Tenant's plans and specifications.

Tenant shall not remove the Alterations, but shall, at Tenant's cost, remove all of Tenant's exterior Building signage, repair any damage to the Building caused thereby and restore the applicable exterior areas to their condition prior to the installation of such signage.

11. Brokers. Tenant and Landlord each will indemnify, defend and hold the other harmless from and against any and all costs, expenses or liabilities for commissions or other compensation or charges claimed by any broker or agent based on dealings with the indemnifying party with respect to this Amendment.

12. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

13. Binding on Successors. The provisions of this Amendment shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date and year first above written.

**LANDLORD:**

THE PARKING AUTHORITY OF THE  
CITY OF BEVERLY HILLS,  
a parking authority established pursuant to the  
Parking Law of 1949 of the State of California

By: \_\_\_\_\_  
William W. Brien, M.D.,  
Chairman of the Board of Directors

ATTEST:

\_\_\_\_\_  
Byron Pope  
Secretary to Board of Directors

APPROVED AS TO FORM:

\_\_\_\_\_  
Laurence S. Wiener  
Authority Counsel

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Jeffrey Kolin  
Executive Director

\_\_\_\_\_  
Scott G. Miller  
Director of Administrative Services/CFO

**TENANT:**

FORWARD BEVERLY HILLS, INC.,  
a California corporation

By: \_\_\_\_\_  
Paul M. Morris,  
Chief Executive Officer

By: \_\_\_\_\_  
David Bailey,  
President

**EXHIBIT "A"**

**FORM OF NEW GUARANTY**

(Attached.)

## GUARANTY OF LEASE

THIS GUARANTY OF LEASE ("Guaranty") is made by DAVID BAILEY, an unmarried man, and PAUL MORRIS, an unmarried man (collectively, "Guarantor") in favor of THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS, a parking authority established pursuant to the Parking Law of 1949 of the State of California ("Landlord"), in connection with that certain Office Lease dated as of December 21, 2004 between Tenant and the City of Beverly Hills (as predecessor-in-interest to Landlord), as amended by that certain First Amendment to Lease dated October 17, 2006 between the City of Beverly Hills and Tenant, that certain Second Amendment to Lease dated as of February 17, 2009 between the City of Beverly Hills and Tenant, and that certain Third Amendment to Lease dated substantially concurrently herewith between Landlord and Tenant (the "Lease") pursuant to which Landlord leases to FORWARD BEVERLY HILLS, INC., a California corporation (dba KELLER WILLIAMS REALTY) ("Tenant"), certain "Premises" (as more particularly defined in the Lease) within the building located at 439 N. Canon Drive, Beverly Hills, California. As a material inducement to and in consideration of Landlord entering into the Third Amendment to Lease, Landlord having indicated that it would not enter into the Third Amendment to Lease without the execution of this Guaranty, Guarantor does hereby agree with Landlord as follows:

1. Guarantor does hereby unconditionally and irrevocably guarantee, as a primary obligor and not as a surety, and promise to perform and be liable for any and all obligations and liabilities of Tenant under the terms of the Lease, except that Guarantor shall have a maximum liability under this Guaranty in an amount equal to the portions of the "free rent" under Sections 2 and 4 of the Third Amendment to Lease (i.e., the Minimum Annual Rent and Annual CAM Payment as if they were payable for July 1, 2012 through September 30, 2012 and July 1, 2012 through June 30, 2013, respectively) and the Alteration Allowance described in Section 10(a) of such Third Amendment that remain unamortized as of the date the Lease is terminated by Landlord due to an Event of Default by Tenant (calculated by amortizing such sums on a straight line basis over the period of July 1, 2012 through September 30, 2017).

2. Guarantor does hereby agree that, without the consent of Guarantor and without affecting any of the obligations of Guarantor hereunder: (a) any term, covenant or condition of the Lease may be hereafter amended, compromised, released or otherwise altered by Landlord and Tenant, and Guarantor does guarantee and promise to perform all the obligations of "Tenant" under the Lease as so amended, compromised, released or altered; (b) any guarantor of or party to the Lease may be released, substituted or added; (c) any right or remedy under the Lease may be exercised, not exercised, impaired, modified, limited, destroyed or suspended; (d) Landlord or any other person acting on Landlord's behalf may deal in any manner with Tenant, any guarantor, any party to the Lease or any other person; and (e) all or any part of the Premises or of the rights or liabilities of "Tenant" under the Lease may be sublet, assigned or assumed. This is a continuing guaranty.

3. Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require Landlord to proceed against Tenant or any other person or to pursue any other remedy before proceeding against Guarantor; (b) any right or defense that may arise by reason of the incapacity, lack of authority, death or disability of Tenant or any other person; and (c) any right or defense arising by reason of the absence, impairment, modification, limitation,

destruction or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Tenant, of the subrogation rights of Guarantor or of the right of Guarantor to proceed against Tenant for reimbursement. Without in any manner limiting the generality of the foregoing, Guarantor hereby waives the benefits of the provisions of Sections 2809, 2810, 2819, 2845, 2849, 2850, 2899 and 3433 of the California Civil Code and any similar or analogous statutes of California or any other jurisdiction.

4. Guarantor hereby waives and agrees not to assert or take advantage of any right or defense based on the absence of any or all presentments, demands (including demands for performance), notices (including notices of adverse change in the financial status of Tenant or other facts which increase the risk to Guarantor, notices of non-performance and notices of acceptance of this Guaranty) and protests of each and every kind.

5. Until all Tenant's obligations under the Lease are fully performed, Guarantor: (a) shall have no right of subrogation against Tenant by reason of any payments or acts of performance by Guarantor under this Guaranty; and (b) subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant under, arising out of or related to the Lease or Tenant's use or occupancy of the Premises.

6. The liability of Guarantor and all rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor relating to the Lease shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord by law and/or in equity.

7. This Guaranty applies to, inures to the benefit of and binds all parties hereto, their heirs, devisees, legatees, executors, administrators, representatives, successors and assigns (including any purchaser at a judicial foreclosure or trustee's sale or a holder of a deed in lieu thereof). This Guaranty may be assigned by Landlord voluntarily or by operation of law.

8. Guarantor shall not, without the prior written consent of Landlord, commence, or join with any other person in commencing, any bankruptcy, reorganization or insolvency proceeding against Tenant. The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Tenant, or by any defense which Tenant may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding. Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims which Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor and will assign to Landlord all rights of Guarantor thereunder. Landlord shall have the sole right to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Landlord the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to Landlord all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Landlord receives cash by reason of any such payment or distribution. If

Landlord receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

9. At any time during the Term of the Lease, Guarantor shall upon ten (10) days prior written notice from Landlord, provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Guarantor, shall be audited by an independent certified public accountant. Notwithstanding anything to the contrary contained herein, if Guarantor is a publicly traded corporation making annual 10-K filings with the Securities and Exchange Commission, Guarantor may satisfy the requirements of this section with respect to delivery of financial information by delivery of Guarantor's most recent annual report filed with the Securities and Exchange Commission.

10. As a further material part of the consideration to Landlord to enter into the Lease with Tenant, Guarantor agrees: (a) the law of the State of California shall govern all questions with respect to this Guaranty; (b) any suit, action or proceeding arising directly or indirectly from the Guaranty, the Lease or the subject matter thereof shall be litigated only in courts located within the county and state in which the Premises is located; (c) Guarantor hereby irrevocably consents to the jurisdiction of any local, state or federal court located within the county and state in which the Premises is located; and (d) without limiting the generality of the foregoing, Guarantor hereby 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 the above-named courts, that such suits, action or proceeding is brought in an inconvenient forum or that the venue of such action, suit or proceeding is improper.

