



REPLACEMENT

COUNCIL AGENDA: 05-03-11
ITEM: 2.7

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: 04-20-11

Approved

Date

4/25/11

COUNCIL DISTRICT: # 3
SNI: NA

REPLACEMENT

SUBJECT: ADOPTION OF A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ROBERT GARY SCHMELZER, AN INDIVIDUAL, FOR THE LEASE OF REAL PROPERTY LOCATED AT 108 PASEO DE SAN ANTONIO

REASON FOR REPLACEMENT

The replacement memo reflects a change to the listed Tenant from "Couch Guy Incorporated" with Robert Gary Schmelzer signing as President, to Robert Gary Schmelzer, an individual.

RECOMMENDATION

Adoption of a resolution authorizing the City Manager to execute an agreement with Robert Gary Schmelzer, an individual ("CIRCLE A") for the lease of real property located at 108 Paseo de San Antonio for purposes of operating a retail store, for rental revenue to City as follows: Year 1 \$17,856; Year 2 \$18,972; Year 3 \$20,646; Year 4 \$22,381.38; Year 5 \$23,019.34; Year 6 \$23,676.44 for total compensation to the City of \$126,551.16.

OUTCOME

The lease of 108 Paseo de San Antonio to CIRCLE A will allow for the continued operation of a retail store selling footwear, clothing, skateboards and related equipment and accessories at the property. The six-year projected lease revenue to the City, including the initial three-year term and additional three-year option, would be \$126,551.16.

4-20-2011

Subject: Circle A Lease

Page 2

BACKGROUND

The subject property is part of the Paseo de San Antonio in downtown San Jose, encompassing San Jose Repertory Theatre, ClubHouse Restaurant & Sports Lounge, Circle A Skate and Rosies & Posies. A map of the Paseo de San Antonio is attached as Exhibit A. 108 Paseo de San Antonio was constructed in 2003 and has been occupied by CIRCLE A (operating as a sole proprietorship of Mr. Schmelzer) since March 2003 pursuant to 7.5 year lease between CIRCLE A and the San Jose Redevelopment Agency ("SJRA"), which was comprised of an initial 2.5 year term with two additional 2.5 year options. In October 2003, the SJRA transferred ownership of the property and assigned the lease to the City of San Jose.

The original lease term and option terms expired on September 30, 2010, and CIRCLE A has been occupying the property on a holdover basis. CIRCLE A is current in all rent and common area maintenance payments to the City.

ANALYSIS

Staff conducted research on the market value of the lease space through online databases and discussions with a number of brokers experienced with the downtown San Jose retail market. Based upon this research, staff determined the fair market value of the space to be \$1.85 per square foot per month. Accordingly, the base rent for the property under the lease has been set at \$1.85 per square foot per month.

Furthermore, staff conducted research on the physical condition of the property, as well as the economic condition of downtown retailers. The property has been in continuous use by CIRCLE A since construction in 2003, and has not benefitted from any significant investment from City to its interior or exterior space. Likewise due to poor sales during the economic downturn, CIRCLE A has not been able to invest in its interior space or its retail business. As a result, staff and CIRCLE A determined that City will provide rent credits to CIRCLE A for the purpose of facilitating CIRCLE A's possible further investment in the interior space and retail business. Items in which CIRCLE A might invest include: floor refinishing, inventory and vendor management, signage, displays and employee training. The rent credits to CIRCLE A will be in the amount of \$0.35 psf/month in Year 1, \$0.25 psf/month in Year 2, and \$0.10 psf/month in Year 3. The total credit to CIRCLE A for the three-year period would be \$7,812.00, which amount has already been deducted from the City's six-year projected lease revenue of \$126,551.16.

On the economic front, downtown San Jose's retailers continue to feel the effects of the recession and CIRCLE A is no exception. However, through this lease CIRCLE A is confirming its commitment to downtown San Jose and its optimism for the area's economic future. The lease ensures that a local small business continues to operate in the City's core, thereby: (a) filling a specialty market need for skateboard-related items, which is otherwise unavailable in the immediate vicinity, (b) retaining a retail business in the downtown core, at a time when many retailers are closing doors, and (c) contributing to the vitality and growth of the Paseo de San Antonio retail corridor, in alignment with the City's Economic Strategy to develop retail to the fullest.

