

CONTRACT SUMMARY SHEET

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

DATE: 06/26/2023

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

FORM MUST BE TYPEWRITTEN

FROM (DEPARTMENT): Department of General Services

CONTACT PERSON: Zachary Millett PHONE: 213-926-9483

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 2nd

CONTRACTOR NAME: Mayfair Lofts, LLC

TERM OF CONTRACT: Date of Attestation THROUGH: _____

TOTAL AMOUNT: \$3,445,973.48

PURPOSE OF CONTRACT:

Second Settlement and Release Agreement with the Mayfair Hotel, located at 1256 West 7th. Street. This second settlement agreement is part of the Project Roomkey closeout process with the hotel, and specifies a release of claims and waiver relating to furniture replacement (partial).

SETTLEMENT AND RELEASE

(Mayfair Hotel - Certain Claims Relating to Furniture and Fixtures Only)

This Settlement and Release (Mayfair Hotel – Certain Claims Relating to Furniture and Fixtures Only) (this “Agreement”), dated, for reference purposes only, as of June _____, 2023, is entered into by and between Mayfair Lofts, LLC, a California limited liability company (“Owner”), on the one hand, and the CITY OF LOS ANGELES, a municipal corporation (“City”), acting by and through its Department of General Services, on the other. Owner and City are referred to herein collectively as the “Parties” and individually as a “Party”.

RECITALS

A. Owner and City entered into that certain Emergency Occupancy Agreement, attested by the City Clerk of the City on July 10, 2020 (Contract Number C-136072) (as amended from time to time, the “Occupancy Agreement”), pursuant to which Owner granted City the right to use and occupy rooms at that certain hotel located at 1256 West 7th Street, Los Angeles, California, commonly known as the Mayfair Hotel (“Premises”), in accordance with the terms and conditions of the Occupancy Agreement;

B. The Occupancy Agreement has expired;

C. City’s use of the Premises pursuant to the Occupancy Agreement resulted in certain damages/alleged damages to the Premises, as well as furniture, fixtures, equipment, and personal properties within the Premises (collectively, “Damages”);

D. The Parties are currently negotiating a transaction pursuant to which City would purchase from Owner, and Owner would sell to City, the Premises in its as-is condition, at a purchase price that reflects the existing Damages (“Sale Transaction”).

E. The Parties have negotiated a settlement structure for all claims/potential claims relating to the Damages;

F. With respect to certain Damages relating to the paint and flooring of the Premises, the Parties have previously entered into that certain Settlement and Release (Mayfair Hotel - Certain Claims Relating to Flooring and Paint Only), dated as of April 19, 2023 (“Prior Settlement and Release”);

G. In addition to the settlement of those Damages addressed under the Prior Settlement and Release (“Previously-Released Matters”), and with respect to the Released Matters (defined below), the Parties have mutually agreed to a settlement amount, subject to the terms and conditions of this Agreement;

H. Owner has agreed to waive and release the Released Matters, subject to the terms and conditions of this Agreement; and

I. The Parties intend to address the rest of the claims/potential claims relating to the remaining Damages (“Unreleased Matters”; i.e., all claims/potential claims other than the Released Matters and the Previously-Released Matters) as part of the Sale Transaction, as more particularly discussed below.

NOW, THEREFORE, in mutual consideration of the promises, covenants, and terms contained herein and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties hereby agree as follows:

AGREEMENT

1. Payment by City to Owner. City shall pay to Owner a total amount of \$3,445,973.48 (the “Payment Amount”) as full consideration for Owner’s release and wavier set forth below in Section 2 and Section 3 of this Agreement and calculated as shown on Exhibit A. Within ten (10) business days after the date the Office of the City Clerk of Los Angeles attests this Agreement, City shall pay to Owner the Payment Amount.

2. Release of Claims Relating to Certain Damages. Upon payment of the Payment Amount, but not before, Owner, for itself and any person or entity claiming by, through or under Owner and its and their respective successors and assigns, does forever release, discharge and acquit City, including its boards, commissions, departments, agencies, officers, agents, employees, successors, assignees, contractors, licensees, and invitees (collectively with City, the “City Parties”), of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or any relationship, acts, omissions, misfeasance, malfeasance, cause or causes of action, judgments, debts, controversies, damages, costs, losses and expenses, of every type, kind, nature, description or character, and irrespective of how, why, or by reason of what facts, whether heretofore or now existing, or which could, might or may now or hereafter be claimed to exist, of whatever kind, name or nature, whether known or unknown, past or present, latent or patent, suspected or unsuspected, anticipated or unanticipated, liquidated or unliquidated, each as though fully set forth herein at length, which in any way arise out of, are connected with, or relate to the subset of Damages relating to those itemized categories referenced in Exhibit A attached hereto (collectively, the “Released Matters”). For clarification purposes, the term Released Matters shall exclude claims/potential claims for other Damages not specifically released herein, including, but not limited to, any alleged holdover or loss of revenue relating to the Damages.

