

CONTRACT SUMMARY SHEET

TO: THE OFFICE OF THE CITY CLERK,
COUNCIL/PUBLIC SERVICES DIVISION
ROOM 395, CITY HALL

DATE: 06/22/22

(PLEASE DO NOT STAPLE THE CONTRACT FOR THE CLERK'S FILE)

FORM MUST BE TYPEWRITTEN

FROM (DEPARTMENT): General Services, Real Estate Services Division

CONTACT PERSON: W. Lee PHONE: 213-922-8554

CONTRACT NO.: C-136072 COUNCIL FILE NO.: _____

ADOPTED BY COUNCIL: _____
DATE

APPROVED BY BPW: _____
DATE

NEW CONTRACT _____
AMENDED AND RESTATED _____
ADDENDUM NO. _____
SUPPLEMENTAL NO. _____
CHANGE ORDER NO. _____
AMENDMENT ⁵ _____

CONTRACTOR NAME: Mayfair Lofts LLC

TERM OF CONTRACT: 1/12/21 THROUGH: 7/31/22

TOTAL AMOUNT: _____

PURPOSE OF CONTRACT:

Interim Housing - Project Roadmap

FIFTH AMENDMENT TO EMERGENCY OCCUPANCY
AGREEMENT (CONTRACT # _____)
BETWEEN THE CITY OF LOS ANGELES
AND MAYFAIR LOFTS LLC

This Fifth Amendment to Emergency Occupancy Agreement (Contract # _____) ("Fifth Amendment"), dated for reference purposes as of _____, 2022, is entered into by and between the City of Los Angeles, a municipal corporation, acting by and through its Department of General Services ("City"), and Mayfair Lofts LLC, a California limited liability company ("Owner").

RECITALS

- A. On or about _____, 2020, City and Owner entered into an Emergency Occupancy Agreement (Contract # _____) ("Occupancy Agreement"), pursuant to which Owner granted City the right to use and occupy rooms at the Mayfair Hotel ("Hotel"), located at 1256 West 7th Street, Los Angeles, CA 90017, in accordance with the terms and conditions of the Occupancy Agreement.
- B. Pursuant to the terms of the Occupancy Agreement, City has exercised three (3) options to extend the Term (as defined in the Occupancy Agreement), which is currently scheduled to expire on January 12, 2021.
- C. On or about _____, City and Owner amended the Occupancy Agreement to extend the Term to March 26, 2021, and to revise the schedule of minimum guaranteed rent to be paid by City to Owner ("First Amendment").
- D. On or about _____, City and Owner amended the Occupancy Agreement to extend the Term to August 31, 2021, and to revise the schedule of minimum guaranteed rent to be paid by City to Owner ("Second Amendment").
- E. On or about _____, City and Owner amended the Occupancy Agreement to extend the Term to December 31, 2021, and to revise the schedule of minimum guaranteed rent to be paid by City to Owner ("Third Amendment").
- F. On or about _____, City and Owner amended the Occupancy Agreement to extend the Term to April 29, 2022, and to revise the schedule of minimum guaranteed rent to be paid by City to Owner ("Fourth Amendment").
- G. City and Owner wish to amend the Occupancy Agreement to extend the Term to July 31, 2022, and to revise further the schedule of minimum guaranteed rent to be paid by City to Owner, along with other changes, as more particularly set forth in this Fifth Amendment.

AGREEMENT

1. **Amendments.** In consideration of the promises and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by each party hereto, City and Owner agree that the Occupancy Agreement be amended effective as of the Amendment Date (defined below) as follows:

- A. **Term.** The Term of the Occupancy Agreement is hereby extended through July 31, 2022.
- B. **Rent.** Paragraph 4 of the Occupancy Agreement is hereby amended to provide in its entirety as follows:

4. Rental payments shall be paid by the City on the 1st and 15th day of each calendar month during the Term and during any holdover period, from legally available funds, in arrears (based on an invoice provided by Owner to the City at least thirty (30) business days prior to the payment due).

