



AGENDA ITEM NO. C-16

# COUNTY OF HUMBOLDT

For meeting of: November 18, 2003

DATE: NOVEMBER 10, 2003

TO: BOARD OF SUPERVISORS

FROM: KIMBERLY KERR, GENERAL SERVICES DIRECTOR

SUBJECT: ASSIGNMENT AND FIRST AMENDMENT TO HEALTH AND HUMAN SERVICES (HHS) LEASE AT 507 F STREET, EUREKA, AND TENANT ESTOPPEL AGREEMENT, AND SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

RECOMMENDATIONS:

That the Board of Supervisors:

1. Approve the Draft Assignment and First Amendment for the lease for 507 F Street, executed on January 14, 2003, with Kramer Properties, Inc. and authorize the Chair of the Board to sign upon approval from County Counsel and General Services Director regarding the language.
2. Approve and authorize the General Services Director to execute the Tenant Estoppel provided by the Bond Street Capital Corporation upon approval by County Counsel.
3. Approve and authorize the General Services Director to execute the Subordination, Non-Disturbance and Attornment Agreement provided by the Bond Street Capital Corporation upon approval by County Counsel.

Prepared by: Kim Kerr, General Services Director CAO Approval: 

REVIEW: Auditor \_\_\_\_\_ County Counsel RK Personnel \_\_\_\_\_ Risk Manager KK Other \_\_\_\_\_

**TYPE OF ITEM:**

- Consent
- Departmental
- Public Hearing
- Other \_\_\_\_\_

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT**

Upon motion of Supervisor  
seconded by Supervisor  
and unanimously carried by those members  
present, the Board hereby adopts the  
recommended action contained in this report.

**PREVIOUS ACTION/REFERRAL:**

Board Order No. \_\_\_\_\_  
Meeting of: \_\_\_\_\_

Dated: \_\_\_\_\_  
LORA CANZONERI Clerk of the Board

by: \_\_\_\_\_

DISCUSSION:

In January 2003, the County entered into a lease with Kramer Properties, Inc. for the property at 507 F Street in Eureka. The County took possession of the property in October 2003 after the improvements were completed.

In September 2003, Kramer Properties, Inc. transferred the property and premises by Corporation Deed to A&K Properties due to requirements from the financing entity. Because of the transfer of the property the lease now needs to be assigned to A&K Properties. Additionally, after the improvements at the property were completed, it was determined that the rentable space is less than originally indicated in the lease. Based on the reduction in rentable space, from 25,595 square feet to 25,131.6 square feet, the monthly rent is reduced from \$45,815.05 to \$44,986.00 resulting in \$829.05 savings per month. This requires that the lease be amended.

Finally, the County needs to agree to and sign the SNDA and Estoppel as indicated in the lease. Currently, these documents are under review and being modified to bring them into compliance with the lease. Upon approval from County Counsel, we are requesting that the General Services Director be authorized to sign these documents.

ALTERNATIVE:

The Board can elect not to approve the recommendations, but this will impact the Landlord and his ability to finalize his loan on the leased property.

FINANCIAL:

Approving the assignment and first amendment will reduce the rent by approximately \$829.05 per month due to the reduction in rentable space.

ATTACHMENTS:

Original Lease  
Draft Tenant Estoppel  
Draft Subordination, Non-Disturbance and Attornment Agreement

OTHER AGENCY:

County Counsel

**ASSIGNMENT AND FIRST AMENDMENT TO LEASE**

This Assignment and First Amendment to the Lease entered on January 14, 2003, by and between the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter called Tenant, Kramer Properties, Inc., a California Corporation, hereinafter called Assignor, and A&K Investments, LLC, an Alaska limited liability company hereinafter called Assignee and Landlord, is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**WHEREAS**, on January 14, 2003 Tenant and Kramer Properties, Inc., entered into a Lease for the use of the premises at 507 F Street, Eureka, for the purpose of Department of Health and Human Services, Administration offices; and

**WHEREAS**, on September 11, 2003 Kramer Properties, Inc., conveyed the property and premises by Corporation Deed to A&K Investments, LLC, thereby assigning the lease to A&K Investments, LLC; and

**WHEREAS**, Kramer Properties, Inc., and A&K Investments, LLC, seek Tenant's approval and consent to the assignment of the lease to A&K Investments, LLC; and

**WHEREAS**, A&K Investments, LLC, assumes all obligations, liabilities and responsibilities of Landlord as set forth in the lease; and

**WHEREAS**, Tenant and A&K Investments, LLC, as Landlord, desire to amend the lease to change the rentable square footage of premises; and

**WHEREAS**, TENANT and A&K Investments, LLC, as Landlord, desire to reduce the monthly rental amount.

**NOW, THEREFORE**, it is mutually agreed as follows:

**ASSIGNMENT AND CONSENT TO ASSIGNMENT OF LEASE**

1. Assignor, Kramer Properties, Inc., assigns to Assignee, A&K Investments, LLC, all of Assignor's right, title and interest in the lease entered into on January 14, 2003 between Tenant and Kramer Properties, Inc.
2. Assignee, A&K Investments, LLC, hereby accepts the assignment and assumes and agrees to perform each and every obligation of Assignor under the lease.
3. Assignee, A&K Investments, LLC, hereby assumes all obligations, liabilities and responsibilities of Assignor as Landlord under the lease.
4. Assignee, A&K Investments, LLC, and Assignor, Kramer Properties, Inc., shall be jointly and severally liable for any and all damages or breaches of the lease resulting from actions of Assignor, Kramer Properties, Inc., from January 14, 2003 to the date this assignment is

signed. Nothing in this assignment shall relieve Assignor, Kramer Properties, Inc., from liability for actions which occurred under the lease from January 14, 2003 to the date this assignment is signed.