An outline of the CIRCLE A business terms, along with a chart of the projected revenues, is attached as Exhibit B.

EVALUATION AND FOLLOW-UP

The lease of this property is expected to be effective on or about May 3, 2011. Thereafter, City staff will monitor lease compliance through the term of the lease.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The subject lease agreement does not meet any of the above criteria; however, this memorandum will be posted on the City's website for the May 3, 2011 Council agenda.

COORDINATION

This item has been coordinated with the City Attorney's Office and Budget Office.

FISCAL/POLICY ALIGNMENT

The six-year projected lease revenue to the City, including the initial three-year term and additional three-year option, would be \$126,551.16

CEQA

Exempt, File No. PP10-066(f), lease of existing space for same use.

/s/
KIM WALESH
Chief Strategist and Director of
the Office of Economic Development

For questions please contact NANJI KLEIN, Deputy Director, at 408-535-8181.

Exhibit B

Business Terms

- Lessee: Robert Gary Schmelzer, an individual
- Venue Type: Retail kiosk.
- Size of Building: 930 square feet.
- Term: 3 years initial term.
- Option: One 3-year option to extend.
- Rent:

Initial Term		Option Term	
Year 1	\$17,856.00	Year 4	\$22,381.38
Year 2	\$18,972.00	Year 5	\$23,019.34
Year 3	\$20,646.00	Year 6	\$23,676.44

- Common Area Maintenance Fee: \$0.10 per sq ft per month common area maintenance fee; equates to \$93.00 per month.
- Security Deposit: \$1,163.00.
- Utilities: Separately metered; separate utility bills to be paid by Tenant.
- Improvements: Tenant responsible for constructing any additional tenant improvements.
- Prevailing Wage: Applies to construction of improvements on-site.
- Assignment/Subleasing: Requires City's prior written approval.
- Termination: City has right to terminate the lease without cause upon 180 days prior written notice.
- Right of First Offer: The adjacent City-owned space at 98 Paseo de San Antonio is currently being leased by Rosies & Posies, which lease is set to expire on September 30, 2014. Should the Rosies & Posies lease terminate or expire anytime during Tenant's Initial Term or Option Term, and provided Rosies & Posies does not renew or enter into a new lease for said space, then Tenant will have the right to make an offer to lease the space at 98 Paseo de San Antonio. If City and Tenant enter into an agreement to lease 98 Paseo de San Antonio under the circumstances described herein, then Tenant may relocate its business at its sole cost and expense from 108 Paseo de San Antonio to 98 Paseo de San Antonio.

Projected Rental Revenue

Term	Year	PPSF	Annual Escalation	PSF Credit	Effective PPSF	Monthly Rent	CAM	Total Due Monthly	Total Annual
Initial	1	\$ 1.85	0%	\$ 0.35	\$ 1.50	\$ 1,395.00	\$ 93.00	\$ 1,488.00	\$ 17,856.00
Initial	2	\$ 1.85	0%	\$ 0.25	\$ 1.60	\$ 1,488.00	\$ 93.00	\$ 1,581.00	\$ 18,972.00
Initial	3	\$ 1.85	0%	\$ 0.10	\$ 1.75	\$ 1,627.50	\$ 93.00	\$ 1,720.50	\$ 20,646.00
Option 1	4	\$ 1.91	3%	0	\$ 1.91	\$ 1,772.12	\$ 93.00	\$ 1,865.12	\$ 22,381.38
Option 1	5	\$ 1.96	3%	0	\$ 1.96	\$ 1,825.28	\$ 93.00	\$ 1,918.28	\$ 23,019.34
Option 1	6	\$ 2.02	3%	0	\$ 2.02	\$ 1,880.04	\$ 93.00	\$ 1,973.04	\$ 23,676.44
Total Six Years								\$ 126,551.16	