



AGENDA REPORT

Meeting Date: May 6, 2014

Item Number: E-9

To: Honorable Mayor & City Council

From: Steven Zoet, Director of Community Services

Subject: APPROVAL OF AMENDMENT NO. 1 TO THE LEASE BY AND BETWEEN THE CITY OF BEVERLY HILLS AND DEAN JOFFE (DBA DELICIOUS SNACK COMPANY) FOR A SNACK BAR AT LA CIENEGA PARK.

Attachments: 1) First Amendment of Lease

RECOMMENDATION

It is recommended that the City Council approve the First Amendment to the Lease by and between the City of Beverly Hills and Dean Joffe (dba Delicious Snack Company) for the snack bar at LaCienega Park.

INTRODUCTION

Dean Joffe (dba Delicious Snack Company), operates a snack bar at LaCienega Park located at 8400 Gregory Way. The Tenant is requesting to change the rent structure from a Monthly Fixed Rent in the amount of \$666.66, and a Basic Percentage Rent equal to ten (10%) of Tenant's Gross Receipts that exceeds the Monthly Fixed Income each month, to a Monthly Rent equal to no more than 10% of gross monthly sales.

DISCUSSION

The operation of the Delicious Snack Company began in February, 2013 and has been a positive addition to the City and to LaCienega Park, providing food and beverage options to the park patrons, sports spectators and participants that frequent the park. In its first year of business, sales have been less than anticipated. In the interest of enabling the

Delicious Snack Company to continue providing service, staff is recommending that City Council accept the lease amendment request to restructure the monthly rent payment.

The terms of the current seven-year lease agreement stipulates under Section 5a. and 5b:

5. RENT. TENANT shall pay to LANDLORD as rent for the Premises the following sums, without deduction, setoff, prior notice, or demand:
 - a. Monthly Fixed Rent. Six Hundred Sixty-Six and 66/100 Dollars (\$666.66), which shall be paid on or before the first day of each calendar month; and
 - b. Monthly Basic Percentage Rent. Ten (10%) of the amount by which TENANT's Gross Receipts during such month exceed six hundred sixty-six and 66/100 Dollars (\$666.66), which shall be paid on or before the twentieth day of the subsequent calendar month.

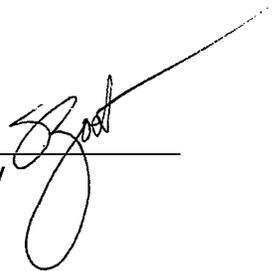
The recommendation is to change the terms of the lease Agreement regarding rent to:

5. RENT. TENANT shall pay to LANDLORD as rent for the Premises the following sums, without deduction, setoff, prior notice, or demand:
 - a. Monthly Basic Percentage Rent. Ten (10%) of the amount of the TENANT's Gross Receipts during such month which shall be paid on or before the twentieth day of the subsequent calendar month.

FISCAL IMPACT

Currently the City of Beverly Hills receives a minimum of rent at \$666.66 per month, amounting to \$7,999.92 per year. The Basic Percentage Rent equal to ten (10%) of Tenant's Gross Receipts that exceeds the Monthly Fixed Income each month of 10% was met only once in March, 2013 for \$151.96 which totals \$8,151.88 in annual revenue. Should the proposed formula be adopted, the City of Beverly Hills would expect to receive, based on average monthly sales generated between February 1, 2013 and February 28, 2014, approximately \$423.00 per month in rent or \$5,076 per year.

Steven Zoet
Approved By



Attachment 1

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:

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

[Space Above For Recorder's Use Only]

The undersigned declare that this Amendment to 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 NO. 1 TO LEASE BY AND BETWEEN THE CITY
OF BEVERLY HILLS AND DEAN JOFFE (dba DELICIOUS
SNACK COMPANY) FOR A SNACK BAR AT LA CIENEGA PARK**

This Amendment No. 1 is to that certain Lease dated April 17, 2012 and identified as Contract No. 139-12 (the "Lease"), by and between the City of Beverly Hills, a municipal corporation ("LANDLORD") and Dean Joffe, an individual (dba Delicious Snack Company ("TENANT")).

RECITALS

A. CITY and TENANT entered into the Lease for a snack bar at La Cienega Park in the City of Beverly Hills, Los Angeles, California.

