



To enrich lives through effective and caring service



Santos H. Kreimann
Acting Director
Kerry Silverstrom
Chief Deputy

September 2, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

29

SEP 02 2008

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**APPROVAL OF AMENDMENT NO. 11 TO LEASE NO. 11525
RENEGOTIATED RENTAL RATES AND INSURANCE COVERAGE
PARCEL 75W (MARINA PROFESSIONAL BUILDING) – MARINA DEL REY
(SUPERVISORIAL DISTRICT FOUR)
(4 VOTES)**

SUBJECT

This Board letter requests approval of a Marina lease amendment that provides for increased office space percentage rental rates as negotiated for Parcel 75W (Marina Professional Building) based on an outside appraisal, as well as a new square foot rental rate (minimum rent) and insurance coverage.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed lease amendment is categorically exempt under the California Environmental Quality Act pursuant to Classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chair of the Board to sign the attached Amendment No. 11 to Lease No. 11525 – Parcel 75W, Marina del Rey, which provides for (1) the adjustment of square foot rental, (2) the adjustment of percentage rental rates for office space, and (3) an increase in general liability insurance coverage as negotiated pursuant to an appraisal for the 10-year period ending August 31, 2017. The increased office space rental rate is expected to generate an additional \$9,700 in leasehold rent revenue in Fiscal Year 2008-09.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

All Marina del Rey leases provide for the periodic review of leasehold rents and liability insurance coverage to ensure that the rental rates payable to the County are maintained at current fair market levels and that the amount of general liability insurance is adequate to protect the County's interests. County rents are typically computed as the greater of either a fixed minimum rent or the total of varying percentages of the lessee's gross receipts from the leasehold's uses.

The Parcel 75W lease requires adjustment of rents on September 1, 1997 and every tenth anniversary thereafter. The lessee has agreed to a graduated increase in the percentage rent for office rentals, and begun paying rent at the new rate, as identified on the table below without the need for arbitration.

CATEGORY	CURRENT RATE	PROPOSED RATE	FROM	TO
Office rentals	12%	13.0%	9/1/2007	8/31/2009
		13.5%	9/1/2009	8/31/2017

The proposed rates are within the range of comparable office rentals as determined by the Department's commissioned appraisal. All other categories of percentage rents shall remain unchanged.

The proposed lease amendment (Amendment) also provides that the square foot rental (also known as minimum rent) will henceforth be adjusted on the first day of September of every third year, as measured from the 2007 Rental Adjustment Date, to an amount equal to 75% of the average annual rent payable by the lessee to the County over the prior three years.

The lessee has also agreed to increase the general liability insurance to a combined single limit of not less than \$20 million, up from the existing \$5 million combined single limit. Such limits have been approved by the Chief Executive Office's Risk Management Branch. Additionally, the Amendment incorporates changes to the indemnity clause and casualty insurance provisions to conform to the Risk Management Branch's new and more stringent requirements.

Implementation Of Strategic Plan Goals

The recommended action will provide additional rent to the County in furtherance of the County Strategic Plan Goal of Fiscal Responsibility.

FISCAL IMPACT/FINANCING

The execution of the Amendment is projected to yield an additional \$9,700 in leasehold rent revenue to the County in Fiscal Year 2008-09. The Amendment will increase annual minimum rent from \$114,765 to \$147,828, based on 75% of the average annual rent payable by the lessee to the County over the three years prior to September 1, 2007.

Operating Budget Impact

The recommended actions will result in a \$9,700 annual increase in leasehold rent revenue. This estimate was not included in the Department's FY 2008-09 Adopted Budget, but will be included in FY 2008-09 Supplemental Change Request.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Parcel 75W, commonly known as the Marina Professional Building, is improved with a three-story medical office building, consisting of 39,050 square feet gross building area, and a free-standing pharmacy building consisting of 1,134 square feet. The leasehold currently occupies 52,026 square feet of land in Marina del Rey. The 60-year ground lease between the County and lessee was executed in 1966.

This Amendment has been approved as to form by County Counsel. At its meeting of July 16, 2008, the Small Craft Harbor Commission endorsed the Director's recommendation that your Board approve and execute the proposed Amendment.

