



Staff Summary Report

Council Meeting Date: March 26, 2009

Agenda Item Number: _____

SUBJECT: This is the second public hearing of an ordinance authorizing an amendment to the lease between the City of Tempe and Urban Outfitters.

DOCUMENT NAME: 20090326cdnc03 **CENTRAL BUSINESS DISTRICT (0403-05)** Ordinance No. 2009.09

COMMENTS: N/A

PREPARED BY: Heidi Graham, Senior Planner (x. 8528)

REVIEWED BY: Chris Salomone, Community Development Director (x. 8294)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (x. 2187)

FISCAL NOTE: The proposed modification of the rent calculation will likely result in a drop in the rent payments to the City in the short term. Long term, it is anticipated that the rent will match or exceed its current level.

RECOMMENDATION: Approve Ordinance No. 2009.09 as presented.

ADDITIONAL INFO: Urban Outfitters is currently leasing space from the City in the 525 Building. In an effort to stay competitive in the market, Urban Outfitters requested the City modify the current rent structure to reduce the rent from 5% of gross revenues to 4%. In exchange, they have agreed to a 10-year lease term. Staff has analyzed their request and recommends this change as a means of retaining this tenant and to maintain Urban Outfitters presence within the Mill Avenue District.

ORDINANCE NO. 2009.09

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE LEASE BETWEEN THE CITY OF TEMPE AND URBAN OUTFITTERS.

WHEREAS, the City leased to Urban Outfitters Inc., certain commercial space within the City-owned building located at 525 South Mill Avenue pursuant to a lease agreement dated March 21, 2004, as amended by a First Amendment to Lease dated July 20, 2006 (the "Lease") ;

WHEREAS, the City and Urban Outfitters Inc. mutually desire to modify the Lease.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1: That the Mayor is authorized to execute the Second Amendment to Lease to effect a change in the rental rate and extend the term, and to execute any other documents referenced therein, copies of which are on file with the City Clerk's office and to take such further actions as are necessary to implement its terms.

Section 2: The Mayor is hereby authorized to execute any further documents that may be necessary to carry out the provisions of this Ordinance.

Section 3: Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA,
this _____ day of _____ 2009.

Hugh Hallman, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

SECOND AMENDMENT TO LEASE

This Second Amendment to Lease (this "Amendment") is entered into as of March ___, 2009, by and between the CITY OF TEMPE, an Arizona municipal corporation ("Landlord") and URBAN OUTFITTERS, INC., a Pennsylvania corporation ("Tenant").

BACKGROUND

Landlord and Tenant entered into that certain Lease dated March 21, 1994, as amended by that certain Certification as to Critical Dates dated October 13, 1995 and that certain First Amendment to Lease dated July 20, 2006 (collectively, the "Lease") pursuant to which Tenant leases from Landlord the Premises at 545 South Mill Avenue, Tempe, AZ 85281, as more particularly described in the Lease. Tenant exercised its first renewal option under the Lease and the Lease Term is currently scheduled to expire on or around July 26, 2010. The parties desire to further extend the Lease Term and modify the rent as more fully set forth in this Amendment.

AGREEMENTS

For valuable consideration, whose receipt and sufficiency are acknowledged, Landlord and Tenant, intending to be legally bound, agree as follows:

1. **Extended Lease Term.** Notwithstanding any provisions of this Lease to the contrary, the Lease Term is hereby extended to March 31, 2019 (the "Extended Term"), subject to Tenant's options to further extend the Lease Term as set forth below or sooner termination pursuant to the provisions of the Lease.
2. **Options To Extend.** Notwithstanding any provisions of the Lease to the contrary, Tenant shall have the options to extend the term of the Lease, for two (2) successive additional periods (individually, an "Extension Term" and, together, the "Extension Terms") of five (5) years each, commencing on the first day following the last day of the Extended Term or of the first Extension Term, as the case may be. Tenant's exercise of an extension option, if ever, shall be by notice to Landlord at least one hundred twenty (120) days prior to the last day of the Extended Term or first Extension Term, as the case may be. Tenant shall satisfy the other terms and conditions set forth in Section 1(d) of the Lease relating to extension; provided that the rent during the Extension Terms shall be as set forth in Section 3 below.
3. **Rent.** Effective as of April 1, 2009 and continuing for the balance of the Extended Term and during the Extension Terms, if exercised, Tenant shall pay to Landlord at the office of Landlord or at such other place as Landlord may designate, without notice or demand, on or before the thirtieth day of each month, an amount equal to 4% of its Gross Sales (as defined in the First Amendment), as rent. With each monthly rent payment, Tenant shall submit to Landlord a statement of Tenant's Gross Sales for the calendar month to which the rent payment relates. In addition, the Fixed Rent Conversion option granted to Tenant in Section 2(b) of the First Amendment is hereby terminated.

4. **Tenant's Notice Address.** Tenant's address for receipt of all notices, consents and other communications required or desired to be given by Landlord to Tenant pursuant to the Lease is as follows:

Urban Outfitters, Inc.
5000 S. Broad Street
Philadelphia, PA 19112
Attn: President

With a required copy to:

Urban Outfitters, Inc.
5000 S. Broad Street
Philadelphia, PA 19112
Attn: General Counsel

5. **Full Authority.** Each of Landlord and Tenant has full power and authority to execute and deliver this Amendment and to perform its obligations hereunder; the signatory hereto on behalf of Landlord has full power and authority to bind the City of Tempe, as Landlord, and the signatory hereto on behalf of Tenant has full power and authority to bind Urban Outfitters, Inc., as Tenant, and all requisite actions necessary to authorize each of Landlord and Tenant to execute and deliver this Amendment and to perform its obligations hereunder have been taken.

6. **Capitalized Terms.** Capitalized terms used herein but not defined shall be given the meanings assigned to them in the Lease.

7. **Binding Effect; Governing Law.** Except as modified hereby, the Lease shall remain in full force and effect and this Amendment shall be binding upon Landlord and Tenant and their respective successors and assigns. If any inconsistency exists or arises between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall prevail. This Amendment shall be governed by the laws of the State of Arizona.

8. **Counterparts.** This Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

Executed as of the date first written above.

LANDLORD:
CITY OF TEMPE, a municipal corporation

By: _____
Name:
Title:

Attest:

City Clerk

Approved as to Form:

City Attorney

TENANT:
URBAN OUTFITTERS, INC.

By: _____
Name:
Title: