

**LOAN MODIFICATION AGREEMENT AND
REAFFIRMATION OF LOAN**

This Loan Modification Agreement and Reaffirmation of Loan (this “**Agreement**”) is made effective as of _____, 20____ (“**Reference Date**”), by and between _____, a _____ and _____, a _____ (collectively referred to herein as “**Lender**”) and _____, a _____ (“**Borrower**”), with respect to the following facts:

RECITALS:

A. Pursuant to that certain Loan Agreement dated as of _____, 20____ (as modified from time to time, the “**Loan Agreement**”), Lender made a secured loan (“**Secured Loan**”) to Borrower to finance Borrower’s acquisition of fee title to that certain improved real property described in Exhibit “A” of the Loan Agreement and incorporated herein by reference and commonly known as _____ (the “**Property**”). The Secured Loan was evidenced by, among other things, a Secured Promissory Note (“**Secured Note**”) dated as of _____, 20____ in the original principal amount of _____ Dollars and ____/100 (\$_____). To secure Borrower’s obligations to Lender, Borrower, as trustor, executed and delivered in favor of _____ Title Company, as trustee, for the benefit of Lender, as beneficiary, that certain Deed of Trust _____ made as of _____, 20____ and recorded in the official records of the _____ County Recorder on _____, 20____ as document number _____ (as modified from time to time, the “**Deed of Trust**”).

B. To induce Lender to make the Secured Loan, Borrower executed and delivered to Lender an Unsecured Environmental Indemnity Agreement (as modified from time to time, the “**Indemnity**”), dated _____, 20____, indemnifying Lender as to certain environmental and other claims as provided therein.

C. This Agreement, the Loan Agreement, the Secured Note, the Deed of Trust, the Indemnity, together with any other documents required by Lender to evidence or secure the Secured Loan, and any and all amendments and modifications thereto, shall be collectively referred to as the “**Loan Documents**”. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement (or if not defined in the Loan Agreement, in the other Loan Documents).

D. Borrower has requested that Lender advance additional funds to Borrower for the construction of certain improvements to the Property and to otherwise modify the terms and conditions of the Loan Documents as agreed to by Lender and Borrower and as set forth by the terms of this Agreement.

E. At Borrower’s request, Lender has agreed to advance additional funds to

Borrower, conditioned upon Borrower's execution of and performance under this Agreement and the ratification and confirmation of the Secured Loan and the Loan Documents, and of any and all such documents required to put Lender in the same position as it was prior to such advance of additional funds and completion of such other acts or things reasonably requested by Lender.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The recitals set forth above are hereby incorporated herein as true and correct.
2. **Confirmation of Loan.** Borrower hereby acknowledges and confirms Borrower's obligations to Lender as set forth in the Loan Documents and reaffirms and restates each and every term, condition, provision, and waiver thereof. This Agreement is entered into as a result of Borrower's request for Lender to advance additional funds to Borrower and there is no intention to increase, reduce or otherwise alter the respective rights or obligations of Lender under the Loan Documents. Nothing in this Agreement shall be deemed to constitute Lender's release of Borrower of any of its obligations under the Loan Documents.
3. **Confirmation of Collateral.** Borrower hereby grants, confirms, covenants, acknowledges and agrees that all obligations of Borrower to Lender are secured by the first priority Deed of Trust, including but not limited to the Modified Loan Amount (defined below).
4. **Representations and Warranties.** Borrower hereby represents and warrants to Lender that:
 - a. This Agreement and the other Loan Documents represent valid and enforceable obligations against the Borrower.
 - b. As of the date hereof, Borrower has no claims or defenses against Lender or any other person or entity which would or might affect (i) the enforceability of any provisions of the Loan Documents; or (ii) the collectability of sums advanced by Lender in connection with the Secured Loan.
 - c. The execution, delivery, and performance by Borrower of this Agreement and the Loan Documents have been duly authorized, are not in conflict with the terms of any organizational document of such Borrower and will not violate any law, rule, or order of any court or governmental agency or body to which Borrower is subject. All representations and warranties contained in this Agreement, the Loan Agreement and in any and all of the other Loan Documents are true and correct as of the date of this Agreement, and all such representations and warranties shall survive the execution of this Agreement.
 - d. As of the Reference Date, there is no uncured breach or default under the Loan Documents or any Material Agreement. There have been no new Material Agreements

entered into since the date of the closing of the Secured Loan and no amendments, waivers, modifications or terminations of any Material Agreement have occurred.

5. **Advance of Additional Funds.** Subject to the terms hereinafter set forth, Lender hereby agrees to advance in addition to the original Loan Amount, the amount of up to _____ Dollars and ____/100 (\$_____) (the “**Additional Advance Amounts**”) pursuant to the terms and conditions set forth in the Loan Documents and in this Agreement, which combined with the original Loan Amount shall not exceed the sum of _____ Dollars and ____/100 (\$_____) (the “**Modified Loan Amount**”). Borrower shall use the Additional Advance Amounts to make Renovations on the Property pursuant to the Renovation Plan, as defined below (the “**Renovations**”). The Loan Amount of the Note and all of the other Loan Documents shall be _____ Dollars and ____/100 (\$_____), which is comprised of the original Loan Amount of _____ Dollars and ____/100 (\$_____), plus the Additional Advance Amounts of up to _____ Dollars and ____/100 (\$_____).