ENVIRONMENTAL DOCUMENTATION

The proposed Amendment is categorically exempt under the provisions of the California Environmental Quality Act pursuant to Classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current services from your Board's approval of this Amendment.

Honorable Board of Supervisors
September 2, 2008
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CONCLUSION

Please have the Chair of the Board of Supervisors sign all three copies of the Amendment No. 11 and have the Executive Officer of the Board return two executed copies to the Department of Beaches and Harbors for distribution and one copy of the Board letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Santos H. Kreimann", with a long horizontal flourish extending to the right.

Santos H. Kreimann
Acting Director

SHK:sn
Attachments (1)

c: Chief Executive Officer
Executive Officer, Board of Supervisors
County Counsel

AMENDMENT NO. 11 TO LEASE NO. 11525

Parcel No. 75W--Marina del Rey

THIS AMENDMENT TO LEASE is made and entered into this 2nd day of September, 2008 (the "Effective Date"),

BY AND BETWEEN

COUNTY OF LOS ANGELES
hereinafter referred to as "County,"

AND

DEL REY PROFESSIONAL
ASSOCIATION, a general partnership,
hereinafter referred to as "Lessee."

WITNESSETH:

WHEREAS, County and Lessee's predecessor in interest entered into Lease No. 11525 under the terms of which County leased to Lessee's predecessor in interest that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly know as Parcel 75W, which leasehold premises (the "Premises") are more particularly described in Exhibit "A" attached to and incorporated in said lease, as amended (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 15 of said Lease provides that as of September 1, 1997, and as of September 1st of every tenth (10th) year thereafter (the "Rental Adjustment Date"), the rates for square foot rental and all categories of percentage rentals, and liability insurance requirements (collectively, the "Adjusted Rentals") shall be readjusted by Lessee and County in accordance with the standards established in said Section 15, and

WHEREAS, Section 15 further provides that Adjusted Rentals may be determined by Lessee and County by mutual agreement at any time; and

WHEREAS, the parties have agreed to adjust the square foot rental for the ten-year period commencing on September 1, 2007 (the "2007 Rental Adjustment Date"); and

WHEREAS, the parties were able to reach a mutual agreement regarding the proper adjustments to be made to the percentage rentals for the ten-year period commencing on the 2007 Rental Adjustment Date; and

WHEREAS, the parties have reached agreement with respect to the amount of liability insurance required to be maintained by Lessee for the ten-year period commencing on the 2007 Rental Adjustment Date; and

NOW, THEREFORE, in consideration of the mutual agreements, covenants and restrictions contained herein, the parties, and each of them, agree as follows:

1. **Square Foot Rental.** Commencing as of the 2007 Rental Adjustment Date, the first paragraph of Section 12 (SQUARE FOOT RENTAL) of the Lease is amended to read as follows:

"Effective September 1, 2007 and every three years thereafter, the annual square foot rental for the whole of the Premises shall be readjusted to equal seventy-five percent (75%) of the annual average of all rents payable by the Lessee under Section 13 of the Lease for the immediately preceding three-year period, provided that no adjustment shall result in a decrease of the square foot rental."

2. **Percentage Rental.** Commencing as of the 2007 Rental Adjustment Date, subsection (c) (ii) of Section 13 (PERCENTAGE RENTALS) is deemed deleted and the following subsection (c) (ii) is correspondingly substituted therefore:

"(c) (ii) THIRTEEN PERCENT (13%) [for the period from September 1, 2007 through August 31, 2009] and THIRTEEN AND ONE-HALF PERCENT (13.5%) [for the period from September 1, 2009 and thereafter] of gross receipts or other fees charged for the occupancy of offices utilized for banking, financial or investment activities, internal clerical or administrative activities of business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies, or similar professional services (collectively, "Offices"), but not to include, however, stores, shops or other commercial establishment, the gross receipts pertaining to which are subject to percentage rentals and specifically required to be reported under other subsections of this Section."

3. **Retroactive Payment.** Lessee shall pay to County, within ten (10) days following the Effective Date, for the period between the 2007 Rental Adjustment Date and the actual date of payment (the "Retroactive Period"), the difference between (i) the actual rents paid by Lessee under the rental rates in effect prior to the effectiveness of this Amendment from the 2007 Rental Adjustment Date to the Effective Date, and (ii) the rents that should have been paid in accordance with the new rental rates as determined ("Retroactive Payment").

4. **Insurance Provisions.** Commencing as of the Effective Date, Sections 25, 26, 27 and 28 of said Lease are deleted in their entirety and the following substituted therefor:

“25. INDEMNITY CLAUSE.

Lessee shall at all times relieve, indemnify, protect and save harmless County and its Boards, officer, agents, and employees from any and all claims and liability, including expenses incurred in defending against, the same, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of County, and of its officers, agents or employees, that may in whole or in part arise from or be caused by (a) the operation, maintenance, use or occupation of the herein demised premises by Lessee, (b) the acts, omissions or negligence of Lessee, its agents, officers, employees or permittees, or (c) the failure of Lessee to observe and abide by any of the terms or conditions of this lease or any applicable law, ordinance, rule or regulation; the obligation of Lessee to so relieve, indemnify, protect and save harmless County, and each of its Boards, officers, and employees, shall continue during any periods of occupancy or of holding over by Lessee, its agent, officers, employees or permittees, beyond the expiration or other termination of this lessee.

26. INSURANCE REQUIREMENTS.

Without limiting Lessee's indemnification of County, during the term of this Lease Lessee shall provide and maintain the following insurance issued by companies authorized to transact business in the State of California by the Insurance Commissioner and having a "general policyholders rating" of at least A-VII (or such higher rating as may be required by an encumbrance holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency.

26.1. General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) and endorsed to name County as an additional insured, with limits of not less than the following:

General Aggregate:	\$ 20 million
Products/Completed Operations Aggregate:	\$ 20 million
Personal and Advertising Injury:	\$ 10 million
Each Occurrence:	\$ 10 million

26.2. Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than \$2 million for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for

"any auto." If valet parking or any parking services is provided on premises, Lessee also shall provide Garagekeeper's Legal Liability coverage, (written on ISO form CA 99 37 or its equivalent) with limits of not less than \$3 million for this location.

26.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California and for which Lessee is responsible, and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

26.4 Intentionally left blank.

26.5 Commercial Property insurance covering damage to the premises, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake, and including Ordinance or Law Coverage, written for the full replacement value of the property, with a deductible no greater than \$250,000 or 5% of the property value, which ever is less, and also including business interruption, including loss of rent, equal to two (2) years annual rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the premises and any improvements thereon.

26.6 For construction projects, including any alterations or restoration, on the premises, Lessee or Lessee's contractor will provide the following insurance (County reserves the right to determine the coverage and coverage limit required on a project by project basis.):

26.6.1 Builder's Risk Course of Construction to insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30). This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, testing, preservation of property, excavation costs, landscaping, shrubs and plants and full collapse coverage during construction (without restricting collapse coverage to specified perils. This insurance shall be written on a completed-value basis and cover the entire value of the construction

project, including County furnished materials and equipment, against loss or damage until completion and acceptance by Lessee.

26.6.2 General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as required by the County for the construction project(s). The products/completed operations coverage shall continue to be maintained for a period to be determined by the County from the date the construction project(s) are completed and accepted by the Lessee.

26.6.3 Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability as required by the County for the construction project(s). Such insurance shall include coverage for all "owned," "hired" and "non-owned" automobiles, or coverage for "any auto."

26.6.4 Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.) with limits as required by the County for the construction project(s). This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project(s).

26.6.5 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos in compliance with governmental mandate or requests. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's or subcontractor's Automobile Liability Insurance. Contractor shall maintain limits as required by the County for the construction project(s).

