

Meeting Date: 7/14/2015

Report Type: Consent

Report ID: 2015-00626

Title: Consent to Assignment of City Agreement 2011-0642 for 1019 L Street

Location: 1019 L Street, District 4

Recommendation: Pass a Motion authorizing the City Manager to execute a Consent to Assignment agreement approving the assignment of City Agreement 2011-0642 from Lisa Paskaly, owner of The Chefs' Olive Mix, to Gabriel Silva, Jr., owner of Total Body Nutrition, LLC.

Contact: Erika Galang, Program Specialist, (916) 808-8572; Matt Eierman, 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

7/7/2015 8:56:56 AM

Approvals/Acknowledgements

Department Director or Designee: Jerry Way - 6/26/2015 10:32:08 AM

Description/Analysis

Issue Detail: The Chefs' Olive Mix, owned and operated by Lisa Paskaly at 1019 L Street, specializes in imported olive oils with an additional location at 131 J Street in Old Sacramento. The previous tenant, Collected Works Gifts, Inc. was the original lessee for the space at 1019 L Street and assigned the lease agreement, City Agreement 2011-0642 ("Lease"), to Ms. Paskaly on April 21, 2014. Due to unforeseen circumstances, Ms. Paskaly must relocate to Florida and is requesting consent to assign the Lease to Total Body Nutrition, owned and operated by Gabriel Silva, Jr. Under terms of the Lease, Ms. Paskaly must obtain the City's consent to assign the Lease to Mr. Silva.

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

Economic Impacts: N/A

Environmental Considerations:

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

Sustainability Considerations: There are no sustainability considerations applicable to this action.

Other: None

Commission/Committee Action: None

Rationale for Recommendation: Pursuant to Section 25 of the Lease, Ms. Paskaly may not assign the Lease without the prior written consent of the City. Section 7 of the Lease allows early termination of the Lease on the condition she pays the City six months of rent in advance. Instead of terminating the Lease, Ms. Paskaly would like to assign it to Gabriel Silva, Jr. who will own and operate Total Body Nutrition, a store specializing in health supplements and fitness products. 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 solid start for a new, start-up business due to the move-in ready condition of the space, reducing the need for costly improvements.

Total Body Nutrition has offered to pay eight months of rent, in advance, for a total of Ten Thousand Ninety-Seven Dollars and Eighty-Four Cents (\$10,097.84) to release Ms. Paskaly of her obligation to pay six months of advance rent. Mr. Silva offers this advance payment as an assurance of his ability to fulfill the remaining time under the Initial Lease Term, which expires on March 4, 2017.

Financial Considerations: Monthly rent payments under the lease are \$1,262.23 and increase annually every April based on the Consumer Price Index. The new tenant will take the site as-is, therefore no tenant improvement allowance will be provided. Ms. Paskaly will continue to make all rent payments through July 2015. The new tenant will pay eight months' rent in advance and then pay the new rent amount when the CPI adjusts in April 2016. All terms and conditions of the lease will remain the same. All rental income will be deposited in the Parking Fund (Fund 6004).

Local Business Enterprise Program (LBE): Not applicable

Background

On May 25, 2011, Roberta Witkin Gould, owner of Collected Works Gifts, Inc. was approved by City Council to lease the premises located at 1019 L Street (City Agreement 2011-0642). The Lease was for an initial five-year term with two additional two year options to extend. Improvements were made by the City, followed by a build-out period for the tenant to customize her space. Therefore the Initial Lease Term was effective March 5, 2012 with an expiration date on March 4, 2017.

Section 7 of the Lease allowed Ms. Gould to terminate the lease after the first two years of the initial term on the condition she paid the City six months of rent in advance to compensate the City for improvements made to site. Instead of terminating the lease, Ms. Gould requested the City, pursuant to Section 25 of the Lease, to allow an assignment of her rights, title and interests under the lease to Lisa Paskaly, owner of The Chefs' Olive Mix, under the condition that six months of rent would be paid and held by the City of Sacramento as a Lease Security Deposit. This deposit was to be refunded to Ms. Gould upon Ms. Paskaly's fulfillment of all Lease obligations through October 17, 2014. At the time of the request, Ms. Paskaly had an existing store at 131 J Street in Old Sacramento and desired to open a second location.

