

**Agenda Item 6.d.**  
**Board of Directors Mtg. 10-8-08**

September 18, 2008

**To:** The Board of Directors

**From:** Dev Mahadevan, Interim Executive Director

**Re:** Proposal for Exclusive Listing Agreement to Lease Space at 525 Veterans Blvd.

**Action Requested:** Approve the listing agreement attached between Bayside Realty Partners and Sequoia Healthcare District to lease space at 525 Veteran Boulevard, Redwood City, at a cost of approximately \$12,600 for a three-year lease.

**Background:** We were about to enter into a lease in San Carlos for space for the District Offices in 2007, when the 525 Veterans Boulevard building became available. It was decided to renovate and move into this space and lease any additional space that may be available at 525 Veterans to a lessee which could reduce the cost of occupancy for the District.

Bayside Realty Partners CEO, Trask Leonard, worked with the District on that lease. In the last month, I spoke to both Mr. Leonard and Linda Meltcher (Thursday, August 28) and tried to determine who might best serve the District's interests. Mr. Leonard made a much more convincing case that they could provide a tenant who could meet our needs (pay rent reliably and be a good tenant). Ms. Meltcher gave the impression of needing to research the market before she could even guess at local rentals. Under the circumstances, given that the leasing commission on such a small rental is the standard fee of 6% on a reducing scale for longer leases, it appeared the Mr. Leonard is better able to meet our needs.

**Budget Impact:** The cost of this agreement is expected to be 6% of the total lease value. I have assumed a three-year lease, of approximately 2,000 square feet (the net rentable space) at \$3.00 per square foot per month. The total lease value would be around \$216,000 and the commission to the leasing agent would be around \$12,640. If the lease were for a longer period, the commission would be higher based on the total lease cost at 6%.

**Alternatives Considered:** Ms. Meltcher was the other leasing agent that I spoke to. We could consider trying to lease it ourselves by advertising, but this could take longer and negate any savings.



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### **EXCLUSIVE LISTING AGREEMENT**

The undersigned Owner hereby appoints Bayside Capital Management Company dba Bayside Realty Partners ("Broker") as its sole Broker and grants to Broker the exclusive right to lease 525 Veterans Blvd, Redwood City, California (the "Property").

1) **TERM:** The term of this Agreement begins on September 15, 2008 and will end at midnight on June 30, 2009 and will continue for successive periods of 30 days each unless terminated by either party with 30 days' written notice.

2) **BROKER'S SERVICES:** Broker will enlist the efforts of its firm to secure a satisfactory tenant(s), and if Broker deems it necessary, Broker will also solicit the cooperation of other licensed real estate Brokers. Broker will negotiate the terms of any sale or lease on behalf of Owner and in Owner's interest.

3) **OWNER REFERRALS:** Owner will refer to Broker all inquiries and offerings received by Owner regarding the Property, and all negotiations will be conducted solely by Broker or under Broker's direction, subject to Owner's review and final approval.

4) **ADVERTISING:** Owner authorizes Broker to advertise and to place signage on the Property. Broker, at its expense, will provide its standard signage and flier/brochure. Any additional advertising and promotion will be done at Owner's expense pursuant to a program and budget agreed upon by Owner and Broker and will identify Broker as exclusive agent for the Property.

5) **COMMISSION:** If, during the term hereof, Owner enters into a sale or lease(s) of all or any portion of the Property, Owner will pay to Broker a commission in accordance with the attached Schedule of Commissions. Within 15 days after the end of the term, Broker will provide to Owner a list of prospective buyers and tenants to whom the Property was submitted (by Broker, Owner or any third party) during the term. If Owner enters into a lease or sale with a prospective buyer or tenant appearing on said list within 120 days after the end of the term, Owner will pay a commission to Broker as provided herein. Owner agrees that such 120 day period will be extended for so long as negotiations with a prospective buyer or tenant are continuing.

6) **OUTSIDE BROKERS:** If Broker recognizes an outside broker representing the tenant in a transaction for which a commission is payable hereunder, Broker will split its compensation with the cooperating broker.

7) **ALTERNATIVE TRANSACTION:** If a proposed transaction covered by this Agreement turns into any other transaction, including, but not limited to, a sale, exchange, build to suit, option to purchase, or right of first refusal, then Broker will automatically, without the necessity of any further acts by Owner or Broker or an amendment to this Agreement, be Owner's sole and exclusive agent for such transaction and will be entitled to a commission on such transaction under the terms of this Agreement. If the commission computation is not addressed in the attached Schedule of Commissions, then the Owner shall pay to Broker a market rate commission as dictated by local custom.

8) **PROPERTY INFORMATION:** Owner represents that it has no knowledge of toxic, contaminated or hazardous substances, or defective conditions, at the Property except as Owner has informed Broker in writing. Owner authorizes Broker to transmit such information to prospective tenants.

9) **OTHER CLIENTS:** Owner acknowledges that Broker may represent potential tenants and consents to such dual representation.

10) FEES AND EXPENSES: If either party institutes legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and other costs so incurred. Any portion of a commission not paid to Broker when due will bear interest from the due date until paid at the legal rate of interest.

11) AUTHORITY: Owner represents that it is the owner of the Property and/or has the full right, power and authority to execute this Agreement and to consummate a transaction as provided herein, and to perform Owner's obligations hereunder. The individuals signing this Agreement represent that they are authorized signatories.