(a) During the first two (2) weeks (i.e., 14 calendar days) of the Term (the “First Two Weeks”), the rent paid by the City shall be \$138 times the actual number of room nights occupied by the City or its invitees during the First Two Weeks, plus any transient occupancy taxes actually impose on such occupancy (“TOT”);

(b) After the First Two Weeks and through January 11, 2021, the rent paid by the City for any given payment period within that window of time shall be the greater of: (i) \$138 times the actual number of room nights occupied by the City or its invitees during that payment period, plus any applicable TOT and (ii) \$138 times 206 rooms (given that the City has agreed to guarantee payment on a minimum 70% occupancy of the 294 rooms during this portion of the Term) times the number of days in that payment period, plus any applicable TOT (this guaranteed amount, the “Minimum Guaranteed Rent”);

(c) From January 12, 2021, through February 14, 2021, the rent paid by the City for any given payment period within that window of time shall be the greater of: (i) \$138 times the actual number of room nights occupied by the City or its invitees during that payment period, plus any applicable TOT and (ii) \$138 times 221 rooms (given that the City has agreed to guarantee payment on a minimum 75% occupancy of the 294 rooms during this portion of the Term) times the number of days in that payment period, plus any applicable TOT; and

(d) From February 15, 2021, through February 28, 2021, the rent paid by the City for any given payment period within that window of time shall be the greater of: (i) \$138 times the actual number of room nights occupied by the City or its invitees during that payment period, plus any applicable TOT and (ii) \$138 times 147 rooms (given that the City has agreed to guarantee payment on a minimum 50% occupancy of the 294 rooms during this portion of the Term) times the number of days in that payment period, plus any applicable TOT; and

(e) From March 1, 2021, through March 17, 2021, the rent paid by the City for any given payment period within that window of time shall be the greater of: (i) \$138 times the actual number of room nights occupied by the City or its invitees during that payment period, plus any applicable TOT and (ii) \$138 times 103 rooms (given that the City has agreed to guarantee payment on a minimum 35% occupancy of the 294 rooms during this portion of the Term) times the number of days in that payment period, plus any applicable TOT; and

(f) From March 18, 2021, through March 26, 2021, the rent paid by the City shall be \$138 times the actual number of room nights occupied by the City or its invitees, plus any transient occupancy taxes actually impose on such occupancy (“TOT”); and

(g) From March 27, 2021, through July 25, 2021, the rent paid by the City for any given payment period within that window of time shall be the greater of: (i) \$138 times the actual number of room nights occupied by the City or its invitees during that payment period, plus any applicable TOT and (ii) \$138 times 209 rooms (given that the City has agreed to guarantee payment on a minimum 75% occupancy of the 278 rooms during this portion of the Term) times the number of days in that payment period, plus any applicable TOT; and

(h) From July 26, 2021, through September 14, 2021, the rent paid by the City for any given payment period within that window of time shall be the greater of: (i) \$138 times the actual number of room nights occupied by the City or its invitees during that payment period, plus any applicable TOT and (ii) \$138 times 195 rooms (given that the City has agreed to guarantee payment on a minimum 70% occupancy of the 278 rooms during this portion of the Term) times the number of days in that payment period, plus any applicable TOT; and

(i) From September 15, 2021, through October 31, 2021, the rent paid by the City for any given payment period within that window of time shall be the greater of: (i) \$138 times the actual number of room nights occupied by the City or its invitees during that payment period, plus any applicable TOT and (ii) \$138 times 209 rooms (given that the City has agreed to guarantee payment on a minimum 75% occupancy of the 278 rooms during this portion of the Term) times the number of days in that payment period, plus any applicable TOT; and

(j) From November 1, 2021, through November 15, 2021, the rent paid by the City for any given payment period within that window of time shall be the greater of: (i) \$138 times the actual number of room nights occupied by the City or its invitees during that payment period, plus any applicable TOT and (ii) \$138 times 139 rooms (given that the City has agreed to guarantee payment on a minimum 50% occupancy of the 278 rooms during this portion of the Term) times the number of days in that payment period, plus any applicable TOT; and

