



REPORT TO COUNCIL

City of Sacramento

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915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

Consent
November 4, 2010

Honorable Mayor and
Members of the City Council

Title: Agreement: Consent to Assignment, 814 15th Street-The Melting Pot
Restaurant

Location/Council District: 814 15th Street. Council District 3.

Recommendation: Adopt a **Resolution** authorizing the City Manager to execute a Consent to Assignment agreement approving the assignment of City Agreement 2002-172 from Samrac, Inc. to Samrac, LLC.

Contact: Paul Sheridan, Program Analyst, 808-6817

Presenters: None

Department: Transportation

Division: Parking Services

Organization No: 15001211

Description/Analysis

Issue: The Melting Pot restaurant is located at 814 15th Street in the City's Memorial Garage. In September 2002, Samrac, Inc. signed a 10-year lease agreement with the City (CA# 2002-172). The current owner and lessee, Samrac, Inc., is being restructured into Samrac, LLC, and the lease requires the lessee obtain the City's consent to assign their lease from the current ownership to the new.

Policy Considerations: The resolution is consistent with the City's strategic plan and the goal of the City council to expand economic development throughout the City.

Environmental Considerations:

California Environmental Quality Act (CEQA): The current proposal would approve a Consent to Assignment agreement. The proposal is not a "project" in accordance with Section 15378 of the California Environmental Quality Act

Guidelines. The proposal does not have a potential for resulting in either direct or indirect physical changes in the environment. Therefore, as determined by the City's Environmental Services Planning Manager, no environmental review is necessary.

Sustainability Considerations: None.

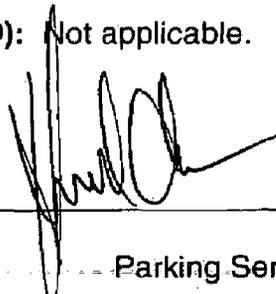
Other: None.

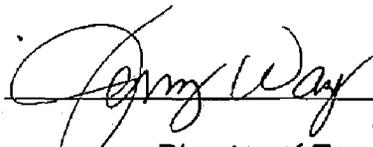
Commission/Committee Action: None.

Rationale for Recommendation: The current owner of the Melting Pot restaurant is Samrac, Inc. and it is being restructured from an S corporation into a limited liability corporation. The lease agreement for the Melting Pot requires Samrac, Inc. obtain the City's consent to approve the assignment of the lease from Samrac, Inc. to Samrac, LLC. The corporate restructuring will not involve a change of tax ID, investors, or a change of management of the Melting Pot.

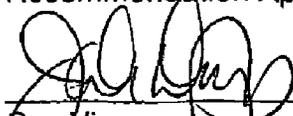
Financial Considerations: Terms of the lease will remain the same. There are no financial considerations.

Emerging Small Business Development (ESBD): Not applicable.

Respectfully Submitted by: 
Howard Chan
Parking Services Manager

Approved by: 
Jerry Way
Director of Transportation

Recommendation Approved:


Gus Vina
Interim City Manager

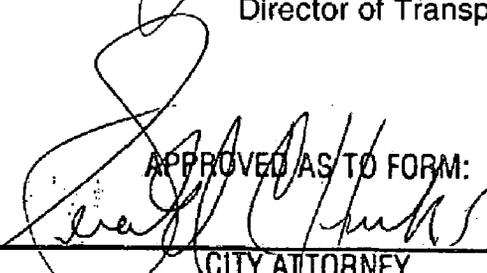
APPROVED AS TO FORM:

CITY ATTORNEY

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Attachment 1

RESOLUTION NO.

Adopted by the Sacramento City Council

THE MELTING POT CONSENT TO ASSIGNMENT

BACKGROUND

- A. The Melting Pot restaurant is located at 814 15th Street in the City's Memorial Garage. In September 2002, Samrac, Inc. signed a 10-year lease agreement with the City (CA# 2002-172).
- B. Samrac, Inc. is being converted from an S corporation to a limited liability corporation.
- C. Samrac, Inc.'s. lease with the City requires it to obtain the City's consent to assign the lease to a new entity.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The city manager is authorized to execute a Consent to Assignment Agreement with Samrac, Inc. and Samrac, LLC.

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Exhibit A – Consent to Assignment Agreement

Exhibit A

Consent to Assignment Agreement

This Consent to Assignment ("Consent") is made as of _____, among the City of Sacramento, charter, a Municipal Corporation ("Lessor"), Samrac, Incorporated, ("Assignor"), and Samrac, LLC., ("Assignee").

