



## AGENDA REPORT

**Meeting Date:** January 8, 2013  
**Item Number:** H-6  
**To:** Honorable Mayor and City Council Members  
**From:** Brenda Lavender, Real Estate & Property Manager  
**Subject:** AMENDMENT OF LEASE BY AND BETWEEN THE CITY OF BEVERLY HILLS AND FIRST PICKS BREAD COMPANY IX L.P., DBA PANERA BREAD  
**Attachments:** 1. Amendment of Lease

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### RECOMMENDATION

It is recommended that City Council approve the Amendment of Lease by and between The City of Beverly Hills and First Picks Bread Company IX, L.P. dba Panera. A copy of the amendment is on file with the City Clerk. This amendment provides an additional tenant improvement allowance of \$160,000, delays the start of rent by six (6) months and extends the term of the lease by 12 months.

### INTRODUCTION

In May, 2012 City Council approved a ten (10) year lease with Panera Bakery-Café to lease the 239 S. Beverly Drive Building (former Chamber Building). Panera Bakery has been working on their building designs since that time. Panera has not able to take possession of the space or do any exploratory investigations in the building until such time that both the Chamber and CVB moved out of the building and until the City as the Landlord was able to remediate the asbestos and lead hazards from the building.

Landlord has now completed Phase I of the hazardous materials abatement and all interior hazards have been remediated and disposed of and the building is ready for delivery to Panera.

### DISCUSSION

In the course of re-designing the building Panera has encountered numerous issues that were not apparent during the negotiation process. Panera was only afforded limited access to the building for physical inspection prior to the execution of the lease largely

because the building was occupied. Staff could not allow Panera to open portions of the ceiling and walls to review structural beams and infrastructure until the occupants relocated to the 9400 Santa Monica building and until the interior hazards had been remediated. As a result of the limited access and knowledge of the infrastructure of the building, Panera has encountered several issues that have impacted the construction budget and delayed the completion schedule. Panera is asking for help from the City to resolve the following issues:

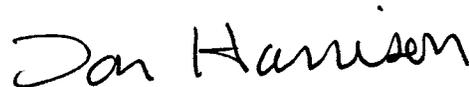
ADA compliance to 2<sup>nd</sup> floor: As a part of the lease, the City agreed to install a lift to the 2<sup>nd</sup> floor to address the ADA issues within the building. Based on the overall height of the floor, it was determined that we could not install one lift to address ADA access to the 2<sup>nd</sup> floor and that the installation of two (2) lifts was not practical. Panera has agreed to share the cost with the City to install an elevator in the building. The City would contribute up to \$100,000 towards the cost of the elevator based on an overall cost estimate of \$225,000.

Sprinkler System: There is no sprinkler system in the building, but because of the change of use from office to a mixed use building, the building must be retrofitted to provide a rated fire separation between the two floors. This is an unanticipated expense for Panera of \$120,000 that adds value to the base building and as such the City would contribute up to \$60,000 towards the cost of the sprinkler system.

Time Delay: Based on Panera's use of the building the electrical service to the building must be completely upgraded. Southern California Edison does not have the existing capacity to accommodate Panera's requirements for a 1,000 amp service. Panera and staff must therefore work with SCE to provide a new transformer and this is delaying the construction completion by at least 6 months including the time required for SCE to design and construct the installation. Panera will pay for the required preliminary reports and SCE's costs to install the transformer, and with this amendment the City will delay the rent start by six (6) months.

### **FISCAL IMPACT**

The fiscal impact includes an additional tenant improvement allowance of \$160,000 and a six (6) month delay in the start of the scheduled rent payments (\$144,000). These costs will be offset by the extension of the lease term by 12 additional months, which will generate \$363,593.40 in additional revenue. The net result of this amendment is \$59,593.40 of additional revenue over the life of the lease.



Noel Marquis, Acting Director of  
Administrative Services, CFO

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Approved By

# **Attachment 1**

RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

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 Amendment of Lease is exempt from Recording Fees pursuant to California Government Code Section 27383 and exempt from Documentary Transfer Tax pursuant to California Revenue and Taxation Code Section 11922.

### AMENDMENT OF LEASE

THIS AMENDMENT OF LEASE (this "Amendment") is dated as of January 8, 2013, and is entered into by and between CITY OF BEVERLY HILLS ("City"), and FIRST PICKS BREAD COMPANY IX L.P., a Delaware limited partnership ("Tenant").

### RECITALS

A. Tenant and City entered into that certain City of Beverly Hills Lease dated as of May 15, 2012 (the "Lease"), pursuant to which City agreed to lease and demise to Tenant, and Tenant agreed to lease and accept from City, a portion of that certain real property located in the City of Beverly Hills, County of Los Angeles, State of California, commonly known as 239 S. Beverly Drive and more particularly described in the Lease (the "Property").

B. A Memorandum of Lease dated May 15, 2012 executed by the City and Tenant was recorded in the Official Records of Los Angeles County, California on December 6, 2012 as Document No. 20121879931.

C. Tenant and City now desire to amend the Lease. Capitalized terms used in this Amendment shall have the same meaning as set forth in the Lease.

### AGREEMENT

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

1. Term. Section 1(e) of the Lease is hereby deleted and is replaced with the following:

"Eleven (11) years, commencing three hundred (300) days after the date on which Landlord (i) has completed the work described on Exhibit B-1 ("Landlord's Work") and (ii) has tendered to Clarence Mah of Tenant at 205

North Moorpark Road, Unit N, Thousand Oaks, CA 91360, the keys to the Premises, as may be extended pursuant to Section 3 below (collectively the "Commencement Date"), which contains two 5-year extension options in favor of Tenant; provided, however, that if Landlord then intends to re-develop the Building with a project that includes public parking, Landlord may terminate this Lease on the eleventh (11<sup>th</sup>) or sixteenth (16<sup>th</sup>) anniversary of the Commencement Date by written notice given at least one (1) calendar year prior to the applicable termination date. Upon request of either party after the Commencement Date, the other party shall confirm the Commencement Date in writing."

