



Office of the City Manager

CONSENT CALENDAR
March 13, 2018

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront
 Subject: Lease Amendment: 200 Seawall Drive, RUI One Corporation (Skates Restaurant)

RECOMMENDATION

Adopt first reading of an Ordinance amending the City's ground lease with RUI One Corporation, to extend it through December 31, 2018, to allow both parties to continue negotiations on a future lease, and add a holdover clause to follow standard leasing practices.

FISCAL IMPACTS OF RECOMMENDATION

This Amendment would allow the City to continue receiving rent at the current rates through December 31, 2018. If negotiations have not been reached, the holdover provision would provide for roughly a 25% increase in rent, collected on a monthly basis. Without this extension, the lease would terminate on March 31, 2018.

CURRENT SITUATION AND ITS EFFECTS

The City and RUI One Corporation are nearing the end of the 50 year lease term on our executed agreement. RUI One Corporation owns and operates Skates on the Bay Restaurant at 200 Seawall Drive, at the Berkeley Waterfront. The property is located on Public Trust Lands granted to the City of Berkeley by the State of California.

The existing lease agreement is set to expire on March 31, 2018. The City and the Lessee are in active negotiations on a new lease agreement, however, more time is needed to reach agreement, ensure maximum benefit to the City and the Waterfront, and finalize the documents.

Lease agreements entered into by the City typically include a holdover clause, which allows the agreement to continue on a month-to-month basis on an increased lease rate. The current lease does not have such a provision. As such, upon expiration, the lease between the parties could terminate.

If adopted, the attached Amendment would extend the lease term from March 31, 2018, to December 31, 2018, to allow for lease negotiations to occur while the tenant remains in place. The Amendment would also add a holdover provision to allow for the tenant to

remain in place on a month-to-month basis upon the termination of the lease agreement, subject to all conditions, provisions and obligations of this Lease insofar as they are applicable to a month-to-month tenancy, except that the Base Rent (also referred to as Fixed Rent) shall be payable monthly in the amount of \$24,000 per month and no percentage rent shall be due for the holdover period. This represents a roughly 25% increase in the rent (Estimated 2018 Annual Rent of \$231,000, plus 25% = \$288,750, divided by 12 months = \$24,062.5).

BACKGROUND

The City and Lessee are parties a Ground Lease agreement between the City and Manning's Inc., the Lessee's predecessor-in-interest, dated March 23, 1967 (Ord. 4247-N.S.). This initial agreement has been amended by the City of Berkeley City Council on May 18, 1967; July 6, 1967; May 7, 1974 (Ord. 4697 – N.S.); June 6, 1974; February 14, 1978 (Ord. 5027 – N.S.); and September 24, 1996 (Ord. 6341-N.S.). The Lease, as amended and assigned is set to expire on March 31, 2018.

ENVIRONMENTAL SUSTAINABILITY

Lease revenue generated at the Waterfront is required to be reinvested into the public trust lands overseen by the City, and supports the City's environmental/ecological educational programming at the Shorebird Park Nature Center, habitat maintenance at Cesar Chavez Park, and capital projects.

RATIONALE FOR RECOMMENDATION

If adopted, the attached Amendment would extend the lease term from March 31, 2018, to December 31, 2018, to allow for lease negotiations to occur while the tenant remains in place under the existing lease terms.

The Amendment would also add a holdover provision to allow the tenant to remain in place on a month-to-month basis after the term of the lease agreement ends on December 31, 2018, subject to all conditions, provisions and obligations of the existing lease. Under holdover, the Base Rent (also referred to as Fixed Rent) would be modified to a monthly amount of \$24,000 per month and no percentage rent would be due. This represents a roughly 25% increase in the overall rent under the current structure (Estimated 2018 Annual Rent of \$231,000, plus 25% = \$288,750, divided by 12 months = \$24,062.5).

The amendments herein will ensure that the City is able to collect lease revenue from the tenant while the tenant remains in place, as both parties work in good faith to negotiate new lease terms. Furthermore, the holdover clause adds protections for both parties in the event that unforeseen circumstances arise. Extending the lease will allow for increased patronage to the Berkeley waterfront, increased revenue to the City of Berkeley, and ongoing business operations for RUI One Inc.

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ALTERNATIVE ACTIONS CONSIDERED

The City could allow the lease to terminate on March 31, 2018, however, that would be detrimental to the tenant and the City, as well as to the public, who benefits from access water-side dining with views of the San Francisco Bay.

