

**Meeting Date:** 7/19/2016

**Report Type:** Consent

**Report ID:** 2016-00696

**Title:** Second Amendment to Lease Agreement for Rio City Café

**Location:** Old Sacramento, District 4

**Recommendation:** Pass a Resolution 1) authorizing the City Manager, or his designee, to execute an assignment of Agreement No. 93-098 from Waterfront Management, Inc. to Riverwalk Ventures, LLC for the lease of real property located at 1110 Front Street, also known as Rio City Café; and 2) authorizing the City Manager, or his designee, to execute the Second Amendment to Agreement No. 93-0098.

**Contact:** Leslie Wisniewski, Administrative Officer, (916) 808-8920, Department of Convention & Cultural Services

**Presenter:** None

**Department:** Convention & Cultural Services

**Division:** CCS Administration

**Dept ID:** 17001011

**Attachments:**

1-Description/Analysis

2-Assignment

3-2nd Amendment

4-Resolution

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### **City Attorney Review**

Approved as to Form

Maila Hansen

7/6/2016 12:18:35 PM

### **Approvals/Acknowledgements**

Department Director or Designee: Jody Ulich - 6/30/2016 9:23:51 AM

## Description/Analysis

**Issue Detail:** In 1993, the City entered into a lease agreement (“Agreement”) with Waterfront Management, Inc. (“Waterfront”) whereby Waterfront leased the premises located at 1110 Front Street for operation of a full service restaurant and cocktail lounge, which is currently known as the Rio City Café. Waterfront was a Nevada corporation consisting of members of the Miller family and over 20 additional and limited partners. The initial term of the Agreement was July 27, 1993, through July 26, 2004. The Agreement provided for extensions of up to three additional five-year terms, with the Agreement expiring on July 26, 2019 if all extension options were exercised. The first two five-year extensions were executed in 2004 and in 2009, with the Agreement set to expire on July 26, 2014.

In 2014, Waterfront was pursuing sale of the Rio City Café, but negotiations with the potential new owner stalled. The Miller family ultimately decided to retain Rio City Café, and they relocated from Boulder, Colorado to take an active role in the management of Rio City Café. In consideration of those events, the City and Waterfront agreed that the Agreement would only be extended for two years, instead of five. Therefore, the City and Waterfront amended the Agreement so that it would expire on July 26, 2016.

In the last two years, the Miller family has bought the limited partners of Waterfront and created Riverwalk Ventures, LLC (“Riverwalk”), a California corporation. The Millers are actively working to rebrand and improve Rio City Café to re-establish it as a destination restaurant in Old Sacramento. Due to the Millers recent commitment to the success of Rio City Café, the Millers and City staff would like to extend the Agreement until July 26, 2019, which would have been the termination date of the Agreement if all options under the original Agreement were exercised. Waterfront also would like to assign the Agreement to Riverwalk. Thus, staff recommends that the City Manager or his designee execute the attached amendment of the Agreement to extend the term until July 26, 2019, and the attached assignment of the Agreement.

**Policy Considerations:** Pursuant to City Code section 3.68.120, City Council approval is required to amend leases of \$100,000 or more.

**Economic Impacts:** None.

### **Environmental Considerations:**

**California Environmental Quality Act (CEQA):** This report concerns administrative activities and government fiscal activities that do not constitute a “project” as defined by the CEQA Guidelines Sections 15378(b)(2) and 15378(b)(4) and are not subject to the provisions of CEQA (CEQA Guidelines 15060(c)(3)).

**Sustainability:** The action requested herein is consistent with the City’s Strategic Plan goal to achieve sustainability and livability.

**Commission/Committee Action:** Not applicable.

**Rationale for Recommendation:** Rio City Café has been in operation since 1995 and it is located in Old Sacramento, which attracts over two million visitors per year. In the last year, the Miller family has implemented staff changes to Rio City Café, including recruitment of a new General Manager and Chef. Rio City Café has embraced the farm-to-fork movement and is an annual sponsor for Old Sacramento events including: Gold Rush Days, Sacramento Music Festival, and the Theatre of Lights. It also supports the goals of the City's Riverfront Master Plan by:

- Maintaining the riverfront as an active, vibrant, urban district, and public asset;
- Providing for visitor and community serving uses and amenities; and
- Increasing the viability and sustainability of Old Sacramento as a historic and commercial district, preserving Sacramento's history.