26.7 Provisions Pertaining to Property Insurance. The insurance coverage required in Section 26.5 shall name the County as an additional insured and any encumbrance holder as loss payee. Subject to Section 25, upon the occurrence of any loss, the proceeds of property and builder's risk insurance shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that if the

insurance proceeds received with respect to a loss are less than \$500,000 (as adjusted to reflect any increase in the Engineering News Construction Cost Index ("ENR Index") for the Los Angeles area (or such substitute index as the parties may mutually agree upon if such index is no longer published or otherwise available), during the period from the effective date of this Amendment No. 11 through the date of the loss), the encumbrance holder shall have the right to hold and disburse such proceeds to pay the renovation and repair of any improvements on the premises in accordance with the terms of the loan agreement or deed of trust with Lessee's encumbrance holder. In the event of a loss, Lessee shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment, and improvements, in accordance with the procedures set forth hereinabove for the initial construction. Subject to Section 25, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

26.8. General Insurance Requirements. Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Section 26, in such form as shall be reasonably acceptable to County, shall be filed with Director no later than the effective date of this Amendment No. 11, provided that the evidence of the insurance coverage required under Section 26.1.5 shall be required to be delivered by Lessee prior to the commencement of any construction project(s). All certificates of insurance shall (a) specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions exceeding \$25,000; and (d) evidence all other requirements under this Section 26. The policy or policies of insurance shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to Director or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with Director.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Lessee may submit in a form reasonably acceptable to County a certificate of insurance.

Any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to County such that such coverage provides the same protection as required under this Section 26 as if the insurance had been procured on an individual property basis.

26.9. Additional Required Provisions. Lessee's insurance policies required by Section 26 shall be for a term of not less than one year and shall additionally provide:

(a) that County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers, shall be named as additional insureds under any liability insurance policy or policies;

(b) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;

(c) in any property insurance policy, a waiver of all right of subrogation against County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers with respect to losses payable under such policies;

(d) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(e) the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to the additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(f) that losses, if any, shall be adjusted with and payable to Lessee, County and encumbrance holders, if any, pursuant to a standard mortgagee clause;

(g) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all encumbrance holders or ten (10) business days in case of cancellation for failure to pay the premium;

(h) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(i) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

26.10 Notification of Incidents, Claims or Suits. Lessee shall report to County any accident or incident on or about the premises which involves injury or property damage which might reasonably be thought to result in the filing of a claim or lawsuit against Lessee and/or County. Such report shall be made in writing within seventy-two (72) hours of Lessee's knowledge of such occurrence.

27. **FAILURE TO PROCURE INSURANCE**

If Lessee fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from County, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by County shall be repaid by Lessee, with interest thereon at an annually compounded rate of interest equal to the lesser of (a) ten percent (10%) per annum or (b) the average daily variable prime rate of interest published in the Wall Street Journal, plus three percent (3%) per annum (Applicable Rate), to County within five (5) business days after Lessee's receipt of written demand therefor; provided however, the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to any applicable codes, laws rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of the County, State, the United States of America, the California Coastal Commission and/or any other governmental or quasi-governmental entity (Applicable Laws). In the event that the Applicable Rate exceeds such maximum rate of interest, then the Applicable Rate shall be deemed the maximum rate permissible under Applicable Laws.

28. **RENEGOTIATION OF INSURANCE REQUIREMENTS.**

The insurance requirements of Sections 26 and 27 shall be subject to renegotiation at the same time and in the same manner as the amounts of rent hereunder."

5. **Miscellaneous.** Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and reacknowledges its respective obligations under the Lease as amended hereby.

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment to Lease to be subscribed by the Chairman of said Board and attested by the Executive Officer thereof, and the Lessee by its duly authorized representative, has executed the same.



ATTEST:

SACHI A. HAMAI
Executive Officer--Clerk of the
Board of Supervisors

By: [Signature]
Deputy

COUNTY OF LOS ANGELES

By: [Signature]
Chair, Board of Supervisors

LESSEE:

DEL REY PROFESSIONAL ASSOCIATION,
a general partnership

By: [Signature]
Its: General Partner

4.30.08

APPROVED AS TO FORM:

RAYMOND J. FORTNER, JR.
County Counsel

By: [Signature]
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

29 SEP 02 2008

[Signature]
SACHI A. HAMAI
EXECUTIVE OFFICER