



## AGENDA REPORT

**Meeting Date:** April 2, 2013  
**Item Number:** F-4  
**To:** Honorable Parking Authority  
**From:** Brenda A. Lavender, Real Estate & Property Manager  
**Subject:** APPROVAL OF SEVENTH AMENDMENT TO LEASE BETWEEN THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS AND FEDEX OFFICE AND PRINT SERVICES, INC.  
**Attachments:** 1. Seventh Amendment to Lease

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### **RECOMMENDATION**

It is recommended the Parking Authority approve the Seventh Amendment to Lease with FedEx Office and Print Services, Inc. at 461 N. Bedford Drive. This Seventh Amendment extends the terms of the lease for 25 months. A copy of the amendment is on file with the City Clerk.

### **INTRODUCTION**

FedEx is a long-standing tenant at this location. This amendment extends the term of the lease by 25 months and increases the base rent by 17.8% from \$6,122.24 to \$7,213.50 monthly.

### **DISCUSSION**

Staff has worked with FedEx to extend this lease based on market rent. As noted this renewal reflects a 17.8% increase in the rent. In the 2010 extension of the lease the rental rate had been reduced as a result of lower market rental rates and in an effort to retain FedEx at this location. This extension is a return to market rates.

**FISCAL IMPACT**

The fiscal impact of this deal is additional annual revenue of \$13,095.12 as a result of the increased rental rate. There is no out of pocket cost and no free rent.



Noel Marquis, Acting Director of  
Administrative Services, CFO

Approved By

# **Attachment 1**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

The Parking Authority of the  
City of Beverly Hills  
c/o City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attn: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

### SEVENTH AMENDMENT TO LEASE

THIS SEVENTH AMENDMENT TO LEASE (this "**Amendment**") is dated as of April 2, 2013, and is entered into by and between THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS ("**Lessor**") and FEDEX OFFICE AND PRINT SERVICES, INC., a Texas corporation ("**Lessee**").

### RECITALS

A. The City of Beverly Hills ("City") and Lessee entered into that certain Lease Agreement dated December 7, 1982 and amended it by amendments dated October 20, 1992, May 5, 1998, June 5, 2001 and May 23, 2006 (recorded August 25, 2006 as Document 061904831), January 5, 2010 (recorded May 7, 2010 as Document No. 20100627717) and December 21, 2010 (recorded February 10, 2011 as Document No. 20110228271) (the "**Lease**"). The Lease affects a portion of the building located at 461 North Bedford Drive, Beverly Hills, California (the "**Premises**").

B. The City has conveyed 461 North Bedford Drive to Lessor.

C. Lessor and Lessee now desire to amend the Lease in order to, among other things, extend the term of the Lease, as more specifically set forth below.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, and the covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. Extension of Term. Section 2 of the Lease is hereby amended to extend the expiration of the term of the Lease from February 1, 2013 to February 28, 2015.

2. Rent. Notwithstanding anything to the contrary in the Lease:

“The fixed minimum rent shall be Seven Thousand Two Hundred Thirteen and 50/100 Dollars (\$7,213.50) per month commencing on February 1, 2013, and continuing until the end of the term of this Lease.”

3. Option to Renew. Notwithstanding anything in the Lease to the contrary, Tenant may renew this Lease for one (1) additional term of two (2) years, commencing March 1, 2015 and expiring February 28, 2017 (“Extension Term”), to be exercised upon written notice to Landlord (the “Option Notice”) not less than nine (9) months before the expiration of the Extension Term, upon the same terms, conditions and covenants therein contained, except that Minimum Rent will be determined as follows:

(i) Within thirty (30) days after timely receipt of Lessee’s extension notice, Landlord will deliver a written statement of Lessor’s determination of the prevailing fair market rental rate for the Premises, based on the criteria set forth below (the “**Fair Market Rental Rate**”).

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

BOMA Chapter including the area of the Project to select a third broker meeting the qualifications stated in this subsection. Each of the parties shall bear one-half (1/2) of the cost of appointing the third broker and the third broker's fee.

(iii) Within ten (10) business days after the selection of the third broker, the third broker shall notify both parties in writing as to which of the two determinations is closest to the Fair Market Rental Rate for the first year of the Extension Term, and the Fair Market Rental Rate determination so selected by the third broker shall be the Fair Market Rental Rate for the first year of the Extension Term.

(iv) Each broker shall consider such information as Lessor and Lessee timely presents regarding the determination of Fair Market Rental Rate for the first year of the Extension Term, and each broker shall be given access to the information used by each other broker.