On April 21, 2014, Ms. Gould was approved by City Council to assign the lease to Ms. Paskaly, who met the obligations under the Lease through October 17, 2014 and Ms. Gould was refunded the Lease Security Deposit. Ms. Paskaly continues to operate at both locations and has been consistent with timely rent payments to the City for the 1019 L Street site.

Gabriel Silva, Jr. is the owner of Total Body Nutrition, LLC. This will be a new, start-up business specializing in health supplement and fitness products. Mr. Silva has provided substantial financial proof to indicate that he will be able to sustain his operation until the end of the Lease term in March 2017. Pending on the success of his business, Mr. Silva plans to remain in the space and exercise the options to extend after the Initial Lease Term expires.

Assignment, Consent to Assignment and Lease Security Agreement

This Consent to Assignment and Lease Security Agreement ("Agreement") is made as of _____, among City of Sacramento, a Municipal Corporation ("Lessor"), Lisa Paskaly, dba The Chefs' Olive Mix, ("Assignor"), and Gabriel Silva, Jr., dba Total Body Nutrition, LLC ("Assignee").

Background

This Agreement is made with regard to the following facts:

- A. Lessor entered into a Lease Agreement ("Lease") with Roberta Witkin Gould, dba Collected Works Gifts, Inc. on May 25, 2011 under which Lessor leased the premises known as 1019 L Street ("Premises"), which comprise a portion of the Capitol Garage located on L Street in Sacramento, California, and is more particularly described in the Lease. (City Agreement 2011-0642)
- B. The initial term of the Lease is from the Rent Commencement date of March 5, 2012 through March 4, 2017. There are two additional two-year options to extend the Lease.
- C. Section 7 of the Lease provided Collected Works Gifts, Inc. the right to terminate the Lease after two years subject to an advance payment of six (6) months of rent to be held by Lessor as a deposit. This deposit was to be returned to Lessee on the condition that Assignee fulfilled all Lease obligations during the first six (6) months immediately following the execution of the Assignment Agreement.
- D. On April 21, 2014, Collected Works Gifts, Inc. requested and was approved by City Council to assign all of its rights, title and interest in, to, and under the Lease and the Premises to The Chefs' Olive Mix. The Chefs' Olive Mix met the obligations under the Lease through October 17, 2014, therefore Lessor returned the deposit to Collected Works Gifts, Inc.
- E. The Chefs' Olive Mix, as Lessee, now desires to assign to Total Body Nutrition ("Assignee") all of its rights, title, and interest in, to, and under the Lease and the Premises.
- F. 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.

- G. In lieu of terminating the Lease pursuant to section 7 of the Lease, Assignee shall pay to the Lessor a non-refundable, advance payment of Ten Thousand Ninety-Seven Dollars and Eighty-Four Cents (\$10,097.84), which is equal to eight months of rent. Assignor will be released of the obligation to pay six months of advance rent, which would have released her from the current Lease. Assignee offers this advance payment as an assurance of his ability to fulfill the remaining time under the Initial Lease Term.

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 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 Payment

Upon execution of this Agreement, Assignee shall pay Lessor a non-refundable, advance rent payment of Ten Thousand, Ninety-Seven Dollars and Eighty-Four Cents (\$10,097.84). Assignor will be released from the obligation to pay six months of rent. Assignee's failure to pay in full upon execution of this Consent will render it null and void.

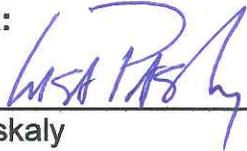
4. General Provisions

- 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 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 anyone else liable under the Lease will not be deemed a waiver by Lessor of any provisions of the Lease.

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

ASSIGNOR:

By: 
Lisa Paskaly

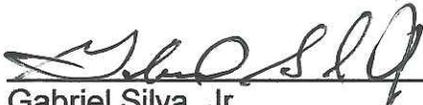
Date: 6/18/15

LESSOR:

City of Sacramento
A Charter Municipal Corporation

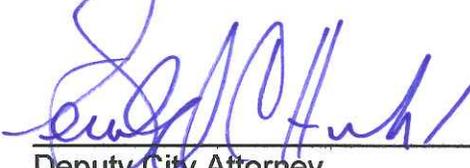
By: _____
John F. Shirey, City Manager

ASSIGNEE:


Gabriel Silva, Jr.

Date: 6/18/15

APPROVED AS TO FORM:


Deputy City Attorney

ATTEST:

City Clerk