B. A Memorandum of Lease, Agreement No. 140-12 was recorded in Los Angeles County as Document No. 20120843742 on June 6, 2012.

C. Section 5 of the Lease requires a Monthly Fixed Rent of \$666.66 plus a Basic Percentage Rent equal to 10% of TENANT's Gross Receipts in excess of the Monthly Fixed Rent each month.

D. TENANT and LANDLORD have agreed that commencing May 1, 2014 the rate structure shall be changed to a Monthly Rent equal to no more than 10% of gross monthly sales.

NOW, THEREFORE, in consideration of the foregoing Recitals, and other consideration, the sufficiency of which is hereby acknowledged, the parties hereto do amend the Lease as follows:

Section 1. As of May 1, 2014, Section 5 of the Lease entitled "Rent" shall be deleted and shall be replaced with the following:

"5. RENT. TENANT shall pay to LANDLORD as rent for the Premises the following sums, without deduction, setoff, prior notice, or demand:

a. Monthly Basic Percentage Rent. Commencing May 1, 2014, ten (10%) of the amount of TENANT's Gross Receipts defined below each month shall be paid on or before the twentieth day of the subsequent calendar month.

Within twenty (20) days after the end of each calendar month of the term hereof, TENANT shall (i) furnish to LANDLORD a statement in writing, certified by TENANT to be correct, stating the total Gross Receipts during that calendar month and including reasonable evidence thereof and (ii) pay to LANDLORD the Basic Percentage Rent payable for that calendar month.

(1) The term "Gross Receipts" means the sum of the following:

(a) The gross selling price of all merchandise or services sold, leased, licensed, or delivered in or from the Premises by TENANT (and TENANT's permitted contractors, licensees and subconcessionaires, if any are permitted in writing by LANDLORD, whether for cash or on credit (whether collected or not), including sales from vending machines. Any transaction on an installment basis, including, without limitation, any "lay-away" sale or like transaction, or otherwise involving the extension of credit, shall be treated as a sale for the full price at the time of the transaction, irrespective of the time of payment or when title passes;

(b) The gross amounts (or, for items or things of value other than money, the full cash value thereof) paid or given to TENANT and TENANT's permitted independent contractors, licensees and subconcessionaires for sponsorships, corporate underwriting, acknowledgments, advertising and similar associations or relationships arising out of or in connection with the concession.

Gross Receipts shall not include, or if included there shall be deducted (but only to the extent they have been included), and Tenant shall maintain accurate records of the following:

(1) the selling price of all merchandise returned by customers and accepted for full credit, or the amount of discounts, refunds, and allowances made on such merchandise;

(2) cash discounts allowed or taken on sales;

(3) gift certificates, or similar vouchers, until such time as they shall have been converted into a sale by redemption;

(4) sales and use taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes, and other similar taxes now or in the future imposed on the sale of merchandise or services, but only if such taxes are added to the selling price, separately stated, and collected separately from the selling price of merchandise or services."

b. Interest on Delinquent Rent. Rent not paid when due shall bear interest at the maximum rate permitted by law from the date due until paid. Acceptance of interest by LANDLORD shall not constitute a waiver of TENANT's default with respect to the overdue amount, nor prevent LANDLORD from exercising any of the other rights and remedies available to LANDLORD.

Section 2. Except as specifically amended by this Amendment No. 1, all terms and conditions set forth in the Lease shall remain in full force and effect.

EXECUTED the ____ day of _____, 2014, at Beverly Hills, California.

LANDLORD:

CITY OF BEVERLY HILLS,
a municipal corporation

LILI BOSSE
Mayor of the City of Beverly Hills, California

ATTEST:

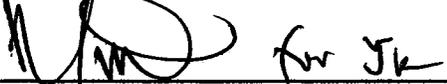
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:



JEFFREY C. KOLIN
City Manager



STEVEN ZOET
Director of Community Services

TENANT:



DEAN JOFFE, an individual doing business as
"DELICIOUS SNACK COMPANY"

ACKNOWLEDGEMENT

State of California)
County of Los Angeles)

On April 22, 2014, before me, Mi K. Gi
(insert name and title of the officer)

Notary Public, personally appeared ✓ Dean Joffe, 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 