3. Waiver of Civil Code Section 1542 by Owner. Owner hereby agrees, represents and warrants to City that it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and it further agrees, represents and warrants that this Agreement has been negotiated and agreed upon in light of that realization and that it nevertheless hereby intends to release, discharge and acquit the City Parties, and each of them, from any and all such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which in any way arise out of, are connected with, or relate to, the Released Matters. In furtherance of this intention, Owner expressly waives any and all rights conferred upon it by the provisions of California Civil Code

Section 1542, and expressly consents that this Agreement shall be given full force and effect according to each and all of its express terms and provisions. California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Owner hereby understands and acknowledges the significance and consequences of such release and specific waiver of California Civil Code Section 1542 and has been advised by independent legal counsel concerning the same.

By signing its initials here, Owner certifies that it has read, understood, and waives the protection of California Civil Code section 1542:

Owner: 

4. Binding upon Successors. This Agreement and each of its terms shall be binding upon and inure to the benefit of the Parties' successors in interest, assignees, heirs, personal representatives, administrators, executors, and trustees.

5. No Admission of Liability. By executing this Agreement, the Parties do not admit any liability, obligation, or fault. Neither this Agreement nor any of its terms shall operate or be construed as an admission of any liability, obligation, or fault.

6. Entire Agreement. This Agreement constitutes the entire agreement by and between the Parties regarding the Release Matters. This Agreement supersedes and merges all prior and contemporaneous negotiations, representations, understandings, and agreements regarding the Released Matters.

7. Amendments. Any amendment to or modification of this Agreement must be in writing and signed by all of the Parties.

8. Waiver. Failure to demand compliance with or prosecute a breach of any term of this Agreement shall not be deemed a waiver of the term or the breach. The waiver of a breach must be in writing and signed by the Party waiving the breach. Such waiver of a breach shall neither operate nor be construed as a waiver of any other breach of this Agreement or as a continuing waiver.

9. Choice of Law. As an agreement negotiated, drafted, executed, and to be performed wholly within the State of California, this Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts-of-law principles.

10. Venue. Any action or proceeding arising out of or relating to this Agreement shall be initiated and maintained exclusively in the Superior Court of the State of California for the County of Los Angeles, without regard to forum-non-conveniens principles.

11. Supplemental Documents and Actions. The Parties shall execute all supplemental documents and take all actions necessary, if any, to give full force and effect to the terms of this Agreement.

12. Good Faith and Cooperation. The Parties shall act in good faith and cooperate fully with one another in carrying out the intent of this Agreement.

13. Representation and Warranties. The Parties hereby represent and warrant as follows:

a. The Parties have been represented in the negotiation and preparation of this Agreement by legal counsel of each Party's choice. Before executing this Agreement, the Parties read this Agreement in its entirety (or had it read and explained to such Party), consulted with legal counsel about its contents, and fully understood the legal effects of each of its terms. Each Party executed this Agreement voluntarily and knowingly.

b. Each Party, to its satisfaction and as it deems necessary, has investigated or been apprised of the facts and law relevant to this Agreement. Neither Party has relied on any representation of the other, whether factual or legal, that is not expressly referenced herein.

c. In executing this Agreement, each Party relies solely upon this Agreement's contents, and not upon any extrinsic promise or representation. Neither Party has not any promise or representation that is not expressly referenced herein to induce the other to execute this Agreement.

d. Owner has full authority to release and waive the Released Matters, as set forth herein, and has not heretofore assigned, subrogated, or otherwise transferred any claim released by this Agreement.

14. No Assignment. Owner shall not assign, subrogate, or otherwise transfer any claim released by this Agreement. If a third party in privity with Owner institutes any action or proceeding based on or related to Owner's putative assignment, subrogation, or transfer of a released claim, Owner shall defend, indemnify, and hold harmless the City Parties against all resulting damages and incurred expenses, including attorney fees.

15. Recitals Incorporated by Reference. By this reference, each of the recitals of this Agreement is incorporated herein.

16. Severability. The Parties believe that this Agreement and each of its terms are valid and enforceable. If any term of this Agreement is found to be invalid or unenforceable for any

reason, such a finding shall in no way affect the other terms' validity and enforceability, provided it does not result in a failure of consideration.