6. **Term.** The Additional Advance Amounts shall mature and be due and payable in full on that date which is _____ (____) months from the Reference Date (“**Additional Advance Maturity Date**”). The Additional Advance Amounts that have been advanced to Borrower along with any accrued interest on such Additional Advance Amounts shall become due and repayable in accordance with the provisions of this Agreement on the Additional Advance Maturity Date.

7. **Additional Advance Interest Rate.** Notwithstanding anything to the contrary set forth in the Secured Note or any of the other Loan Documents, all Additional Advance Amounts disbursed to Borrower in accordance with this Agreement shall bear interest at a rate equal to _____ percent (____%) per annum (“**Additional Advance Interest Rate**”). Borrower acknowledges and agrees that the Base Interest as set forth in the original Loan Agreement and Secured Note shall continue in full force and effect.

8. **Timing and Funding of Additional Advance Amounts.** Lender, in its sole discretion may make one or more advances of the Additional Advance Amounts to Borrower on the terms and conditions set forth herein including, but not limited to, the following provisions:

a. Lender shall have no obligation to fund any Additional Advance Amounts except upon the satisfaction of all of the conditions set forth herein to Lender’s satisfaction and pursuant to a Renovation plan to be mutually agreed upon by Borrower and Lender (the “**Renovation Plan**”) and as otherwise expressly set forth herein and in the other Loan Documents.

b. Provided that Borrower is not in default under any of its obligations in connection with this Agreement, or otherwise under the Loan Documents, and upon written request from Borrower (no more frequently than once per month), Borrower may request a portion of the Additional Advance Amounts equal to, but in no event exceeding, the actual out-of-pocket costs incurred by Borrower in connection with the Renovations, pursuant to the Renovation Plan, upon progress completion, to the date of the request, less any retention, if any.

c. Each draw request from Borrower shall include:

(i) copies of invoices and receipts in connection with the Renovations, the aggregate of which equals the amount requested by Borrower;

(ii) original, conditional (conditioned upon payment) lien releases and waivers from all contractors, subcontractors and materialmen providing services and/or materials in connection with that portion of the improvements for which the requested funds relate, and to the extent not previously delivered to Lender, original unconditional lien releases and waivers from all contractors, subcontractors and materialmen providing services and/or materials in connection with any work done or services or materials provided prior to the period covered by the then current draw request; and

(iii) written authorization by an inspector mutually acceptable to Borrower and Lender verifying that the work for which disbursement is requested has been done in accordance with the Renovation Plan, and all applicable laws, rules and regulations of governmental agencies having jurisdiction over the Property. All inspection fees incurred by Lender, if any, shall be treated as a project cost and paid from the Additional Advance Amounts. The parties hereby approve _____ to serve as the inspector pursuant to this paragraph.

d. In no event shall Borrower request from Lender to withdraw an Additional Advance Amount which is less than _____ Dollars and ____/100 (\$_____).

e. The Secured Note shall evidence the entire Modified Loan Amount from the Reference Date.

f. Borrower shall be liable for the full repayment of all principal, interest or other sums disbursed pursuant to the Loan Documents and this Agreement.

g. Lender and its inspector shall have the right at all times to monitor, inspect, and observe the Renovation of, and payment for, all improvement to the Property made pursuant to the Renovation Plan without any responsibility or liability whatsoever arising from such observance, inspection, or monitoring.

h. Provided that Borrower is not in default in any of its obligations in connection with the Renovations, or otherwise under the Loan Documents and upon completion of the Renovations, any remaining balance of the Additional Advance Amounts (not to exceed \$_____) shall in Lender's sole and absolute discretion be either (i) disbursed to Borrower or (ii) used to pay down the principal balance of the Loan at Lender's election. Completion of the Renovations shall mean the issuance of all necessary certificates of occupancy and presentation of final lien waivers for all labor, suppliers, materialmen, contractors and subcontractors in connection with the Improvements.

i. In the event Borrower fails to complete the Renovations prior to the maturity date under the Note (including any extensions thereof) and in accordance with the Renovation Plan and/or Borrower's other obligations under the Loan Documents, then Borrower shall be deemed in default of the Note, Deed of Trust and other Loan Documents and (without

limiting any other rights and remedies available to Lender at law or in equity) Lender may enforce its rights to foreclose on the Property under the Deed of Trust. Subject to the limitations on Lender's use of the undisbursed Additional Advance Amounts as set forth below, Borrower hereby irrevocably assigns to Lender, as additional security for Borrower's obligations under the Loan Documents, all of Borrower's right, title, and interest in and to the undisbursed Additional Advance Amounts. In the event of a foreclosure by Lender following a default under the Loan Documents, and if Lender or its successors acquire title to the Property, Lender or its successors shall have the right (but not the obligation) to proceed with completion of the Renovations and to apply the undisbursed Renovation Reserve to the cost thereof.