(k) From November 16, 2021, through November 30, 2021, the rent paid by the City for any given payment period within that window of time shall be the greater of: (i) \$138 times the actual number of room nights occupied by the City or its invitees during that payment period, plus any applicable TOT and (ii) \$138 times 98 rooms (given that the City has agreed to guarantee payment on a minimum 35% occupancy of the 278 rooms during this portion of the Term) times the number of days in that payment period, plus any applicable TOT; and

(l) From December 1, 2021, through December 31, 2021, the rent paid by the City shall be \$138 times the actual number of room nights occupied by the City, plus any transient occupancy taxes actually imposed on such occupancy; and

(m) From January 1, 2022, through March 31, 2022, the rent paid by the City for any given payment period within that window of time shall be the greater of: (i) \$138 times the actual number of room nights occupied by the City or its invitees during that payment period, plus any applicable TOT and (ii) \$138 times 139 rooms (given that the City has agreed to guarantee payment on a minimum 50% occupancy of the 278 rooms during this portion of the Term) times the number of days in that payment period, plus any applicable TOT; and

(n) From April 1, 2022, through May 15, 2022, the rent paid by the City shall be \$138 times the actual number of room nights occupied by the City, plus any transient occupancy taxes actually imposed on such occupancy; and

(o) From May 16, 2022, through June 30, 2022, the rent paid by the City for any given payment period within that window of time shall be the greater of: (i) \$138 times the actual number of room nights occupied by the City or its invitees during that payment period, plus any applicable TOT and (ii) \$138 times 139 rooms (given that the City has agreed to guarantee payment on a minimum 50% occupancy of the ~~278~~ rooms during this portion of the Term) times the number of days in that payment period, plus any applicable TOT; and

252 ROOMS

(p) From July 1, 2022, through July 31, 2022, the rent paid by the City shall be \$138 times the actual number of room nights occupied by the City, plus any transient occupancy taxes actually imposed on such occupancy. If, however, on any date after July 15, 2022, there is a COVID-19 outbreak among City occupants at the Hotel such that they cannot be reasonably relocated therefrom, the Term shall be extended by two (2) weeks from such date, and the rent paid by the City for any given payment period within that window of time shall be the greater of: (i) \$138 times the actual number of room nights occupied by the City or its invitees during that payment period, plus any applicable TOT and (ii) \$138 times 84 rooms (given that the City has agreed to guarantee payment on a minimum 30% occupancy of the ~~278~~ rooms during this portion of the Term) times the number of days in that payment period, plus any applicable TOT.

252 ROOMS

With respect to each reference to \$138 above, if the subject room has two (2) occupants rather than one (1) occupant, such amount would instead be \$156.

When the City's occupancy of the Hotel is below 35% of the ~~278~~ rooms (i.e., fewer than 98 rooms), the Owner shall not be contractually obligated under this Occupancy Agreement to provide food and beverages to City guests and staff notwithstanding anything to the contrary herein.

252 ROOMS

Owner shall provide a monthly invoice to the City by sending an email to GSD.Projectroomkey@lacity.org, citing each room occupied, multiplied by the number of days actually occupied in that month, and then multiplied by the daily room rate or the aforementioned minimum guaranteed rent ("Minimum Guaranteed Rent"), as applicable. Rent shall be paid to Owner at the address specified in Paragraph 5 or to such other address as the Owner may designate by a notice in writing.

Invoices to City shall be sent to:

City of Los Angeles
c/o Department of General Services
Real Estate Services Division
Suite 201, City Hall South
111 East First Street
Los Angeles, CA 90012
Attention: Director of Real Estate Services

2. **Defined Terms.** Each capitalized term used herein shall have the same meaning as given to such terms in the Occupancy Agreement, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment unless expressly superseded by the terms of this Fifth Amendment.

3. **Occupancy Agreement Effective.** City and Owner agree that the Occupancy Agreement, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment, and all of their terms, as modified by this Fifth Amendment, remain in full force and effect, and City and Owner hereby affirm and reaffirm the Occupancy Agreement, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment, as modified by this Fifth Amendment. Except as set forth in this Fifth Amendment, all of the terms and provisions of the Occupancy Agreement, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment shall remain unmodified and in full force and effect.

