

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 **FIFTH AMENDMENT TO LEASE NO. 24468**

2 **24468**

3 THIS FIFTH AMENDMENT TO LEASE NO. 24468 is made and entered, in
4 duplicate, as of September 4, 2008 for reference purposes only, pursuant to a minute
5 order adopted by the City Council of the City of Long Beach at its meeting on August 19,
6 2008, by and between the CITY OF LONG BEACH, a municipal corporation ("Lessee"),
7 and NGOC V. PHAM and NHIENT T. BUI, Husband and Wife (Successors in Interest)
8 ("Lessor").

9 WHEREAS, Lessee entered Lease No. 24468 for property located at 1957
10 Pacific Avenue and subsequent amendments to the Lease were made on April 30, 1996,
11 on August 17, 1999, June 20, 2002, and August 24, 2005; and

12 WHEREAS, the parties desire to amend the Lease again to extend the
13 term;

14 NOW, THEREFORE, in consideration of the mutual terms, covenants and
15 conditions contained in the Lease and herein, the parties agree as follows:

16 1. Section 2 of the Lease is hereby amended in its entirety to read as
17 follows:

18 "2. TERM. The term of this Lease shall commence at 12:01 a.m.
19 on September 1, 2008 and shall terminate at midnight on August 31, 2013
20 unless sooner terminated as provided herein.

21 This Fifth Amendment extends the term of the Lease from
22 September 1, 2008 through August 31, 2013. Provided Lessee is not in
23 default of the Lease, there shall be two options to renew at the discretion
24 of Lessee, for a period of three years each at the monthly base rent
25 schedule as outlined in Article 2 below and also provided Lessee give to
26 Lessor at least two hundred seventy (270) days prior written notice of
27 Lessee's intent to renew its Lease. The options to renew shall be
28 personal to Lessee only and not transferable to any entity not part of the

1 City of Long Beach. Lessor shall grant Lessee the one time right to cancel
2 the Lease between the thirty-sixth (36th) and the thirty-ninth (39th) month
3 of the extended Lease term subject to (1) Lessee providing Lessor with
4 270 days prior written notice, and (2) within ninety (90) days after such
5 notice, Lessee shall pay to Lessor the unamortized costs of the broker's
6 commission paid by Lessor and the following building improvement costs
7 identified in Article 3 as provided for herein: (i) remodel the kitchen with
8 new counters, sink, disposal and range, (ii) clean all air-ducts throughout
9 Premises, (iii) the new carpet allowance of \$30.00 per yard, (iv) install
10 blinds or sun shades on the South side of the building, and (v) rebalance
11 the HVAC system. The amortized period shall be sixty (60) months and
12 on a straight-line basis."

13 2. Section 4 of the Lease is hereby amended in its entirety to read as
14 follows:

15 "4. RENT. The monthly base rent for the leased premises shall be
16 as follows:

17 Months 1-12 \$9,200

18 Months 13-24 \$10,000

19 Months 25-36 \$10,300

20 Months 37-48 \$10,609

21 Months 49-60 \$10,927

22 The monthly rent shall be due on the 1st of each calendar month.

23 The monthly base rent for the first option period commencing
24 September 1, 2013 shall be \$11,255 and shall increase by three percent
25 (3%) on each September 1st thereafter. The monthly base rent for the
26 second option period commencing September 1, 2016 shall be \$12,299
27 and shall increase by three percent (3%) on each September 1st
28 thereafter.

1 In the event Lessee exercises the options to renew, then Lessor
2 shall provide Lessee with up to \$25,000.00 as a remodeling allowance for
3 each option exercised. The allowance money shall be spent only for
4 tenant improvements to the building.”

5 3. Section 5.1 shall be added in its entirety to this Lease and will read as
6 follows:

7 “Section 5.1 BUILDING IMPROVEMENTS. The Lessor, at the
8 Lessor’s sole cost and expense, shall provide the following improvements
9 to the building:

- 10 a) Replace the roof.
- 11 b) Repair water damaged areas and ceilings from the roof leaks.
- 12 c) Parking lot repairs/sealing/stripping.
- 13 d) Remodel kitchen with new counters, sink, disposal and range.
- 14 e) Clean all air-ducts throughout the premises.
- 15 f) Paint exterior of the building.
- 16 g) Provide an allowance of \$30.00 per yard for new carpet.
- 17 h) Install blinds or sun shades on the South side of the building.
- 18 i) Rebalance the HVAC system.

19 In order to determine the specifications of the above-listed items,
20 Lessor and Lessee shall share the costs equally (not to exceed \$6,000) to
21 engage the services of Heery International, Inc. who will prepare a Site
22 Assessment Report, develop a scope of work, prepare construction
23 documents, develop color and material guidelines, manage the
24 construction bidding process and oversee the construction phase of the
25 building improvement project.

26 The agreed upon plans and scope of work shall be bid by up to four
27 (4) licensed general contractors mutually approved by Lessor and Lessee.
28 Lessor shall be allowed to have its own qualified contractor participate in

1 the bidding process, subject to reasonable qualification standards
2 developed for all general contractors. Lessor shall enter into the contract
3 to secure the general contractor. The agreed upon work shall be
4 completed in a timely manner.

5 Lessor shall determine which contractor, of the previously agreed
6 upon qualified contractors bidding the jobs, shall be awarded the contract
7 to do the work.