**Financial Considerations:** Pursuant to the Agreement, Waterfront pays monthly rent to the City in the amount of a minimum rent fee or a percentage of its gross receipts, whichever is greater. For FY 2015/16, the City received \$182,888 in rent from Waterfront. For FY 2016/17, rent revenue has been estimated and budgeted in the operating budget of the History Division in the amount of \$180,000.

**Local Business Enterprise (LBE):** Not applicable.

**ASSIGNMENT OF SUBLEASE AGREEMENT  
BETWEEN THE CITY OF SACRAMENTO AND WATERFRONT MANAGEMENT, INC.  
(CITY AGREEMENT NO. 93-098) TO RIVERWALK VENTURES LLC**

**THIS AGREEMENT** ("Agreement"), dated \_\_\_\_\_, 2016 for purposes of identification only, is between the City of Sacramento, a California municipal corporation (the "City"), Waterfront Management, Inc., a Nevada corporation ("Waterfront"), and Riverwalk Ventures LLC, a California limited liability company ("Riverwalk").

**Recitals**

- A. The City and Waterfront are parties to City Agreement 93-098 ("Sublease Agreement"), dated July 27, 1993, by which the City subleased to Waterfront the premises located at 1110 Front Street, Sacramento, CA 95814, along with the accompanying office building, which is referred to as the "Old Sacramento Riverfront Office Building" in the Sublease Agreement (together referred to as the "Premises").
- B. Waterfront would like to transfer the business it operates on the Premises—commonly known as Rio City Café—to Riverwalk and assign the Sublease Agreement to Riverwalk. Pursuant to Section 23 of the Sublease Agreement, relating to "Assignment and Subleasing," Waterfront and Riverwalk are requesting the City's consent to the assignment of the Sublease Agreement from Waterfront to Riverwalk. This Agreement is intended to memorialize the City's consent subject to certain terms and conditions.
- C. This Agreement is not intended to alter any of the terms and conditions that Riverwalk and Waterfront might have separately agreed to in connection with the transfer, including, without limitation, an assignment of the Sublease Agreement.

***Based on the facts set forth in the foregoing recitals, the City, Waterfront, and Riverwalk agree as follows:***

**Consent of City.** In consideration of the terms and conditions set forth in this Agreement, the City consents to the assignment of the Sublease Agreement from Waterfront to Riverwalk.

**Consent of Assignor Waterfront.** Based upon the terms and conditions set forth in this Agreement, and subject to the provisions of any other relevant agreement between Waterfront and Riverwalk, Waterfront consents to the assignment of the Sublease Agreement from Waterfront to Riverwalk.

**Assumption by Riverwalk.** Riverwalk accepts the assignment of the Sublease Agreement, assumes all of Waterfront's obligations under the Sublease Agreement, and agrees to be bound by all of the provisions of the Sublease Agreement and to perform all of the obligations of Lessee under the Sublease Agreement as a direct obligation to City from and after the Effective Date of this Agreement. This assignment is made on, and is subject to, all of the

terms, conditions and covenants of this Agreement.

**Licenses, Permits, Etc.** Riverwalk represents and warrants to the City that it has obtained all licenses, permits, City Business Operations Tax Certificate, qualifications and approvals of whatsoever nature that are legally required for Riverwalk to operate its business. Riverwalk represents and warrants to City that Riverwalk shall, at its sole cost and expense, keep in effect or obtain at all times during the term of the Sublease Agreement any licenses, permits, and approvals that are legally required for Riverwalk to operate its business.

**Insurance.** Riverwalk shall provide proof of insurance concerning the coverages required under the Sublease Agreement within 30 days of the execution of this Agreement. Failure to timely submit such proof of insurance shall result in an immediate termination of this Agreement and the assignment of the Sublease Agreement shall be revoked.

6. **Indemnity.** Riverwalk shall defend, hold harmless and indemnify City, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by Riverwalk, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of City, its agents, servants, or independent contractors who are directly responsible to City, except when such agents, servants, or independent contractors are under the direct supervision and control of Riverwalk.
7. **No Release of Waterfront.** Notwithstanding the consent granted herein, Waterfront shall not be released or discharged from any of the obligations of "Lessee" under the Sublease Agreement for all such obligations arising on or after the date of this Agreement for a period of one year from the Effective Date of this Agreement; and Waterfront shall not now or ever be released or discharged from past obligations of the "Lessee" including paying in full the Rent due and owing to the City as of the Effective Date of this Agreement.
8. **Security for Performance.** City shall retain the current security deposit amount of \$4,000. Upon the Effective Date of this Agreement, Riverwalk shall assume this current deposit according to the terms and conditions set forth in Section 17 of the Sublease Agreement. Riverwalk shall not be entitled to any accrued interest on any returned security deposit

amount.

