

Meeting Date: 12/17/2013

Report Type: Consent

Report ID: 2013-00913

Title: First Amendment to Lease Agreement: 801 14th Street, Coyote Tap House

Location: District 4

Issue: A First Amendment to the Lease between the City and Ken Le for his restaurant, Coyote Tap House located at 801 14th Street, requires City Council approval.

Recommendation: Pass a Motion authorizing the City Manager to execute a first amendment to the current lease agreement with Ken Le for his restaurant, Coyote Tap House located at 801 14th Street in Memorial Garage for payment of arrears.

Contact: Sabrina Tefft, Project Manager, (916) 808-3789, Economic Development Department

Presenter: None

Department: Economic Development Dept

Division: Citywide Development

Dept ID:

Attachments:

1-Description/Analysis

2-Attachment

City Attorney Review

Approved as to Form
Gerald Hicks
12/5/2013 1:21:37 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
11/26/2013 11:36:12 AM

Approvals/Acknowledgements

Department Director or Designee: Jim Rinehart - 12/3/2013 5:38:55 PM

Description/Analysis

Issue Detail: Ken Le is currently leasing space in the City's Memorial Parking Garage at 801 14th Street and operating the restaurant, Coyote Tap House. Mr. Le has accrued almost four months of unpaid rent. The City negotiated a payment schedule addendum to the lease allowing Mr. Le to pay the balance of the arrears, as well as the lease payments negotiated in his current lease.

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

Economic Impacts: None.

Environmental Considerations: This project is exempt from the California Environmental Quality Act (CEQA) under Section 15301, "Operation of existing public structures or facilities involving no expansion of use."

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation:

The operator, Ken Le, became delinquent in meeting monthly lease obligations in August, 2013. Mr. Le approached the City proposing a restructured payment schedule. The City has worked with Mr. Le on a payment plan for the arrears, as well as a lease payment schedule for all future rent payments. The proposed addendum will enable the City to retain a quality and successful tenant and to place Mr. Le on a payment schedule that will allow the City to collect the full rent as stipulated in the lease.

Financial Considerations: The alternative to approving the terms in this addendum to the lease is for the tenant to close operations necessitating the City to seek formal legal action to recover past due funds. These new lease terms will keep a tenant in the space, while also providing revenues to the City. It spreads market rate repayments over seven years and provides for an interest rate of 3.25% for past arrears owed the City.

FIRST AMENDMENT TO LEASE BETWEEN CITY OF SACRAMENTO AND COYOTE TAP HOUSE

THIS FIRST AMENDMENT is made at Sacramento, California, as of _____, 2013, by and between the CITY OF SACRAMENTO, a municipal corporation (“Lessor”), and COYOTE TAP HOUSE, Inc. (“Lessee”).

RECITALS

- A. On January 18, 2012, Lessor and Lessee executed a lease (“Lease”) for a portion of the Memorial Garage (“Premises”) more specifically described in the Lease, which is denominated city agreement number 2012-0082.
- B. Lessor provided a “Build-out Period” after which rent was to commence at the Rent Commencement Date at a rate of \$10,496.20 per month. The “Build-out Period” was eight (8) months under the terms of the Lease.
- C. In addition to rent abatement during the “Build-out Period,” rent was also abated for an additional period of ten (10) months.
- D. The Rent Commencement Date was July 15, 2013. Lessee has failed to stay current on rent and as of November 1, 2013, owes to the Lessor, the sum of \$41,984.80.
- E. Lessee desires to an opportunity to pay and Lessor desires to provide an opportunity for Lessee to pay, all rent and other amounts due. This is Lessee’s last chance to remain in possession of the Premises under the terms of the Lease.

AGREEMENT

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. **Initial Payment.** Upon execution of this First Amendment, Lessee shall make an initial payment of five thousand, three hundred sixty-one dollars and eighty cents (\$5,361.80) to the Lessor by no later than November 15, 2013 as additional consideration for this First Amendment in addition to the rents to be paid and the covenants to be performed by Lessee under this First Amendment. This initial payment shall be applied to Lessee’s arrears.
- 2. **Payback of Rent Plus Interest.**

- a. December 2013 through November 2014; 12 months

For the months of December 2013 through November 2014, Lessee shall pay one half of the applicable month’s current rent plus three and one quarter percent (3.25%) interest on arrears for a total monthly payment for this period of \$5,361.80 per month (subject to the 2% annual increase). Such payments shall be paid by the first of each month.

b. December 2014 through November 2015; 12 months

For the months of December 2014 through November 2015, Lessee shall pay one half of the applicable month's current rent plus principal in arrears plus three and one quarter percent (3.25%) interest on current arrears and deferred rent. The schedule of payments for this period is set forth on Exhibit A, attached hereto and incorporated by reference to this First Amendment and to the Lease. Such payments shall be paid by the first of each month.

c. December 2015 through November 2020; 60 months

For the months of December 2015 through November 2020, Lessee shall pay the full applicable month's current rent plus three and one quarter percent (3.25%) interest on deferred rent (new arrears) plus principal of new arrears over (divided by) sixty months. The schedule of payments for this period is set forth on Exhibit A, attached hereto and incorporated by reference to this First Amendment and to the Lease. Such payments shall be paid by the first of each month.

3. **Place and Time for Payback of Rent Plus Interest; Additional 10% Penalty if Overdue.** All Payback of Rent Plus Interest under this First Amendment shall be paid to Lessor at Revenue Division, 915 I Street, Sacramento, California 95814, or any other place or places that Lessor may designate by written notice to Lessee. If Lessee fails to make any payment to the Lessor required of it under this First Amendment within ten (10) days when due, interest shall accrue on the overdue amount, from the date overdue until the date paid, at the rate equal to ten percent (10%) per annum.

4. **Automatic Termination of Lease; Any Payment More Than 90 Days Overdue.** The Lease will terminate automatically, if any payment due under this First Amendment is more than ninety (90) days overdue. Upon automatic termination, Lessee waives all right to retain possession of the Premises and the Premises must be surrendered no later than the following calendar day. Any notice, including, but not limited to, a three (3) day notice to pay or quite, required by any statute or law now or hereafter in force, is hereby waived, by Lessee.

5. **Payments Applied to the Earliest Arrears.** All payments are applied to Lessee's earliest arrears.

6. **Amendment/Deletion of Section 5.** Section 5(d) of the Lease is deleted in its entirety and shall be replaced with the following: "5(d) Every Twelve (12) months of the Initial Lease Term and any Extended Term, the monthly rent shall increase by two percent (2%)."

7. All terms and Conditions remain the Same. Except as specifically amended by this First Amendment, all terms and conditions of the Lease remain in full force and effect.

Executed as of the day and year first above stated.

LESSEE:

Coyote Tap House, Inc.

By: _____

Its: _____

Date: _____

LESSOR:

City of Sacramento

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

ATTEST:

By: _____

Attachment
Exhibit "A" – Schedule of Payments