12) PROFESSIONAL ADVICE: Broker recommends that the Owner obtain legal, tax or other professional advice relating to this Agreement and the proposed leasing or sale of the Property, as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title, environmental aspects and compliance with the Americans With Disabilities Act. Broker will have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Owner and Broker. Owner further agrees that in determining the financial soundness of any prospective tenant or buyer, Owner will rely solely upon Owner's own investigation and evaluation, notwithstanding Broker's assistance in gathering any financial information.

13) NON-DISCRIMINATION: It is unlawful for either Owner or Broker to discriminate against any persons because of their race, color, religion, national origin, sex, disability or family status.

14) SURVIVAL: This Agreement is binding upon the parties hereto and their respective successors and assigns. The terms "Owner" and "Tenant" include affiliates, successors, assigns and nominees.

15) PUBLICITY: Owner hereby consents to Broker's publicizing its role in any transaction entered into, subject to Owner's reasonable editorial approval of such publicity.

16) COUNTERPARTS: This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement.

17) ARBITRATION OF DISPUTES: Owner and Broker agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If any party commences an action based on a dispute or claim to which this paragraph applies, without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such action. Owner and Broker agree that any dispute or claim in Law or equity arising between them regarding the obligation to pay compensation under this Agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitrator shall be a retired judge or justice, or an attorney with at least five years of commercial real estate experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05.

18) ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between Owner and Broker and supersedes all prior discussions. No modification of this Agreement will be effective unless made in writing and signed by both Owner and Broker. Owner acknowledges receipt of a copy of this Agreement and the Schedule of Commissions.

Sequoia Healthcare District

Bayside Capital Management Company, a California corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Date:

Date:

By: \_\_\_\_\_

Date:

## SCHEDULE OF COMMISSIONS

### A. LEASES

#### Leases:

6% of the rent for the First through Fourth Years or any fraction thereof, plus  
5% of the rent for the Fifth Year, plus  
4% of the rent for the remainder of the term.

Renewals; Extensions: 50% of the amount above for Leases.

Broker's fee for a month-to-month tenancy is one average month's rental with a minimum fee of \$2,000.

#### Assignment or Cancellation of Lease:

For an assignment or cancellation of a lease, the commission will be based on the rent for the unexpired portion of the lease term and computed at the rates set forth above, plus 5% of any other consideration payable to Tenant for such assignment or cancellation.

### CONDITIONS REGARDING LEASES

#### Renewals; Extensions; Expansions:

If a lease contains an option or other right to renew or extend the term or to lease additional space, and if the lease is renewed or extended or if a Tenant leases additional space, whether or not strictly pursuant to the option or right contained in the lease, Landlord shall pay to Broker, at the time of the renewal, extension or lease of additional space, an additional commission based on the aggregate rental for the renewal or extension term, or for such additional space. In the case of a renewal or extension, the commission shall be calculated at the above rates but at the percentage level that would have applied if the renewal or extension period were in force at the time the original lease was made, which for this listing agreement the fee is set at 50% of the total commission for leases.

#### Cancellation Clauses:

Broker will be paid a commission based upon the entire lease term notwithstanding any right of Landlord to cancel the lease. If Tenant has a right to cancel the lease after the term has commenced (and for reasons unrelated to casualty, condemnation, default and the like), the commission will initially be based upon the rental for the non-cancellable portion of the lease term plus the amount of any cancellation payment payable by Tenant; if such right is not thereafter exercised, Landlord will promptly pay Broker the balance of the commission. A lease will be deemed canceled only if Tenant vacates the premises. If a lease is terminated or amended and Tenant remains under a new or different arrangement, Broker shall be paid the balance of its commission. If a cancellation payment includes the unamortized commission, then Broker will be paid a full commission as if no right of cancellation existed.

#### Computation of Commissions:

Commissions shall be computed in accordance with the above rates based upon the aggregate rental set forth in the lease, including rental attributable to rent increases (but not tax or operating expense escalations) and to additional space required to be leased by Tenant. If a rental concession is made by Landlord allowing Tenant not to pay rent for the initial months of the lease term, then the commission shall be calculated on the average rental for the entire term with the first year being deemed to commence on the first day of the lease term whether or not rent is payable. If rental concessions are granted in lieu of Landlord performing construction or alteration work and with respect to any other allowances or concessions granted to Tenant whether in the form of a credit against rent, construction, decoration or otherwise, there shall be no deduction from the aggregate rent set forth in the lease.

#### Time of Payment:

Commissions on leases shall be paid 50% on the execution and delivery of the lease between Landlord and Tenant and 50% upon occupancy by Tenant. In the case of a lease cancellation, the commission shall be paid in full on the execution of the document canceling or terminating the lease.

**Purchase Option:**

If the lease contains an option or right to purchase, and if Tenant purchases the property during the term of the lease, whether or not strictly pursuant to the option or right, Landlord will pay to Broker, upon closing of the transaction, a sales commission as provided in this schedule. If the sale occurs during a period of the lease term for which Broker has been paid a leasing commission, the portion of Broker's share of the leasing commission attributable to the unexpired portion of the term will be credited against the sales commission. Broker will not be required to make a refund should the sales commission be less than the amount of the credit.