9. **Condition of Premises.** By executing this Agreement, Riverwalk accepts the Premises in “as is” condition.
10. **State Lands Commission Master Lease.** Riverwalk acknowledges that the Sublease Agreement is subject to the terms and conditions of the Master Lease Agreement between the City and the State of California, acting by and through its State Lands Commission (“State”), entered into on November 1, 1986, and identified in records of the State Lands Commission as PRC 7001 and in City records as City Agreement 86013. Under Section 4 of the Master Lease, the State reserves the right to approve any and all assignees, sublessees, and subleases. Accordingly, if the State does not consent to the assignment of the Sublease Agreement from Waterfront to Riverwalk, this Agreement shall be null and void.
11. **Waterfront and Riverwalk Not Agents.** Except as the City may specify in writing, neither Waterfront nor Riverwalk have the authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent. Neither Waterfront nor Riverwalk, nor their personnel, have the authority, express or implied, to bind City to any obligations whatsoever.
12. **Representations of Parties.** The person signing this Agreement for each of the parties represents and warrants that he or she is fully authorized to sign this Agreement on behalf of their entity and to bind their entity to the performance of its obligations hereunder.
13. **Effective Date.** This Agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below. However, as described in Section 10 above, this Agreement shall be null and void if the State does not consent to the assignment from Waterfront to Riverwalk.

*[Signature Page Follows]*

**CITY OF SACRAMENTO**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

For: John F. Shirey, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: Maile Hansen  
Deputy City Attorney

ATTEST:

By: \_\_\_\_\_  
Sacramento City Clerk

**WATERFRONT MANAGEMENT, INC.**

1110 Front Street  
Sacramento, CA 95814  
916-442-8226

88-0300665

Federal Tax ID No.

92463

City Business Operations Tax No.

By: [Signature]  
Mark R. Miller, President

Date: 6/23/16

**RIVERWALK VENTURES LLC**

1110 Front Street  
Sacramento, CA 95814  
916-442-8226

47 2287498

Federal Tax ID No.

1021665  
City Business Operations Tax No.

By: [Signature]  
Mark R. Miller, President

Date: 6/23/16

**SECOND AMENDMENT TO CITY AGREEMENT 93-098  
SUBLEASE AGREEMENT FOR THE  
OLD SACRAMENTO RIVERFRONT WAREHOUSE AND OFFICE BUILDINGS**

This second amendment ("Second Amendment") to City Agreement 93-098 ("Sublease Agreement"), as amended, dated \_\_\_\_\_, 2016, for purposes of identification only, is between the City of Sacramento, a municipal corporation ("City"), and Riverwalk Ventures LLC, a California limited liability company ("Riverwalk" or "Lessee"). The City and Riverwalk may be referred to collectively as "Parties" or in the singular as "Party," as the context requires.

**Recitals**

- A. On July 27, 1993, the City entered into the Sublease Agreement with Waterfront Management, Inc. ("Waterfront"), wherein the City subleased to Waterfront the premises located at 1110 Front Street, Sacramento, CA 95814, including the adjacent "Old Sacramento Riverfront Office Building" (together referred to as the "Premises").
- B. On July 28, 2014, the City and Waterfront entered into the First Amendment to the Sublease Agreement, whereby City and Waterfront agreed that, due to City's March 19, 2014 letter of default, the Lease would expire on July 26, 2016. Waterfront subsequently disputed its default under the Lease, and the Parties have agreed to settle the dispute by extending the Lease until July 26, 2019.
- C. Waterfront also requested assignment of the Sublease Agreement from Waterfront to Riverwalk, and the City consented to assignment of the Sublease Agreement from Waterfront to Riverwalk.

***Based on the facts in the foregoing recitals, the City and Riverwalk agree to amend the Sublease as follows:***

- 1. **Term.** Section 3 of the Sublease Agreement is deleted and replaced in its entirety with the following:
  - a) The term of this sublease commenced on July 27, 1993, and shall conclude at 11:59 p.m. on July 26, 2019, subject to prior termination by the City in the event of Lessee's default of any of the terms or conditions of the sublease.
  - b) Lessee understands and agrees that it shall have no right to renew the Lease beyond July 26, 2019. If Lessee holds over for any reason beyond such term with the consent, express or implied, of the City, such holding over shall be month-to-month only, subject to the terms and conditions of this sublease, but shall not be a renewal thereof; and the consideration to be paid shall be at rates then prevailing under the terms of this sublease.

