

Meeting Date: 4/17/2014

Report Type: Consent

Report ID: 2014-00253

Title: Consent to Assignment Agreement with Collected Works

Location: 1019 L Street, District 4

Recommendation: Pass a Motion authorizing the City Manager to execute an agreement approving the assignment of City Agreement 2011-0642 from Roberta Witkin Gould, owner of Collected Works Gifts, LLS, to Lisa Paskaly, owner of The Chef's Olive Mix, Inc.

Contact: Sabrina Tefft, Project Manager, (916) 808-3789, Economic Development Department; Matt Eiermann, Parking Services Manager (916) 808-5849, Department of Public Works

Presenter: None

Department: Public Works Department

Division: Off-Street Parking Admin

Dept ID: 15001211

Attachments:

1-Description/Analysis

2-Background

3-Agreement

City Attorney Review

Approved as to Form

Gerald Hicks

4/4/2014 11:40:40 AM

Approvals/Acknowledgements

Department Director or Designee: Jerry Way - 3/28/2014 9:44:49 AM

Description/Analysis

Issue Detail: Collected Works is a gift shop with two locations: 1019 L Street, in the City's Capitol Garage, and the original location at 4524 Freeport Blvd. The owner, Roberta Witkin Gould, opened the Capitol Garage store in April 2012. Due to unexpected circumstances, Ms. Gould would like to close the Capitol Garage store to focus on the operations of her other store on Freeport Boulevard, which opened in 1992. The terms of her lease for the site at Capitol Garage are still in effect, and she is therefore responsible for the obligations of that lease. Ms. Gould would like to assign the lease to Lisa Paskaly, who currently owns and operates The Chef's Olive Mix in Old Sacramento and would like to open a second location in the Capitol Garage. Under terms of her lease, Ms. Gould must obtain the City's consent to assign her lease to Ms. Paskaly.

Policy Considerations: City Agreement 2011-0642 requires the Lessee to obtain the Lessor's reasonable consent before assigning their lease agreement to a third party.

Economic Impacts: None.

Environmental Considerations:

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

Sustainability Considerations: None.

Other: None.

Commission/Committee Action: None.

Rationale for Recommendation: Pursuant to Section 25 of Ms. Gould's lease with the City, she may not assign her lease without the prior written consent of the City. Section 7 of the lease allows Ms. Gould to terminate the lease after two years of a five-year term, on the condition she pays the City six months of rent in advance to compensate the City for improvements it paid for the site. Instead of terminating the lease, Ms. Gould would like to assign the lease to Lisa Paskaly who would like to open a second olive oil tasting and gift shop, similar to the one she currently owns and operates in Old Sacramento. Ms. Gould has also agreed to provide the City a lease security deposit of six months' rent which will be refunded to her in full on the condition Ms. Paskaly fulfills all lease obligations, including the payment of rent, during the first six months after the lease assignment. Approving the assignment will prevent a highly visible piece of retail space from becoming vacant for an extended period of time and it will provide a successful local business the opportunity to expand to the downtown area.

Financial Considerations: Monthly rent payments under the lease are \$1,229.40 and increase annually based on the Consumer Price Index. The amount of the lease security deposit will be \$7,376.40. Ms. Paskaly will take the site as-is, therefore no tenant improvement allowance will be provided, and she will continue to make all rent payments while the site is being prepared for the new business. All terms and conditions of the lease will remain the same.

Local Business Enterprise Program (LBE): No goods or services are being procured as a result of this action.

Background

Capitol Garage is located between 10th and 11th Streets along L Street. It contains approximately 21,800 square feet of retail space.

Since 1992, Roberta Witkin Gould has owned and operated Collected Works Gifts on Freeport Blvd. In May 2011 Ms. Gould signed a lease agreement with the City for 1019 L Street, a 750 square foot retail site located in Capitol Garage. Monthly rent payments started at \$1,200 and increase annually based on the Consumer Price Index. The term of the lease is five years, with two, two-year extended term options. The lease has a termination option whereby the Lessee may terminate the lease upon 30-day written notice and on the condition they provide the City six months of rent at the time of termination.

Since 2011, Lisa Paskaly has owned and operated The Chef's Olive Mix, an olive tasting and gift shop located in Old Sacramento. Ms. Paskaly would like to open a second store in downtown Sacramento and has reached agreement with Ms. Gould to assume all rights and responsibilities for her lease at 1019 L Street.