CONTACT PERSON

Christina Erickson, Deputy Director, Parks Recreation and Waterfront, 981-6703

Attachments:

1: Ordinance

Exhibit A: Amendment to Ground Lease

ORDINANCE NO. -N.S.

LEASE AMENDMENT FOR RUI ONE CORPORATION AT 200 SEAWALL DRIVE
EXTENDING THE LEASE TERM AND ADDING A HOLDOVER PROVISION

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. FINDINGS

The City and Lessee are parties a Ground Lease agreement between the City and Manning's Inc., the Lessee's predecessor-in-interest, dated March 23, 1967 (Ord. 4247-N.S.). This initial agreement has been amended by the City of Berkeley City Council on May 18, 1967; July 6, 1967; May 7, 1974 (Ord. 4697 – N.S.); June 6, 1974; February 14, 1978 (Ord. 5027 – N.S.); and September 24, 1996 (Ord. 6341-N.S.). The Lease, as amended and assigned is set to expire on March 31, 2018. The City now wishes to extend the term of the Lease to December 31, 2018, and add a standard holdover provision to the agreement.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO A GROUND
LEASE AMENDMENT FOR WILLIAM BYRON RUMFORD SR. PLAZA

The City Manager is hereby authorized to enter into an Amendment to the Lease with RUI One Corporation for the premises at 200 Seawall Drive in Berkeley, which will extend the term of the lease from March 31, 2018, to December 31, 2018, and add a holdover provision. The terms of the amendment shall be substantially the same terms set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibits

A: Amendment to Lease Agreement

**Exhibit A:
Amendment to Lease**

THIS LEASE AMENDMENT ("Amendment") is made and entered into as of March 14, 2018, by and between the City of Berkeley, a California municipal corporation and owner of the subject premises ("Landlord"), and Restaurants Unlimited, Inc., a Washington Corporation ("Lessee").

Recitals

- A. Lessee and Lessor are parties to that certain Ground Lease between Lessor and Manning's Inc., Lessee's predecessor-in-interest, dated March 23, 1967 (Ord. 4247-N.S.), as amended by the City of Berkeley City Council on May 18, 1967; July 6, 1967; May 7, 1974 (Ord. 4697 – N.S.); June 6, 1974; February 14, 1978 (Ord. 5027 – N.S.); and September 24, 1996 (Ord. 6341-N.S.). The Ground Lease, as amended and assigned is hereinafter referred to as the "Lease." The Lease provides for the lease of certain land and improvements constructed thereon located at 100 Seawall Drive, Berkeley, California, as more particularly described in the Lease ("Premises").
- B. Lessor and Lessee desire by this Amendment to i) extend the Term of the Lease, ii) add a holdover clause, and iii) make certain other amendments to the Lease, as set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

Agreements

1. Recitals; Capitalized Terms. The foregoing recitals are incorporated by reference into the Amendment. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Lease.
2. Extension of Term. The Term of the Lease with respect to the entirety of the Premises is hereby extended to December 31, 2018. As so extended, the Expiration Date of the Lease shall be December 31, 2018. All terms of the Lease, including provisions applicable to payment of Rent, including Base Rent (also referred to as Fixed Rent) and Percentage Rent, shall continue in effect for the extension term.
3. Addition of New Section 41. A new Section 41 is hereby added to the Lease to read as follows:

"41. HOLDING OVER. Lessee has no right to retain possession of the Premises or any portion thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over after the expiration of the Term without executing a new lease, then such holding over shall be construed as a tenancy from month-to-month, subject to all conditions, provisions and obligations of this Lease insofar as they are applicable to a month-to-month tenancy, except that the Base Rent (also referred to as Fixed Rent) shall be payable monthly in the amount of \$24,000 per month and no percentage rent shall be due for the holdover period. Nothing contained herein shall be construed as consent of Landlord to any holding over by Lessee."

- 4. Ratification of Lease. The Lease, as amended by this Amendment, is hereby ratified, confirmed and approved in all respects. In the event of any inconsistency between the provisions of this Amendment and the provisions of the Lease, the provisions of this Amendment shall govern.
- 5. Entire Agreement. This Amendment sets forth the entire understanding of the parties in connection with the subject matter hereof. There are no agreements between Landlord and Lessee relating to the Lease other than those set forth in writing and signed by the parties. Neither party hereto has relied upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this Amendment.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment as of the date written on the first paragraph above.

CITY OF BERKELEY:

BY:

APPROVED AS TO FORM:

City Manager
Dated: _____

City Attorney

REGISTERED BY:

ATTEST:

City Auditor

Deputy City Clerk

LESSEE:

By:
Title:

City of Berkeley Business License No.: _____