2. **Waiver.** Nothing in this Second Amendment shall be deemed a waiver by the City of any default or breach by Lessee of any term, covenant, or condition of the Sublease Agreement. No delay or omission to exercise any right, power, or remedy accruing to City under the Sublease Agreement, as amended, shall impair any right, power, or remedy of City, nor shall it be construed as a waiver of, or acquiescence in, any breach or default. Any waiver or consent by City regarding any provision of the Sublease Agreement, as amended, shall be in writing.
3. **Maintenance; Improvements.** Lessee shall continue to maintain the Premises pursuant to its requirements under the Sublease Agreement, including those requirements stated in Section 11 of the Sublease Agreement. City shall provide no subsidy or rent off-set for any maintenance or repairs that Lessee is obligated to perform, at its sole expense, under the Sublease Agreement. Additionally, City shall provide no subsidy or rent off-set for any future Lessee improvements to the Premises.
4. **Lessee Not Agent.** Except as City may specify in writing, Lessee and Lessee's personnel shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent. Lessee and Lessee's personnel shall have no authority, express or implied, to bind the City to any obligations whatsoever.
5. **Effective Date.** This Second Amendment is effective on the date both Parties have signed it, as indicated by the dates in the signature blocks below.
6. **Severability.** If any portion of this Second Amendment or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
7. **Entire Agreement.** This Second Amendment contains the Parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations – written, oral, express, or implied – and may be modified only by another written agreement signed by both Parties.
8. **Sublease Agreement.** All other terms and conditions of the Sublease Agreement shall remain in full force and effect.

*(Signature Page Follows)*

**CITY OF SACRAMENTO**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

For: John F. Shirey, City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: Maile Hansen  
Deputy City Attorney

ATTEST:

By: \_\_\_\_\_  
Sacramento City Clerk

**RIVERWALK VENTURES LLC**

1110 Front Street  
Sacramento, CA 95814  
916-442-8226

47-2287498

Federal Tax ID No.

1021665

City Business Operations Tax No.

By: [Signature]

Mark R. Miller, President

Date: 6/5/16

## **RESOLUTION NO.**

Adopted by the Sacramento City Council

### **SUBLEASE ASSIGNMENT AND AMENDMENT FOR PREMISES AT 1110 FRONT STREET**

#### **BACKGROUND**

- A. The City and Waterfront Management, Inc., a Nevada corporation (“Waterfront”), are parties to City Agreement 93-098 (“Sublease Agreement”), dated July 27, 1993, by which the City subleases to Waterfront the premises located at 1110 Front Street, Sacramento, CA 95814, along with an adjacent office building (together referred to as the “Premises”).
- B. Waterfront would like to transfer the business it operates on the Premises, commonly known as the Rio City Café, to Riverwalk Ventures, LLC and assign the Sublease Agreement. Pursuant to Section 23 of the Sublease Agreement, the City’s written consent is required for any assignment. Accordingly, the parties would like to execute an Assignment Agreement, attached hereto as Exhibit A, to document the City’s consent and the terms and conditions of the assignment.
- C. On July 28, 2014, the City and Waterfront entered into the First Amendment to the Sublease Agreement, whereby the parties agreed that the Sublease Agreement would expire on July 26, 2016. Due to Waterfront’s recent commitment to improve the Rio City Café, the City and Waterfront now desire to extend the Sublease Agreement until July 26, 2019. Therefore, the parties would like to execute the Second Amendment, attached hereto as Exhibit B.

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

- Section 1. The City Manager or the City Manager’s designee is authorized to execute the Assignment of Sublease Agreement, attached hereto as Exhibit A, to assign the Sublease Agreement for the Premises located at 1110 Front Street from Waterfront Management, Inc. to Riverwalk Ventures, LLC.
- Section 2. The City Manager or the City Manager’s designee is authorized to execute the Second Amendment to City Agreement No. 93-098, attached hereto

as Exhibit B, for the Premises located at 1110 Front Street, to extend the term of the Sublease Agreement until July 26, 2019.

Section 3. Exhibit A is a part of this Resolution.

Section 4. Exhibit B is a part of this Resolution.

#### Table of Contents

Exhibit A Assignment of Sublease Agreement between the City of Sacramento and Waterfront Management, Inc. (City Agreement No. 93-098) to Riverwalk Ventures LLC

Exhibit B Second Amendment to Sublease Agreement for the Old Sacramento Riverfront Warehouse and Office Buildings (City Agreement No. 93-098)