11. This Guaranty shall constitute the entire agreement between Guarantor and the Landlord with respect to the subject matter hereof. No provision of this Guaranty or right of Landlord hereunder may be waived nor may any Guarantor be released from any obligation hereunder except by a writing duly executed by an authorized officer or director of Landlord. When the context and construction so requires, all words used in the singular herein shall be deemed to have been used in the plural. The word "person" as used herein shall include an individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective. The waiver or failure to enforce any provision of this Guaranty shall not operate as a waiver of any other breach of such provision or any other provisions hereof. Time is strictly of the essence under this Guaranty and any amendment, modification or revision hereof. If Guarantor is a corporation, limited liability company, partnership or other entity, each individual executing this Guaranty on behalf of such corporation, limited liability company, partnership or other entity represents and warrants that he or she is duly authorized to execute and deliver this Guaranty on behalf of such corporation, limited liability company, partnership or other entity in accordance with the governing documents of such corporation, limited liability company, partnership or other entity, and that this Guaranty is binding upon such corporation, limited liability company, partnership or other entity in accordance with its terms. If Guarantor is a corporation, limited liability company, partnership or other entity, Landlord, at its option, may require Guarantor to concurrently with the execution of this Guaranty, deliver to Landlord a certified copy of a resolution of the board of

directors of said corporation, or other authorizing documentation for such entity authorizing or ratifying the execution of this Guaranty. If either party hereto participates in an action against the other party arising out of or in connection with this Guaranty, the prevailing party shall 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. The term "Landlord" whenever hereinabove used refers to and means the Landlord in the foregoing Lease specifically named and also any assignee of said Landlord, whether by outright assignment or by assignment for security, and also any successor to the interest of said Landlord or of any assignee of such Lease or any part thereof, whether by assignment or otherwise. The term "Tenant" whenever hereinabove used refers to and means Tenant and also any assignee of the interest of "Tenant" in the Lease or any subtenant of all or any part of the Premises and their respective successors in interest. Any notice, request, demand, instruction or other communication to be given to any party hereunder shall be in writing and shall be delivered in the manner provided in the Lease for delivery of notices and addressed to the party to be notified at the address set forth below, or to such other place as the party to be notified may from time to time designate by at least fifteen (15) days notice to the notifying party. If there is more than one undersigned Guarantor, (a) the term "Guarantor", as used herein, shall include all of the undersigned; (b) each provision of this Guaranty shall be binding on each one of the undersigned, who shall be jointly and severally liable hereunder; and (c) Landlord shall have the right to join one or all of them in any proceeding or to proceed against them in any order.

To Landlord:

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attention: Director of Finance Administration

To Guarantor:

David J. Bailey  
1030 Tower Road  
Beverly Hills, California 90210

With a copy to:

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attention: City Attorney

Paul M. Morris, Esq.  
819 Harvard Street  
Santa Monica, California 90403

**[Signatures on Next Page]**

Executed as of \_\_\_\_\_, 2012

GUARANTOR:

\_\_\_\_\_  
David Bailey, an unmarried man

\_\_\_\_\_  
Paul Morris, an unmarried man

**EXHIBIT "B"**

**FORM OF MEMORANDUM OF  
THIRD AMENDMENT TO LEASE**

(Attached.)

RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

The Parking Authority of the City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attention: City Clerk

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[Space Above For Recorder's Use Only]

The undersigned declare that this Memorandum of Third Amendment to Lease is exempt from Recording Fees pursuant to California Government Code Section 27383.

**MEMORANDUM OF THIRD AMENDMENT TO LEASE**

THIS MEMORANDUM OF THIRD AMENDMENT TO LEASE (this "**Memorandum**") is dated as of July 24, 2012, and is entered into by and between THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS, a parking authority established pursuant to the Parking Law of 1949 of the State of California ("**Landlord**"), and FORWARD BEVERLY HILLS, INC., a California corporation doing business as "Keller Williams Realty" ("**Tenant**").

**RECITALS:**

A. The City of Beverly Hills and Tenant entered into that certain Office Lease dated as of December 21, 2004, as amended by a First Amendment to Lease dated October 17, 2006 and a Second Amendment to Lease dated February 17, 2009. Said Office Lease, as so amended, is hereinafter referred to as the "**Lease**".

B. A memorandum of the Lease was recorded on June 28, 2005 as Document No. 05-1523583 in the official Records of Los Angeles County, California, and a Memorandum of Amendment to Lease was recorded on March 8, 2007 as Document No. 20070512814 in said Official Records; and a Memorandum of Second Amendment to Lease was recorded as Document No. 20090538733 in said Official Records.