5. Tenant hereby approves and consents to the assignment. This Consent will not be deemed consent to any subsequent assignment, but rather any subsequent assignment will require the consent of the Tenant pursuant to the Lease.

#### AMENDMENT TO LEASE

1. Paragraph 1.1 of the Lease is amended to read as follows:

1.1 Lease of Premises. Subject to Section 1.5 relating to Tenant's right to expand and contract the Premises, Landlord leases to Tenant and Tenant leases from Landlord those certain premises described in Exhibits A, and A1 attached hereto ("Premises"), which are located in the building commonly known as 507 F Street, Assessor's parcel No's 001-146-001, 001-146-008 and 001-104-002 in the City of Eureka, County of Humboldt ("Building"). Subject to verification as provided in Subsection 1.4.2, the Rentable Area (as defined in Section 1.4) and Useable Area (as defined in Section 1.4) of the Premises are 25,131.6 square feet and 22,070.6 square feet, respectively. The Building, the areas servicing the Building (including any adjacent parking structure and parking area), and the land on which the Building and those areas are located (as shown on the site plan attached to this Lease as Exhibit B) are sometimes collectively referred to as the "Real Property".

2. Paragraph 2.5.2.1 of the Lease is amended to read as follow:

2.5.2.1 First Option Term. Commencing on the first day of the First Option Term and continuing each year thereafter of the First Option Term, annual rent shall be adjusted by the percentage increase in the revised Consumer Price Index for all items (1967=100) U.S. City Average, West Cities Size B-C, as published by the United States Department of Labor, Bureau of Labor Statistics (called "the Index" in this Lease) for the prior calendar year. In calculating this percentage increase, the most current Index immediately preceding the date of annual adjustment during the extended term shall be used. In the event the Index is either unavailable, is no longer published, or is calculated on a significantly different basis following the date of this Lease, the most comprehensive official Index published which most closely approximates the rate of inflation shall be substituted in place of the Index. July 2003 shall be the base month for this adjustment. On adjustment of the rent in accordance with this paragraph, Landlord shall execute a letter stating the adjustment. In no event shall the rent be less than Forty Four Thousand Nine Hundred Eighty Six Dollars (\$44,986.00) per month. Regardless of the CPI percentage change, the increase or decrease for any one year will be no more than three percent (3%).

3. Paragraph 4.1 of the Lease is amended to read as follows:

4.1 Definition of "Rent"--Limited Setoff. Tenant shall pay to Landlord rent ("Rent") in equal monthly installments of Forty Four Thousand Nine Hundred Eighty Six Dollars (\$ 44,

986.00 [\$1.79] per sq. ft. of the Rentable Area) in advance on or before the first day of every calendar month during the Lease Term, without any setoff or deduction except as provided in Section 5.1 and Section 20.2. Commencing on the first day of the second year and continuing each year thereafter during the initial term and first option term, annual rent shall be adjusted by the percentage increase in the revised Consumer Price Index for all items (1967=100) U.S. City Average, West Cities Size B-C, as published by the United States Department of Labor, Bureau of Labor Statistics ( called "the Index" in this lease) for the prior calendar year. In calculating this percentage increase, the most current Index available on the date of commencement of the prior term and the most current Index available immediately preceding the date of annual adjustment during the extended term shall be used. In the event the Index is either unavailable, is no longer published, or is calculated on a significantly different basis following the date of this Lease, the most comprehensive official Index published which most closely approximates the rate of inflation shall be substituted in place of the Index. July 2003 shall be the base month for this adjustment. On adjustment of the rent in accordance with this section, Landlord shall execute a letter stating the adjustment. In no event shall the rent be less than Forty Four Thousand Nine Hundred Eighty Six Dollars (\$44,986.00) per month. Regardless of the U.S. City Average, West Cities, B-C, the increase or decrease for any one year will be no more than 3 percent (3%). Payment shall be made at the address set forth in Section 19.3 or at any other place that Landlord may from time to time designate in writing.

4. Paragraph 19.3 of the Lease is amended to read as follows:

Addresses. Addresses for purposes of giving notice are set forth below:

Tenant	County of Humboldt General Services Real Property Division 825 Fifth Street, Room 103 Eureka, CA 95501
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Landlord	A&K Investment, LLC 1653 Myrtle Avenue Eureka, CA 95501
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5. In all other respects the Lease entered into on January 14, 2003 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have executed this Assignment and First

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