



Council Agenda Report

To: Mayor Wagner and the Honorable Members of the City Council

Prepared by: Reva Feldman, City Manager

Date prepared: August 12, 2019 Meeting date: August 26, 2019

Subject: Second Amendment to Lease Agreement for 23661 Pacific Coast Highway (Super Care Drugs, Inc.)

RECOMMENDED ACTION: Approve Second Amendment to Lease Agreement for 23661 Pacific Coast Highway with Super Care Drugs, Inc.

FISCAL IMPACT: The Lease Agreement provides a rental income stream to the City. In Fiscal Year 2018-2019, the City received \$194,000 in revenue from Super Care Drugs, Inc. The City uses revenue from Super Care Drugs, Inc. and the other commercial tenants for debt service payments applicable to the purchase of the Legacy Park site, maintenance of Legacy Park and high priority water quality projects.

DISCUSSION: On February 8, 2010, the Council approved a Lease Agreement for 23661 Pacific Coast Highway with Super Care Drugs, Inc. The Lease Agreement was amended on June 9, 2010 to correct the square footage of the leased space, to adjust the fixed minimum rent amount according to the corrected square footage, and to reflect the pro-rated amount of utilities and maintenance costs to be paid by the tenant.

The Lease Agreement and First Amendment to the Lease provided for a ten (10) year term with the option for one ten (10) year option with a base rent that increased every year at a rate of 3%. The tenant was required to improve both the interior and exterior of the site, is responsible for a pro rata share of the common area maintenance costs, the real property tax assessment, insurance costs and wastewater costs.

The Leased Space consists of 3,235 square feet and the tenant is currently paying \$5.07 a square foot. The base rent amount has increased at a rate of 3% a year. The first ten (10) year term is set to end on January 6, 2020, and the tenant now has the option of extending the lease for an additional ten (10) year term. The tenant has requested to renegotiate the terms of the lease and lease option.

The City Council discussed the proposed lease terms in a closed session on July 8, 2019 and directed staff to amend the lease agreement.

The Second Amendment to the Lease provides for the following:

- 3,235 square feet
- Term: 5-year term with two additional 5-year options
- Rental rate: \$4.75 a square foot
- Increase: Rent to increase at 2% per year for the first 5-year term and to increase at 3% per year for the two five 5-year options if exercised
- Tenant to pay actual cost of common area and exterior maintenance for the Property, including capital costs
- Tenant to pay real property tax assessment and insurance costs
- Tenant to pay all utilities including wastewater costs

The Second Amendment to the Lease Agreement will become effective on September 1, 2019.

ATTACHMENTS: Second Amendment to the Lease Agreement with Super Care Drugs, Inc.

**SECOND AMENDMENT TO LEASE AGREEMENT
BETWEEN THE CITY OF MALIBU AND SUPERCARE
DRUGS, INC.**

This Second Amendment (“Second Amendment”) to that certain Lease Agreement dated January 6, 2010, as amended by the First Amendment to Lease Agreement dated June 9, 2010 (collectively referred to as the “Lease”) is entered into this 21st day of August, 2019, by and between the CITY OF MALIBU (“Landlord”) and SUPERCARE DRUGS, INC., a California corporation (“Tenant”) (collectively, the “Parties”), as follows:

RECITALS

This Second Amendment is entered into on the basis of the following facts, understanding and intentions of the Parties:

A. The Lease, which contains an original term of ten years, needs to be renewed to avoid expiration in January 2020. The Parties desire to extend the Lease for an additional five year term, with an option at the end of the five years to extend the Lease for another five years, and an additional five years (for a total potential extension of 15 years) at the end of the second five year term

B. The Parties agree the Fixed Minimum Rent will be set at \$4.75 per square foot. With the Leased Premises consisting of 3,235 square feet, the Fixed Minimum Rent will be Fifteen Thousand Three Hundred Sixty Six Dollars And Twenty-Five Cents (\$15,366.25) per month during the first year of the Term.

C. The Fixed Minimum Rent will increase two-percent (2%) annually for the first five years of the extension. The Fixed Minimum Rent will then increase three-percent (3%) annually thereafter during any option periods exercised.

D. All other terms of the Lease, not affected by this Second Amendment are to remain in full force and effect.

NOW, THEREFORE, for and in consideration of the foregoing recitals and the mutual covenants and agreements herein, the Parties agree that as of September 1, 2019, the Lease shall be amended as follows:

A. Paragraph 2 of the Lease is amended to read as follows:

2. TERM. The term of this Lease (the “TERM”) shall be for a period of five (5) years commencing September 1, 2019. The TERM may be extended for an additional five years if Tenant provides Landlord written notice on or before July 1, 2024, that Tenant is electing to extend the Lease for an additional five years. Should the TERM be extended per Tenant’s election, the TERM may be extended for an additional five years (expiring on September 30, 2029) if Tenant provides Landlord written notice on or before July 1, 2029, that tenant is electing to further extend the Lease by an additional five years. Tenant may not elect to extend the Lease for a period other than the specified five year terms without executing a further written amendment to this Lease.

In the event the Term would expire on the day other than the last day of a calendar month, the Term shall extend to the end of the calendar month during which the Lease would otherwise expire.

B. Paragraph 4(A) of the Lease is amended to read as follows:

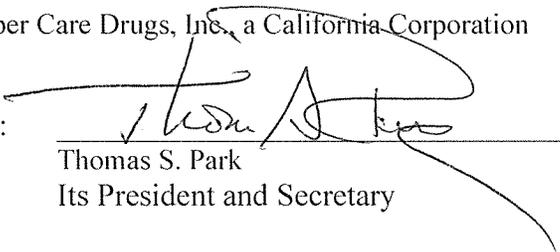
A. "FIXED MINIMUM RENT" payable in equal monthly installments of Fifteen Thousand Three Hundred Sixty Six Dollars And Twenty-Five Cents (\$15,366.25) during the first year of the Term. Commencing at the start of year two of the TERM, the FIXED MINIMUM RENT shall increase on an annual basis by two-percent (2%) every year. Commencing at the start of year six of the TERM (should the term be extended per Paragraph 2), the FIXED MINIMUM RENT shall increase on an annual basis by three-percent (3%) every year. In no event shall the FIXED MINIMUM RENT be adjusted downward in any period. Should the Rent Commencement Date commence on a day other than the first day of the month, the first monthly installment of FIXED MINIMUM RENT shall be prorated on the basis of a thirty (30) day month.

C. Except as amended by this Second Amendment, the Lease and each and every term and provision thereof remains in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Amendment this _____ day of August, 2019.

TENANT:

Super Care Drugs, Inc., a California Corporation

By: 

Thomas S. Park
Its President and Secretary

LANDLORD:

THE CITY OF MALIBU,
a municipal corporation

By: _____

Its: _____

Approved as to Form:

ATTEST:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

Trevor Rusin
Assistant City Attorney

Heather Glaser
City Clerk