Recitals

This Consent is made with regard to the following facts:

- A. Lessor and Assignor, as tenant, entered into a Lease Agreement (City Agreement 2002-172) dated September 24, 2002, under which Lessor leased to Assignor the premises known as 814 15th Street ("Premises"), which comprise a portion of the Memorial Garage located at 805 14th Street, Sacramento, California, and is more particularly described in the Lease.
- B. Assignor desires to assign to Assignee all of its right, title, and interest in, to, and under the Lease and the Premises.
- C. The Lease Agreement requires Assignor to obtain Lessor's written consent to assign the Lease Agreement.
- C. Assignor and Assignee desire to obtain Lessor's consent to the Assignment and Lessor is willing to consent to the Assignment on the following terms and conditions.

NOW THEREFORE, in consideration of the mutual covenants contained in this Consent, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows.

- 1. **No Assumption or Release.**
 - a. Assignee expressly assumes and agrees for the benefit of Lessor to be bound by, and to perform and comply with, every obligation of Assignor under the Lease.
 - b. Assignor shall remain jointly and severably liable for the performance of all obligations under the lease arising before and after the effective date of this Consent.
- 2. **Subsequent Assignments; Recapture.** This Consent does not constitute a consent to any subsequent subletting or assignment and does not relieve Assignee or any person claiming under or through Assignee of the obligation to obtain the consent of Lessor under Section 25 of the Lease to any future assignment or sublease. Notwithstanding the foregoing, Lessor may consent to subsequent sublettings and assignments of the Lease, or amend the Lease without notifying Assignor or anyone else liable under the Lease, including any

guarantor of the Lease, and without obtaining their consent, and that action by Lessor will not relieve those persons of liability.

3. General Provisions

- a. Brokerage Commission.** Assignor and Assignee agree that Lessor will not be liable for any brokerage commission or finder's fee in connection with the consummation of the Assignment or this Consent. Assignor and Assignee will protect, defend, indemnify and hold Lessor harmless from any brokerage commission or finder's fee in connection with the consummation of the Assignment or this Consent, and from any cost or expense (including attorney fees) incurred by Lessor in resisting any claim for any such brokerage commission or finder's fee. The provisions of this Section 3.a shall survive the expiration or earlier termination of both the Assignment and this Consent.
- b. Controlling Law.** The terms and provisions of this Consent will be construed in accordance with and will be governed by the laws of the State of California.
- c. Captions.** Captions to the sections in this Consent are included for convenience only and do not modify any of the terms of this Consent.
- d. Entire Agreement; Waiver.** This Consent constitutes the final, complete and exclusive statement between the parties to this Consent pertaining to the terms of Lessor's consent to the Assignment; supersedes all prior and contemporaneous understandings or agreements of the parties, and is binding on and inures to the benefit of their respective heirs, representatives, successors and assigns. No party has been induced to enter into this Consent by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Consent. Any agreement made after the date of this Consent is ineffective to modify, waive, or terminate this Consent, in whole or in part, unless that agreement is in writing
- e. Waiver.** Except as explicitly stated in this Consent, nothing contained in this Consent will be deemed or construed to modify, waive, impair, or affect any of the covenants, agreements, terms, provisions, or conditions contained in the Lease. In addition, the acceptance of rents by Lessor from Assignee or anyone else liable under the Lease will not be deemed a waiver by Lessor of any provisions of the Lease
- f. Notice.** Any notice that may or must be given by any party under this Consent will be delivered (i) personally, (ii) by certified mail, return receipt requested, or (iii) by a nationally recognized overnight courier, addressed to the party to whom it is intended. Any notice given to Lessor, Assignor or Assignee shall be sent to the respective address set forth on the signature page below, or to such other address as that party may designate for service of notice by a notice given in accordance with the provisions of this Section 3.f. A notice sent pursuant to the terms of this Section 3.f shall be deemed delivered (A) when delivery is attempted, if delivered personally, (B) three (3) business days after deposit into the United States mail, or (C)

the day following deposit with a nationally recognized overnight courier. Any notice or demand to Lessor, Assignor or Assignee may be given to:

Lessor:
City of Sacramento
Parking Services Division
300 Richards Blvd., 2nd Floor
Sacramento, CA 95811

Assignor:
9345 Pinehurst Dr.
Roseville, CA 95747

Assignee:
9345 Pinehurst Dr.
Roseville, CA 95747

Lessor, Assignor and Assignee have executed this Consent as of the above date.

ASSIGNOR:

By: _____

By: _____

Date: _____

ASSIGNEE:

By: _____

By: _____

Date: _____

LESSOR:

City of Sacramento

A Charter Municipal Corporation

By: _____

Its: _____

APPROVED AS TO FORM:

Deputy City Attorney

ATTEST:

City Clerk