17. Construction. The Parties cooperatively negotiated and prepared this Agreement through their respective legal counsel. This Agreement reflects and implements the Parties' mutual intent. None of its terms shall be interpreted for or against any Party because such Party requested or drafted the term.

18. Headings. Paragraph headings are included only for the reader's convenience and have no effect on this Agreement's substantive terms.

19. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and, when taken together, shall constitute one agreement. A photocopied, scanned, faxed, or emailed signature of a Party shall have the same force and effect as the original signature of that Party.

20. Signing Authority. Each person signing this Agreement on behalf of a Party represents and warrants that he or she has the authority to execute this Agreement on behalf of that Party.

21. Settlement of Unreleased Matters. Owner and City's negotiation team have mutually determined that a third and final payment from City to Owner in the amount of \$6,055,467.40 ("Final Payment Amount") would be appropriate as full consideration for Owner's release and waiver of all of the Unreleased Matters in connection with the Sale Transaction. Owner acknowledges that such payment would require a future allocation of funds by the City Council of the City and its relevant committee(s), at their sole and absolute discretion. The Parties intend to settle the Unreleased Matters as part of the Sale Transaction. If and when the Parties enter into a purchase and sale agreement for the Sale Transaction, such purchase and sale agreement would address the payment of the Final Payment Amount and settlement of the Unreleased Matters, both in situations where closing occurs under the said agreement and where closing does not occur thereunder. In the event (i) it becomes apparent that the Parties will not enter into a purchase and sale agreement for the Sale Transaction, or (ii) the Sale Transaction fails to close prior to August 31, 2023 (collectively, "Termination Event"), City agrees to, as soon as practicable (but no later than twenty (20) business days, excluding any City Council recess period(s), after the Termination Event), (x) request the City Council and its relevant committee(s) to approve an allocation of funds in order for the City to pay Owner the Final Payment Amount as full consideration for Owner's release and waiver of all of the Unreleased Matters (except for claims/potential claims relating to any alleged holdover or loss of revenue relating to the Occupancy Agreement), which approval shall be subject to the sole and absolute discretion of the City Council and its relevant committee(s), and (y) if and when such approval is obtained, execute a settlement agreement pertaining to the Unreleased Matters and payment of the Final Payment Amount.

[signature page follows]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed and delivered as of the dates written below.

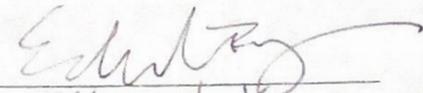
CITY:

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: June 26, 2023

APPROVED AS TO FORM:

HYDEE FELDSTEIN SOTO, City Attorney

By: 
Name: Edward Young
Title: Deputy City Attorney
Date: 6-23-23

ATTEST:

HOLLY L. WOLCOTT, City Clerk

By: _____
Deputy
Date: 06/29/2023

OWNER:

MAYFAIR LOFTS, LLC, a California limited liability company

By: 
Name: Alexander Moradi
Title: Manager
Date: 6/23/23

APPROVED AS TO FORM:

JEFFER MANGELS BUTLER & MITCHELL LLP

By: _____
Name: _____
Title: _____
Date: _____

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed and delivered 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: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

HYDEE FELDSTEIN SOTO, City Attorney

By: _____
Name: _____
Title: _____
Date: _____

ATTEST:

HOLLY L. WOLCOTT, City Clerk

By: _____
Deputy
Date: _____

OWNER:

MAYFAIR LOFTS, LLC, a California limited liability company

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

JEFFER MANGELS BUTLER & MITCHELL LLP

By: *Daniel Wiesel*
Name: Daniel Wiesel
Title: Partner
Date: 06/23/2023

Exhibit A

King Bed	\$122,100.00
King Mattress	\$45,942.00
Queen Bed	\$21,750.00
Queen Mattress	\$7,809.00
Double Bed	\$166,750.00
Double Mattress	\$57,984.00
Murphy Bed	\$470,450.00
Murphy Mattress	\$48,500.00
Night Stands	\$239,750.00
Tulip Lamps	\$142,025.00
Hanging Light	\$15,600.00
Desk Lamp	\$48,068.48
Desk Chair	\$220,400.00
Desk	\$453,250.00
Tall Lounge Chair	\$106,950.00
Cube Ottoman	\$124,640.00
Rectangular Ottoman	\$185,565.00
Wall Mirror	\$145,000.00
Window Treatments (Installed)	\$122,640.00
Removal & Disposal (not including carpet)	\$0.00
Delivery & Install	\$700,800.00
Warehouse/Storage (not needed)	\$0.00
Total	\$3,445,973.48