Assignment, Consent to Assignment and Lease Security Deposit Agreement

This Assignment, Consent to Assignment and Lease Security Deposit Agreement ("Agreement") is made as of _____, among City of Sacramento, a Municipal Corporation ("Lessor"), Roberta Witkin Gould, dba Collected Works Gifts, Inc., ("Assignor"), and Lisa Paskaly, dba The Chef's Olive Mix ("Assignee") (Lessor, Assignor, and Assignee are hereinafter collectively referred to as the "Parties").

Recitals

This Agreement is made with regard to the following facts:

- A. Lessor and Assignor, as tenant, entered into a Lease Agreement ("Lease")(City Agreement 2011-0642) dated May 25, 2011, under which Lessor leased to Assignor the premises known as 1019 L Street ("Premises"), which comprise a portion of the parking garage located at 1126 11th Street at L Street, Sacramento, California, and is more particularly described in the Lease.
- B. Section 7 of the Lease provides Assignor the right to terminate the Lease after two years provided Assignor pays Lessor six (6) months of rent and provides Lessor a minimum of 30 days advance notice. Monthly rent at the time this Agreement is executed is \$1,229.40.
- C. Assignor desires to assign to Assignee all of her right, title, and interest in, to, and under the Lease and the Premises.
- D. Assignor and Assignee desire to obtain Lessor's consent to the Assignment and Lessor is willing to consent to the Assignment on the terms and conditions set forth below.
- E. In lieu of terminating the Lease pursuant to section 7 of the Lease, the City and Assignee have agreed to release Assignor of all obligations under the Lease upon Assignor's payment to City of Seven Thousand Three Hundred Seventy Six Dollars and Forty Cents (\$7,376.40) (the "Lease Security Deposit") which is equal to six months of rent. City will receive this payment as a deposit and will be refunded to Assignor on the condition Assignee performs all lease obligations during the first six months immediately following the execution of this Agreement.

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

- 1. **Assignment.** 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.
- 2. **Subsequent Assignments; Recapture.** This Agreement 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.

3. Lease Security Deposit

Upon execution of this Agreement, Assignor agrees to pay Lessor Seven Thousand Three Hundred Seventy Six Dollars and Forty Cents (\$7,376.40). Upon receipt of the Lease Security Deposit, Lessor and Assignee agree to release Assignor from all obligations arising under the Lease. If Assignee has fulfilled all obligations under the Lease through October 17, 2014, Lessor agrees to refund the full amount of the Lease Security Deposit to Assignor. If Assignee defaults on any terms of the Lease prior to October 17, 2014, Lessor will retain the full amount of the Lease Security Deposit. All remedies the Lessor may have as the result of any default by Assignee under the Lease will be solely against Assignee. Assignor's failure to pay the full amount of the Lease Security Deposit upon execution of this Agreement will render it null and void.

4. General Provisions

- a. **Entire Agreement; Waiver.** This Agreement constitutes the final, complete and exclusive statement between the parties to this Agreement pertaining to the terms of the assignment, consent to assignment, and lease security deposit agreement and 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 Agreement by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Agreement. Any agreement made after the date of this Agreement is ineffective to modify, waive, or terminate this Agreement, in whole or in part, unless that agreement is in writing.
- b. **Waiver.** Except as explicitly stated in this Agreement, nothing contained in this Agreement 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 any person claiming under or through Assignee under the Lease will not be deemed a waiver by Lessor of any provisions of the Lease.

Lessor, Assignor and Assignee have executed this Assignment, Consent to Assignment and Lease Security Deposit Agreement as of the above date.

ASSIGNOR:

By: 
Roberta Witkin Gould

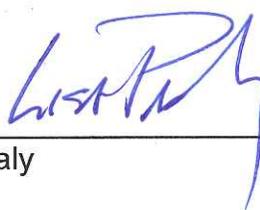
LESSOR:

City of Sacramento
A Charter Municipal Corporation

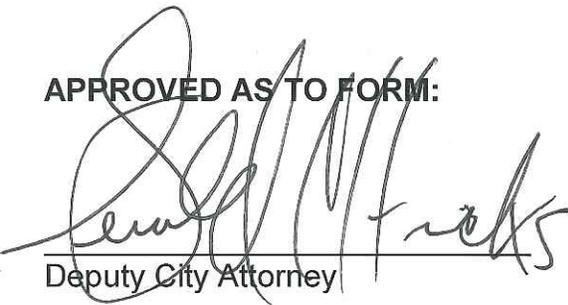
Date: 4/8/14

By: _____
Jerry Way, Director of Public Works

ASSIGNEE:


Lisa Paskaly

APPROVED AS TO FORM:


Deputy City Attorney

Date: 4/7/14

ATTEST:

City Clerk