4. **Entire Agreement.** This Fifth Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. In case of any inconsistency between the provisions of the Occupancy Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, and this Fifth Amendment, the provisions of this Fifth Amendment shall govern and control.

5. **Headings.** The headings in this Fifth Amendment are inserted for convenience of reference only and shall not affect the interpretation of this Fifth Amendment.

6. **Representation and Warranty.** Each of City and Owner represents and warrants to the other that, as to itself, (i) it has the full right and authority to enter into this Fifth Amendment, and (ii) this Fifth Amendment and all instruments, documents and agreements to be executed by such party in connection herewith are, or when delivered shall be, duly authorized, executed and delivered by it and are, or when delivered shall be, valid and enforceable obligations of such party.

8. **Covid-Vaccination Requirement.** Employees of the Owner and persons working on its behalf, including without limitation subcontractors (collectively, "Owner Personnel") must be fully vaccinated against the novel coronavirus 2019 ("COVID-19") prior to (1) interacting in person with City employees, contractors, or volunteers, (2) working on City property while performing services under this Agreement, or (3) coming into contact with the public while performing services under the Occupancy Agreement, as amended, (collectively, "In-Person Services"). "Fully vaccinated" means that fourteen (14) or more days have passed since Owner Personnel have received the final dose of a two-dose COVID-19 vaccine series (e.g., Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (e.g., Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention. Prior to assigning Owner Personnel to perform In-Person Services, the Owner shall obtain proof that such Owner Personnel have been fully vaccinated. The Owner shall retain such proof

for the term of the Occupancy Agreement, as the same may be extended. The Owner shall grant medical and religious exemptions to Owner Personnel as required by law.

8. **Counterparts; Electronic Signatures.** This Fifth Amendment and any other document necessary for the consummation of the transaction contemplated by this Fifth Amendment may be executed in counterparts, including both counterparts that are executed on paper and counterparts that are in the form of electronic records and are executed electronically. An electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Fifth Amendment and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called pdf format shall be legal and binding and shall have the same full force and effect as if a paper original of this Fifth Amendment had been delivered and had been signed using a handwritten signature. Owner and City (i) agree that an electronic signature, whether digital or encrypted, of a party to this Fifth Amendment is intended to authenticate this writing and to have the same force and effect as a manual signature, (ii) intended to be bound by the signatures (whether original, faxed or electronic) on any document sent or delivered by facsimile or, electronic mail, or other electronic means, (iii) are aware that the other party will rely on such signatures, and (iv) hereby waive any defenses to the enforcement of the terms of this Fifth Amendment based on the foregoing forms of signature. If this Fifth Amendment has been executed by electronic signature, all parties executing this document are expressly consenting under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 ("E-SIGN") and California Uniform Electronic Transactions Act ("UETA") (Cal. Civ. Code § 1633.1, et seq.), that a signature by fax, email or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment as of the dates written below.

CITY:

CITY OF LOS ANGELES, a municipal corporation,
acting by and through its Department of General
Services

By: 
Name: Tony M. Royster
Title: General Manager
Date: 6-23-2022

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By: 
Name: Saro Balian
Title: Deputy City Attorney
Date: June 22, 2022

ATTEST:

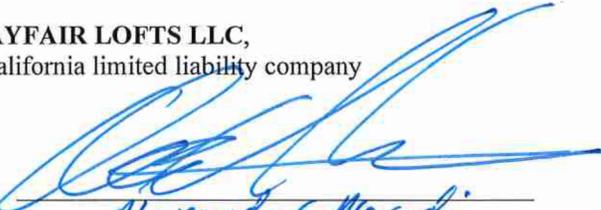
HOLLY L. WOLCOTT, City Clerk

By:  
Deputy
Date: 7/27/2022

Date: May 16, 2022

OWNER:

MAYFAIR LOFTS LLC,
a California limited liability company

By: 
Name: Alexander Meradi
Its: Manager