

Recording Requested By:
Lisa Wolfe, City Clerk

Recorded in Official _____, Solano County

Skip Thomson
Assessor/Recorder

8/17/2004
12:29 PM
AR59
6R

When Recorded Mail To:

P City of Benicia

City of Benicia
250 East L Street
Benicia, CA. 94510

Doc#: 200400114352

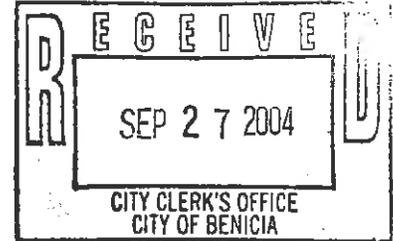
Titles: 1 Pages: 17



Fees	0.00
Taxes	0.00
Other	0.00
PAID	\$0.00

ATTN: Lisa Wolfe, City Clerk

Third Lease Amendments



**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Berding & Weil LLP
Attn: Steven S. Weil, Esq.
Attn: Scott W. Singer, Esq.
3240 Stone Valley Road West
Alamo, CA 94507
(925) 838-2090

APN: _____

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THIRD LEASE AMENDMENT

THIS THIRD LEASE AMENDMENT (this "Third Amendment"), dated as of December 15, 2003, is made and entered into by and between THE CITY OF BENICIA, a California municipal corporation, ("Landlord") and PORTSIDE VILLAGE OWNERS' ASSOCIATION, a California nonprofit mutual benefit corporation ("Tenant", as successor to Kaufman & Broad of Northern California, Inc., a California corporation, ("KB"), pursuant to that certain Assignment of Benicia Marina Lease Agreement - Phase II Condominiums Parcel and Option to Purchase Fee Title to Real Property and Exercise of Option, dated June 13, 1997). The term Party or Parties shall refer to a referenced party, and if no party is referenced, then to all parties.

RECITALS

A. On or about June 10, 1982 Landlord and Old Capitol Marina, Ltd., a California Limited Partnership ("OCM") entered into that certain lease (the "Original Lease") for certain real property in the City of Benicia, Solano County, California, consisting of approximately One Million Six Hundred Fifty Two Thousand Eight Hundred Thirty Three (1,652,833) square feet of area (the "Project Master Area").

B. On or about April 22, 1990, Landlord entered into that certain Restated and Amended Benicia Marina Lease Agreement (Phase II Condominiums Parcel) (the "Restated Lease Agreement") with Southern California Federal Savings and Loan Association ("SCFLA", predecessor to KB). The Restated Lease Agreement created Phase II (the "Property"), as described and set forth in detail in Exhibit A, and purported to create several other leases in the vicinity of Phase II.

C. On or about December 12, 1990, Landlord and SCFLA entered into that certain First Amendment to Restated and Amended Benicia Marina Lease Agreement (Phase II Condominiums Parcel) (the "First Amendment"). *RECORDING SERIAL No. 910005150*

D. On or about August 7, 1997, Landlord and KB entered into with respect to the Property, that certain Second Amendment to Restated and Amended Benicia Lease Agreement (Phase II Condominiums Parcel) (the "Second Amendment"). *RECORDING SERIAL No. 97-54376*

E. Pursuant to that certain Assignment or Benicia Marina Lease Agreement (Phase II Condominiums Parcel) (undated) KB assigned its rights with respect to the Phase II Condominiums Parcel to the Tenant.

F. The parties desire to enter into this Third Amendment to, among other things, clarify that: (i) the expiration date of the Lease is 2028 or sooner, as herein after provided; (ii)

RECORDERS NOTE: Leases in this case are Unrecorded (per City of Benicia).

the sole equitable title shall vest in the Tenant upon expiration of the Lease, and therefore the parties shall prepare and execute a Quit Claim Deed to that effect as part of this Third Amendment (to be recorded only upon expiration of the Lease); and (iii) all options under the Lease to purchase the Property were timely exercised, and all fees required to have been properly and timely paid. The Original Lease, the Restated Lease, the First Amendment and the Second Amendment may hereinafter be collectively referred to as the "Lease."