8 Lessor shall comply with the California Labor Code Section 1720
9 regarding the payment of prevailing wages for the improvements
10 described herein.”

11 4. Section 7 of the Lease is hereby amended in its entirety to read as
12 follows:

13 “Section 7. UTILITIES, SERVICES AND TAXES. Lessee shall
14 continue to pay for all utilities, refuse, janitorial services, and property
15 taxes at 1957 Pacific Avenue. Per the terms of the existing Lease, the
16 Proposition 13 protection shall apply to the extended Lease term for an
17 annual amount of \$6,466.”

18 5. Lessor agrees, subject to applicable laws, rules and regulations, that
19 no person shall be subject to discrimination in the performance of this Agreement on the
20 basis of race, color, religion, national origin, sex, sexual orientation, gender identity,
21 AIDS, HIV status, age, disability, handicap, or Vietnam Era veteran status. Lessor shall
22 take affirmative action to ensure that applicants are employed and that employees are
23 treated fairly during employment without regard to any of these bases, including but not
24 limited to employment, upgrading, demotion, transfer, recruitment, recruitment
25 advertising, layoff, termination, rates of pay or other forms of compensation, and
26 selection for training, including apprenticeship.

27 6. Lessor, at Lessor's sole cost and expense, shall provide the following
28 improvements to the Building, if applicable:

- 1 a) Hazardous Material Removal (not caused by Tenant);
- 2 b) Seismic Retrofit;
- 3 c) Building Systems Improvement, Fire Alarm, Emergency Lighting, HVAC,
- 4 Electrical, Plumbing, and Seismic Bracing;
- 5 d) ADA Accessible Path of Travel (Handicap Ramp, Hardware, Restrooms,
- 6 etc.); installing ADA-compliant Restrooms (Men's & Women's).

7 If Lessor determines it is financially unworkable to complete the above
8 listed work as required by Code by January 30, 2009, then Lessee shall have a right to
9 cancel this Lease subject to the following: (1) Lessee shall provide Lessor with 180 days
10 prior written notice, and (2) within 90 days thereafter, Lessee shall deliver to Lessor the
11 unamortized costs actually spent of the following: (i) items d, e, g, h and i in the Building
12 Improvements provision (see Section 3 above), and (ii) commissions paid pursuant to
13 Section 7 below. The amortization period shall be sixty (60) months and on a straight-
14 line basis.

15 7. Lessor and Lessee acknowledge and agree that Cushman &
16 Wakefield of California, Inc. only represents Lessee and Belmont Partners represents
17 Lessor in this transaction. Lessor shall pay a commission in the amount of five percent
18 (5%) of the total value of the Lease for the first 5 years of the initial term. Said fee shall
19 be split equally between Cushman & Wakefield of California, Inc. and Belmont Partners.
20 Said fee shall be paid in two (2) equal payments, the first payment paid upon the full
21 execution of the Lease and the second payment within thirty (30) days after the
22 Commencement Date of the Lease extension. In the event Lessee exercises its option(s)
23 to renew the Lease, Lessor shall pay a fee in the amount of three percent (3%) of the
24 value of said renewal(s) which shall be due upon the commencement date of the
25 option(s) and shall be split equally between Belmont Partners and Cushman & Wakefield
26 of California, Inc.

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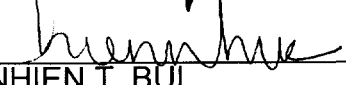
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8. Except expressly amended herein, all terms, covenants and conditions in Lease No. 24468 are ratified and confirmed and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this document to be executed with all formalities required by law as of the date first stated above.

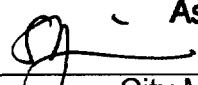
NGOC V. PHAM and NHIEN T. BUI
Husband and Wife Successors in Interest

10/14/08, 2008 By: 
NGOC V. PHAM

10/14/08, 2008 By: 
NHIEN T. BUI

"Lessor"

CITY OF LONG BEACH, a municipal Corporation

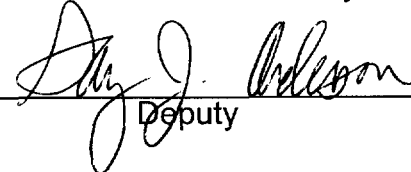
Oct 17, 2008 By: 
Assistant City Manager
City Manager

"Lessee"

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**

This Fifth Amendment to Lease No. 24468 is approved as to form on October 15, 2008.

ROBERT E. SHANNON, City Attorney

By: 
Deputy

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

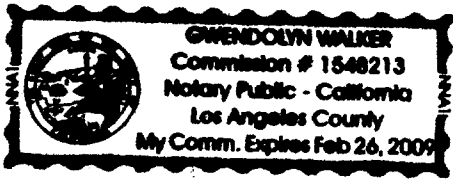
State of California

County of Los Angeles

On 10/14/08 before me, Gwendolyn Walker, Notary Public

personally appeared NGOC V. PHAM & THIEN T. BUI

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ they executed the same in ~~his~~ their authorized capacity(ies), and that by ~~his~~ her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Gwendolyn Walker
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

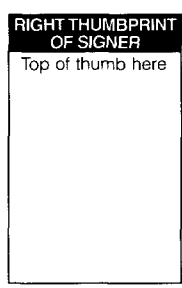
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

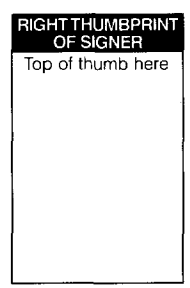
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____