C. The City of Beverly Hills then conveyed the land and building that are subject to the lease to the Landlord.

D. Landlord and Tenant have agreed to further amend the Lease on the terms, and subject to the conditions, set forth in that certain Third Amendment to Lease dated substantially concurrently herewith (the "**Third Amendment**").

E. Landlord and Tenant desire to record this Memorandum to give record notice of the Third Amendment.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Tenant agree as follows:

1. Third Amendment to Lease. The terms of the Third Amendment (which, among other things, extends the term of the Lease to June 30, 2017) are hereby incorporated herein by reference.
2. Purpose. This Memorandum is prepared for the purposes of notice only and in no way modifies the terms and conditions of the Lease or the Third Amendment.
3. Counterparts. This Memorandum 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, the parties have executed this Memorandum of Third Amendment to Lease as of the date first written above.

**LANDLORD:**

THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS, a parking authority established pursuant to the Parking Law of 1949 of the State of California

By: \_\_\_\_\_  
William W. Brien, M.D.,  
Chairman of the Board of Directors

**TENANT:**

FORWARD BEVERLY HILLS, INC.,  
a California corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Byron Pope, Secretary to Board of Directors

**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

# **Attachment 2**

RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

The Parking Authority of the City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attention: City Clerk

---

[Space Above For Recorder's Use Only]

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**RECITALS:**

A. The City of Beverly Hills and Tenant entered into that certain Office Lease dated as of December 21, 2004, as amended by a First Amendment to Lease dated October 17, 2006 and a Second Amendment to Lease dated February 17, 2009. Said Office Lease, as so amended, is hereinafter referred to as the "**Lease**".

B. A memorandum of the Lease was recorded on June 28, 2005 as Document No. 05-1523583 in the official Records of Los Angeles County, California, and a Memorandum of Amendment to Lease was recorded on March 8, 2007 as Document No. 20070512814 in said Official Records; and a Memorandum of Second Amendment to Lease was recorded as Document No. 20090538733 in said Official Records.

C. The City of Beverly Hills then conveyed the land and building that are subject to the lease to the Landlord.

D. Landlord and Tenant have agreed to further amend the Lease on the terms, and subject to the conditions, set forth in that certain Third Amendment to Lease dated substantially concurrently herewith (the "**Third Amendment**").

E. Landlord and Tenant desire to record this Memorandum to give record notice of the Third Amendment.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Tenant agree as follows:

1. Third Amendment to Lease. The terms of the Third Amendment (which, among other things, extends the term of the Lease to June 30, 2017) are hereby incorporated herein by reference.

2. Purpose. This Memorandum is prepared for the purposes of notice only and in no way modifies the terms and conditions of the Lease or the Third Amendment.

3. Counterparts. This Memorandum 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, the parties have executed this Memorandum of Third Amendment to Lease as of the date first written above.

**LANDLORD:**

THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS, a parking authority established pursuant to the Parking Law of 1949 of the State of California

By: \_\_\_\_\_  
William W. Brien, M.D.,  
Chairman of the Board of Directors

**TENANT:**

FORWARD BEVERLY HILLS, INC.,  
a California corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Byron Pope, Secretary to Board of Directors

**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

# **Attachment 3**

## GUARANTY OF LEASE

THIS GUARANTY OF LEASE ("Guaranty") is made by DAVID BAILEY, an unmarried man, and PAUL MORRIS, an unmarried man (collectively, "Guarantor") in favor of THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS, a parking authority established pursuant to the Parking Law of 1949 of the State of California ("Landlord"), in connection with that certain Office Lease dated as of December 21, 2004 between Tenant and the City of Beverly Hills (as predecessor-in-interest to Landlord), as amended by that certain First Amendment to Lease dated October 17, 2006 between the City of Beverly Hills and Tenant, that certain Second Amendment to Lease dated as of February 17, 2009 between the City of Beverly Hills and Tenant, and that certain Third Amendment to Lease dated substantially concurrently herewith between Landlord and Tenant (the "Lease") pursuant to which Landlord leases to FORWARD BEVERLY HILLS, INC., a California corporation (dba KELLER WILLIAMS REALTY) ("Tenant"), certain "Premises" (as more particularly defined in the Lease) within the building located at 439 N. Canon Drive, Beverly Hills, California. As a material inducement to and in consideration of Landlord entering into the Third Amendment to Lease, Landlord having indicated that it would not enter into the Third Amendment to Lease without the execution of this Guaranty, Guarantor does hereby agree with Landlord as follows:

1. Guarantor does hereby unconditionally and irrevocably guarantee, as a primary obligor and not as a surety, and promise to perform and be liable for any and all obligations and liabilities of Tenant under the terms of the Lease, except that Guarantor shall have a maximum liability under this Guaranty in an amount equal to the portions of the "free rent" under Sections 2 and 4 of the Third Amendment to Lease (i.e., the Minimum Annual Rent and Annual CAM Payment as if they were payable for July 1, 2012 through September 30, 2012 and July 1, 2012 through June 30, 2013, respectively) and the Alteration Allowance described in Section 10(a) of such Third Amendment that remain unamortized as of the date the Lease is terminated by Landlord due to an Event of Default by Tenant (calculated by amortizing such sums on a straight line basis over the period of July 1, 2012 through September 30, 2017).

2. Guarantor does hereby agree that, without the consent of Guarantor and without affecting any of the obligations of Guarantor hereunder: (a) any term, covenant or condition of the Lease may be hereafter amended, compromised, released or otherwise altered by Landlord and Tenant, and Guarantor does guarantee and promise to perform all the obligations of "Tenant" under the Lease as so amended, compromised, released or altered; (b) any guarantor of or party to the Lease may be released, substituted or added; (c) any right or remedy under the Lease may be exercised, not exercised, impaired, modified, limited, destroyed or suspended; (d) Landlord or any other person acting on Landlord's behalf may deal in any manner with Tenant, any guarantor, any party to the Lease or any other person; and (e) all or any part of the Premises or of the rights or liabilities of "Tenant" under the Lease may be sublet, assigned or assumed. This is a continuing guaranty.

3. Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require Landlord to proceed against Tenant or any other person or to pursue any other remedy before proceeding against Guarantor; (b) any right or defense that may arise by reason of the incapacity, lack of authority, death or disability of Tenant or any other person; and (c) any right or defense arising by reason of the absence, impairment, modification, limitation,

destruction or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Tenant, of the subrogation rights of Guarantor or of the right of Guarantor to proceed against Tenant for reimbursement. Without in any manner limiting the generality of the foregoing, Guarantor hereby waives the benefits of the provisions of Sections 2809, 2810, 2819, 2845, 2849, 2850, 2899 and 3433 of the California Civil Code and any similar or analogous statutes of California or any other jurisdiction.

4. Guarantor hereby waives and agrees not to assert or take advantage of any right or defense based on the absence of any or all presentments, demands (including demands for performance), notices (including notices of adverse change in the financial status of Tenant or other facts which increase the risk to Guarantor, notices of non-performance and notices of acceptance of this Guaranty) and protests of each and every kind.

5. Until all Tenant's obligations under the Lease are fully performed, Guarantor: (a) shall have no right of subrogation against Tenant by reason of any payments or acts of performance by Guarantor under this Guaranty; and (b) subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant under, arising out of or related to the Lease or Tenant's use or occupancy of the Premises.

6. The liability of Guarantor and all rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor relating to the Lease shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord by law and/or in equity.

7. This Guaranty applies to, inures to the benefit of and binds all parties hereto, their heirs, devisees, legatees, executors, administrators, representatives, successors and assigns (including any purchaser at a judicial foreclosure or trustee's sale or a holder of a deed in lieu thereof). This Guaranty may be assigned by Landlord voluntarily or by operation of law.

8. Guarantor shall not, without the prior written consent of Landlord, commence, or join with any other person in commencing, any bankruptcy, reorganization or insolvency proceeding against Tenant. The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Tenant, or by any defense which Tenant may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding. Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims which Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor and will assign to Landlord all rights of Guarantor thereunder. Landlord shall have the sole right to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Landlord the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to Landlord all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Landlord receives cash by reason of any such payment or distribution. If

Landlord receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

9. At any time during the Term of the Lease, Guarantor shall upon ten (10) days prior written notice from Landlord, provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Guarantor, shall be audited by an independent certified public accountant. Notwithstanding anything to the contrary contained herein, if Guarantor is a publicly traded corporation making annual 10-K filings with the Securities and Exchange Commission, Guarantor may satisfy the requirements of this section with respect to delivery of financial information by delivery of Guarantor's most recent annual report filed with the Securities and Exchange Commission.