AGREEMENT

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

Section 1. Term of Lease.

The Lease and Tenant's duty to pay rent due thereunder will expire and terminate, upon the earlier to occur of the following: (i) December 31, 2028; or (ii) the date the City of Benicia pays to the California Department of Navigation and Ocean Development all principal and interest owing under a certain loan agreement dated July 12, 1976, between the City of Benicia, as the borrower, and the California Department of Navigation and Ocean Development, as the lender (the "Loan") (or such date that the Loan is forgiven, or discharged or for any reason whatsoever the City of Benicia is no longer making payments to the California Department of Navigation and Ocean Development under the Loan) (collectively the "Expiration Date"). Regardless of any modification, extension or other amendment to the Loan, the Tenant's obligation to make payments under the Lease shall unconditionally expire and forever terminate on the Expiration Date.

Section 2. Title to the Property.

Upon the occurrence of the Expiration Date, title to the Property shall immediately, without any delay, demand, or the consent of the Landlord, be deeded in the form of the Quit Claim Deed attached hereto as Exhibit B, to the Tenant. The Parties shall execute the Quit Claim Deed attached hereto as Exhibit B (the "Deed") concurrently with this Third Amendment, which shall be placed in trust with Berding & Weil, LLP (or such other escrow holder as authorized by the parties, or a successor trustee authorized by the parties), and the Landlord hereby irrevocably authorizes the Tenant to record the Deed upon the occurrence of the Expiration Date. Equitable Title to the Property shall pass to Tenant upon execution of this Third Amendment.

Section 3. Extension Options/Fees.

The Parties agree and acknowledge that any and all extension options contained in the Lease were timely and properly exercised, and that all corresponding fees were timely paid to Landlord by Tenant or its predecessors.

Section 4. Rent.

Nothing contained herein shall modify or amend the Minimum Annual Rent (except to the extent the determination of the Term, as contained in Section 1 hereof, modifies Tenant's total rental obligation over the Term to Landlord).

Section 5. Indemnity.

Landlord shall to the maximum extent permitted by California law, indemnify, defend and hold harmless Tenant (including attorneys' fees and court costs) from and against, any and

all claims, demands, causes of action, liabilities, fines, penalties, judgments, or otherwise (collectively "Claims"), related in any manner to the Loan, including but not limited to any action brought by the California Department of Navigation and Ocean Development relating to the real property leased by the Tenant pursuant to the terms of the Lease, or for payment of any amounts due or owing under the Loan. The obligations contained herein shall include but not be limited to any Claim brought by the California Department of Navigation and Ocean Development to foreclose on the Loan (and/or real property), quiet title action, action for monetary damages, injunctive or declaratory relief, or otherwise.

Section 6. Recordation.

The Parties intend for this Third Amendment to be recorded in the Solano County Recorder's Office, and the parties hereby mutually consent to such recordation.

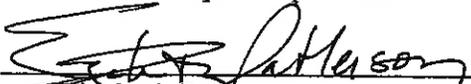
Section 7. Miscellaneous.

Except as amended or modified herein, all the terms of the Lease shall remain in full force and effect and shall apply with the same force and effect. Time is of the essence in this Third Amendment and the Lease and each and all of their respective provisions. Subject to the provisions of the Lease as to assignment, the agreements, conditions and provisions herein contained shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties hereto. If any provisions of this Third Amendment or the Lease shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of the Lease and all such other provisions shall remain in full force and effect. The language in all parts of the Lease shall be construed according to its normal and usual meaning and not strictly for or against either Landlord or Tenant.

This Third Amendment is made and entered into and shall be effective as of date first written above.