(v) The Minimum Rent for the second year of the Extension Term shall be increased by the percentage increase in the CPI over approximately the first year of the Extension Term, as follows:

The base for computing the adjustment on the first day of the second year of the Extension term (the "Adjustment Date") is the Consumer Price Index for All Urban Consumers for the Los Angeles-Anaheim-Riverside Metropolitan Area published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published for the fifteenth (15<sup>th</sup>) month preceding the Adjustment Date ("Beginning Index"). If the Index published for the third month preceding the Adjustment Date ("Extension Index") is less than or equal to the Beginning Index, the Minimum Rent shall be adjusted to an amount determined by multiplying the Minimum Rent in effect immediately prior to that Adjustment Date by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index.

If the Index is changed so that the base year differs from that used for the Beginning Index, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

4. Notices. The addresses for Notices for Tenant under the Lease hereby changed to:

Fedex Office and Print Services, Inc.  
Three Galleria Tower  
13155 Noel Road, Suite 1600  
Dallas, Texas 75240  
Attn: Lease Administration

With a copy to:

Fedex Office and Print Services, Inc.  
Three Galleria Tower  
13155 Noel Road, Suite 1600  
Dallas, Texas 75240  
Attn: Managing Director, Senior Real Estate Counsel

The addresses for Notices for Landlord under the Lease are hereby changed to:

The Parking Authority of the City of Beverly Hills  
c/o City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attn: Real Estate and Property Manager

The Parking Authority of the City of Beverly Hills  
c/o City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attn: City Attorney

5. Brokers. Lessee shall indemnify, defend and hold Lessor harmless from and against any claims that may be asserted against Lessor by any real estate broker, salesperson or finder in connection with this Amendment that is based on any agreements or communications between Lessee and any such real estate broker, salesperson or finder. Lessor represents and warrants that Lessor has not engaged any real estate broker, salesperson or finder in connection with this Amendment, and Lessor shall indemnify, defend and hold Lessee harmless from and against any claims that may be asserted against Lessee by any real estate broker, salesperson or finder in connection with this Amendment that is based on any agreements or communications between Lessor and any such real estate broker, salesperson or finder.

6. Surrender. Notwithstanding anything in the Lease to the contrary, Lessee's only obligation when surrendering the Premises to Lessor will be to leave the Premises in a broom-clean condition and make any repairs required by any removal of the exterior signage.

7. 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.

8. Continuing Effect. Except as specifically modified hereby, the Lease shall remain unaffected and unchanged. The Lease is hereby ratified and affirmed by Lessor and Lessee and remains in full force and effect as modified hereby.

9. Counterparts. This Amendment may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

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

**LESSOR:**

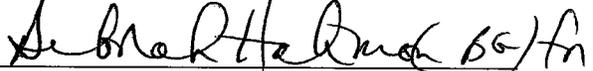
THE PARKING AUTHORITY OF THE  
CITY OF BEVERLY HILLS

By: \_\_\_\_\_  
JOHN A. MIRISCH, Chairman

ATTEST:

APPROVED AS TO FORM:

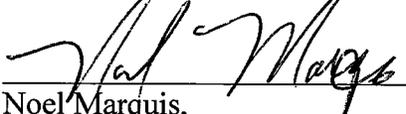
\_\_\_\_\_  
Byron Pope, Secretary

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

APPROVED AS TO CONTENT:

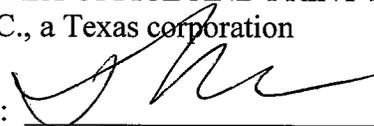
APPROVED AS TO CONTENT:

\_\_\_\_\_  
Jeffrey Kolin, ICMA-CM,  
Executive Director

  
\_\_\_\_\_  
Noel Marquis,  
Acting Director of Administrative  
Services/CFO

**LESSEE:**

FEDEX OFFICE AND PRINT SERVICES,  
INC., a Texas corporation

By:   
\_\_\_\_\_  
Norman E. McLeod,  
Vice President, Development and Real  
Estate

Approved  
  
\_\_\_\_\_  
as to legal terms

**ACKNOWLEDGEMENT**

State of California )  
County of Los Angeles )

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

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**ACKNOWLEDGEMENT**

State of California )  
County of Los Angeles )

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

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
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the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

TENANT ACKNOWLEDGEMENT

STATE OF TEXAS

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SS:

COUNTY OF DALLAS

On 1 February 28, 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared Norman E. McLeod, Vice President of Development and Real Estate of FedEx Office and Print Services, Inc., a Texas corporation, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on this instrument, the entity upon behalf of which he acted executed the instrument.

WITNESS my hand and official seal.

Corinne Neff  
Notary Public

My commission expires 2-25-2015.