10. As a further material part of the consideration to Landlord to enter into the Lease with Tenant, Guarantor agrees: (a) the law of the State of California shall govern all questions with respect to this Guaranty; (b) any suit, action or proceeding arising directly or indirectly from the Guaranty, the Lease or the subject matter thereof shall be litigated only in courts located within the county and state in which the Premises is located; (c) Guarantor hereby irrevocably consents to the jurisdiction of any local, state or federal court located within the county and state in which the Premises is located; and (d) without limiting the generality of the foregoing, Guarantor hereby 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 the above-named courts, that such suits, action or proceeding is brought in an inconvenient forum or that the venue of such action, suit or proceeding is improper.

11. This Guaranty shall constitute the entire agreement between Guarantor and the Landlord with respect to the subject matter hereof. No provision of this Guaranty or right of Landlord hereunder may be waived nor may any Guarantor be released from any obligation hereunder except by a writing duly executed by an authorized officer or director of Landlord. When the context and construction so requires, all words used in the singular herein shall be deemed to have been used in the plural. The word "person" as used herein shall include an individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective. The waiver or failure to enforce any provision of this Guaranty shall not operate as a waiver of any other breach of such provision or any other provisions hereof. Time is strictly of the essence under this Guaranty and any amendment, modification or revision hereof. If Guarantor is a corporation, limited liability company, partnership or other entity, each individual executing this Guaranty on behalf of such corporation, limited liability company, partnership or other entity represents and warrants that he or she is duly authorized to execute and deliver this Guaranty on behalf of such corporation, limited liability company, partnership or other entity in accordance with the governing documents of such corporation, limited liability company, partnership or other entity, and that this Guaranty is binding upon such corporation, limited liability company, partnership or other entity in accordance with its terms. If Guarantor is a corporation, limited liability company, partnership or other entity, Landlord, at its option, may require Guarantor to concurrently with the execution of this Guaranty, deliver to Landlord a certified copy of a resolution of the board of

directors of said corporation, or other authorizing documentation for such entity authorizing or ratifying the execution of this Guaranty. If either party hereto participates in an action against the other party arising out of or in connection with this Guaranty, the prevailing party shall 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. The term "Landlord" whenever hereinabove used refers to and means the Landlord in the foregoing Lease specifically named and also any assignee of said Landlord, whether by outright assignment or by assignment for security, and also any successor to the interest of said Landlord or of any assignee of such Lease or any part thereof, whether by assignment or otherwise. The term "Tenant" whenever hereinabove used refers to and means Tenant and also any assignee of the interest of "Tenant" in the Lease or any subtenant of all or any part of the Premises and their respective successors in interest. Any notice, request, demand, instruction or other communication to be given to any party hereunder shall be in writing and shall be delivered in the manner provided in the Lease for delivery of notices and addressed to the party to be notified at the address set forth below, or to such other place as the party to be notified may from time to time designate by at least fifteen (15) days notice to the notifying party. If there is more than one undersigned Guarantor, (a) the term "Guarantor", as used herein, shall include all of the undersigned; (b) each provision of this Guaranty shall be binding on each one of the undersigned, who shall be jointly and severally liable hereunder; and (c) Landlord shall have the right to join one or all of them in any proceeding or to proceed against them in any order.

To Landlord:

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attention: Director of Finance Administration

To Guarantor:

David J. Bailey  
1030 Tower Road  
Beverly Hills, California 90210

With a copy to:

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attention: City Attorney

Paul M. Morris, Esq.  
819 Harvard Street  
Santa Monica, California 90403

**[Signatures on Next Page]**

Executed as of \_\_\_\_\_, 2012

GUARANTOR:

\_\_\_\_\_  
David Bailey, an unmarried man

\_\_\_\_\_  
Paul Morris, an unmarried man