LANDLORD:

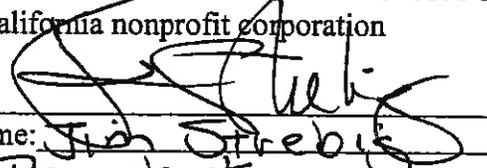
CITY OF BENICIA,
a California municipal corporation

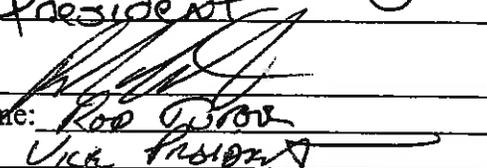
By: 
Elizabeth Patterson
Vice Mayor

By: 
Lisa Wolfe
City Clerk

TENANT:

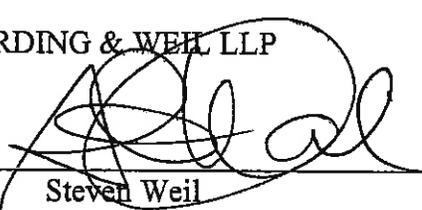
PORTSIDE VILLAGE OWNERS' ASSOCIATION
a California nonprofit corporation

By: 
Name: Jim Strebis
Its: President

By: 
Name: Rod Gross
Its: Vice President

APPROVED AS TO FORM:

BERDING & WEIL LLP

By: 
Steven Weil
Counsel for Portside Village Owners' Association,
a California non-profit corporation

BENICIA CITY ATTORNEY

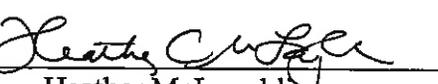
By: 
Heather McLaughlin
City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PHASE II CONDOMINIUMS

All of the property within the subdivision boundary as shown on MAP OF THE BENICIA MARINA, PHASE 2 FOR CONDOMINIUM PURPOSES filed July 2, 1997 in Book 66 of Subdivisions at Page 72, Solano County Records, City of Benicia, Solano County, California.

EXHIBIT B

QUIT CLAIM DEED

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Berding & Weil LLP
Attn: Steven S. Weil, Esq.
Attn: Scott W. Singer, Esq.
3240 Stone Valley Road West
Alamo, CA 94507
(925) 838-2090

APN: _____

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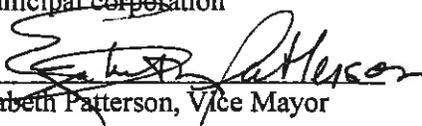
QUITCLAIM DEED

(including legal description labeled Exhibit "1")

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are acknowledged, the CITY OF BENICIA, a California municipal corporation ("Transferor") does remise, release, and forever quitclaim to PORTSIDE VILLAGE OWNERS' ASSOCIATION, a California nonprofit corporation, any and all right, title, and interest Transferor has in the real property located in the City of Benicia, County of Solano, California, described in attached Exhibit 1 and incorporated by reference.

TRANSFEROR:

CITY OF BENICIA,
a municipal corporation

By: 
Elizabeth Patterson, Vice Mayor

By: 
Lisa Wolfe, City Clerk

(Notarize)

EXHIBIT 1

LEGAL DESCRIPTION

All of the property within the subdivision boundary as shown on MAP OF THE BENICIA MARINA, PHASE 2 FOR CONDOMINIUM PURPOSES filed July 2, 1997 in Book 66 of Subdivisions at Page 72, Solano County Records, City of Benicia, Solano County, California.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Solano } ss.

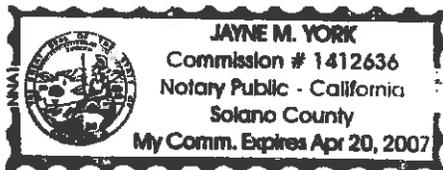
On June 30, 2004 before me, Jayne M. York, Notary Public

personally appeared Elizabeth Patterson and Lisa Wolfe

Name(s) of Signer(s)

personally known to me
 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~~/she/they executed the same in ~~his~~/her/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.



WITNESS my hand and official seal.

Jayne M. York
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: Quit Claim Deed to Portside Village

Document Date: 12-15-03 Number of Pages: 1

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: Elizabeth Patterson, Vice Mayor
Lisa Wolfe, City Clerk

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

Signer Is Representing: City of Benicia