2. Landlord's Work. The first sentence of Exhibit B-1 to the Lease is hereby deleted and is replaced with the following sentence:

"Landlord shall perform the abatement of any existing Hazardous Materials in compliance with applicable law. Landlord has approved (a) Tenant's installation of an elevator in the Building, and (b) the location of the elevator per Tenant's plans submitted to Landlord."

3. Tenant Improvement Allowance. The Tenant Improvement Allowance is hereby increased by an additional One Hundred Sixty Thousand Dollars (\$160,000.00); provided, however, that: (i) Sixty Thousand Dollars (\$60,000) of such increase shall be used only for costs of installing a sprinkler system in the Building, and if such sprinkler system costs less than One Hundred Twenty Five Thousand Dollars (\$125,000) for any reason, then said Sixty Thousand Dollars (\$60,000) portion of the increase in the Tenant Improvement Allowance shall be reduced by the lesser of (a) the amount by which One Hundred Twenty Five Thousand Dollars (\$125,000) exceeds the actual costs of the sprinkler system, or (b) Fifteen Thousand Dollars (\$15,000.00); and (ii) One Hundred Thousand Dollars (\$100,000) of such increase shall be used only for costs of installing an elevator, and if the elevator costs less than Two Hundred Twenty Five Thousand Dollars (\$225,000) for any reason, then said One Hundred Thousand Dollars (\$100,000) portion of the increase in the Tenant Improvement Allowance shall be reduced by the lesser of (a) the amount by which Two Hundred Twenty Five Thousand Dollars (\$225,000) exceeds the actual costs of the elevator or (b) Twenty Five Thousand Dollars (\$25,000.00). All other terms of Exhibit "B" shall apply to the increase in the Tenant Improvement Allowance and the sprinkler system and elevator (and Landlord shall have the right to review and approve plans and specifications for the sprinkler system and elevator, subject to Landlord's prior approval of the location of the elevator noted in the first sentence of Exhibit B-1). The costs of installing a sprinkler system in the Building shall include, but not limited to, the lateral run to the city/municipal fire line, site work related to the lateral line and sprinkler system, installation of the riser, building work and improvements related to the sprinkler system, room or closet for the riser, backflow and check valves, distribution/secondary branches, drops and heads, engineering and architecture costs related to the design of the system, and tap, connection and/or other governmental fees related to the lateral line and sprinkler system. The costs of installing an elevator shall include, but not limited to, the elevator equipment and machinery, elevator finishes, elevator pit, elevator shaft, site and concrete work, building work and improvements related to the elevator, excavation and engineering and architecture work related to the elevator.



ACKNOWLEDGMENT

State of California )  
County of Ventura )

On December 18 2012 before me, Mike B Ghassemi, Notary Public  
(insert name and title of the officer)

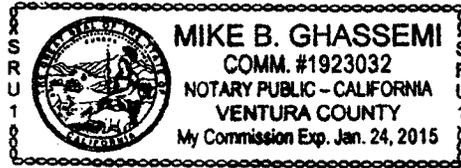
personally appeared Clarence E. Mah

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 [Handwritten Signature] (Seal)  
Signature of Notary Public  
12/18/12



**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

**REAFFIRMATION**

The undersigned (“**Guarantor**”) has reviewed the Amendment to Lease dated January 8, 2013 to which this Reaffirmation is attached (the “**Amendment**”) and hereby consents to the execution and delivery of the Amendment by Tenant, and Guarantor further agrees that the execution and delivery of the Amendment by Tenant shall not impair, limit, abrogate or reduce in any manner or to any extent, the obligations of Guarantor under that certain Guaranty of Lease dated May 15, 2012, executed by Guarantor in favor of the City of Beverly Hills, and that such Guaranty of Lease guarantees the Lease as so amended, and that such Guaranty shall inure to the benefit of the Landlord.

Guarantor acknowledges and agrees that, notwithstanding the execution and delivery of the Amendment by Tenant, (a) Guarantor remains liable under the Guaranty to the fullest extent as if the terms and conditions of the Original Lease were as reflected in the Lease as modified by the Amendment, (b) each of the terms and conditions of, and waivers contained in, the Guaranty remain unmodified and in full force and effect, and (c) Guarantor hereby renews, reaffirms, ratifies and confirms the Guaranty.

Guarantor acknowledges that Landlord would not enter into the Amendment without the execution and delivery of this Reaffirmation.

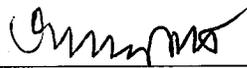
The execution, delivery and performance by Guarantor of this Reaffirmation is within Guarantor’s powers and have been duly authorized by all necessary action by or on behalf of Guarantor. This Reaffirmation shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of laws principles. This Reaffirmation shall inure to the benefit of Landlord and its successors and assigns, and shall be binding upon Guarantor and his respective successors and assigns.

IN WITNESS WHEREOF, Guarantor has executed this Reaffirmation as of January 8, 2013.

**GUARANTOR:**

FIRST PICKS BREAD MANAGEMENT  
LLC, a Delaware limited liability company

By: First Picks Holdings LLC,  
a Delaware limited liability company

By:   
Clarence Mah  
Authorized Person