j. Upon request by or on behalf of the Lender, Borrower shall (a) execute, acknowledge, and deliver or cause the execution, acknowledgement and delivery to the Lender of any document or instrument that ought to have been signed at or before the Reference Date to effectuate the terms of this Agreement or the other Loan Documents and (b) reexecute or correct or cause the reexecution or correction of any document or instrument incorrectly completed or signed in connection with the Loan, Renovation Plan, Additional Advance Amounts or the draw process set forth herein, including without limitation any amendments, corrections, deletions, or additions, provided such amendments, corrections, deletions, additions, and reexecuted documents or instruments are in conformity with the terms of this Agreement, the Loan Documents and Renovation Plan approved by the Lender..

9. **Fees Paid upon Withdraw of Additional Advance Amounts.** Notwithstanding the foregoing, or any provision in any of the Loan Documents to the contrary, Borrower shall pay to Lender upon each withdraw from Lender of an Additional Advance Amount, a non-refundable fee in an amount equal to _____ percent (____%) of the total dollar amount of each such Additional Advance Amount withdrawn ("**Additional Advance Fee**"). The Additional Advance Fee shall be due and payable to Lender at the time the Additional Advance Amount is withdrawn and shall be fully earned and non-refundable. For example, if Lender agrees to advance _____ Dollars and No/100 (\$_____), the Additional Advance Fee for such draw will be equal to _____ Dollars and No/100 (\$_____), which will, at Lender's option, either be withheld from the total amount received by Borrower or paid by Borrower at the time of such draw request.

10. **Cross Default with Other Obligations.** It shall be an immediate Event of Default under the Loan if Borrower or any of its affiliates shall default in the payment when due of any of its indebtedness to Lender or its affiliates, successors or assigns (excluding, but not limited to, indebtedness related to the loan from Lender secured by the improved real property known as 12730 Via Donada, Del Mar, CA) or in the observance or performance of any term, covenant or condition in any agreement or instrument evidencing, securing or relating to any indebtedness to Lender or its affiliates, successors or assigns and such default continues beyond all applicable notice or cure periods and/or for a period sufficient to permit acceleration of that indebtedness.

11. **No Other Modifications.** Except as amended and/or modified by this Agreement, all of the obligations relating to the Base Interest Rate, payment of interest and principal, Maturity Date, financial covenants and other terms of the Loan Agreement and other

Loan Documents shall remain in full force and effect, unaltered and unchanged by this Agreement.

12. **Conditions Precedent.** This Agreement and any increase in the principal amount of the Secured Loan as provided herein, is conditioned upon the following:

a. Lender shall have obtained issuance of, or a commitment from its title insurance company to issue, CLTA Modification and Additional Advance Endorsement No. 110.10 and such other endorsements to the Lender's policy of title insurance issued in connection with the original recordation of the Deed of Trust as may be required by the Lender to assure the Lender as to the priority of the Deed of Trust following the execution of this Agreement, each of which endorsements shall be acceptable to the Lender in form and substance;

b. Concurrently herewith, Borrower shall execute, acknowledge and deliver to Lender a Memorandum of Loan Modification and Amendment to Deed of Trust in recordable form reasonably acceptable to Lender in form and substance;

c. Concurrently herewith, Borrower as necessary and appropriate, shall execute, acknowledge and deliver to Lender: (i) such duly adopted consents and/or resolutions of Borrower and of such other entities as Lender may require, and naming the person(s) authorized to execute this Agreement on behalf of each such entity; and (ii) any further and additional documents as Lender may determine to be necessary or appropriate, including, without limitation, such documents as may be necessary or appropriate to insure the proper attachment, perfection and priority of Lender's security interest in the Property or other Collateral.

d. Borrower shall have furnished to Lender a certificate of good standing/continued existence, which shall have been certified as of a date within thirty (30) days prior to the Reference Date.

e. Borrower shall have paid to Lender, in immediately available funds, the amount of all expenses incurred by Lender in connection with (i) the negotiation and preparation of this Agreement and all other documents executed and delivered pursuant hereto, and (ii) the transactions contemplated by this Agreement and all documents executed and delivered pursuant hereto (including, without limitation, legal fees and expenses, title premiums and other closing costs), as detailed in the Disbursement Request and Authorization executed concurrently herewith;

f. The representations and warranties contained in this Agreement, the Loan Agreement and the other Loan Documents shall be true and correct as of the effective date of this Agreement; and

g. Lender shall be satisfied, in its sole discretion, that no Event of Default shall exist and no event, circumstance or condition shall exist which, with notice or passage of time or both would be an Event of Default.

13. **Release of Claims By Borrower.** Except as expressly set forth herein, Borrower for itself and on behalf of its respective agents, employees, representatives, affiliates,

predecessors-in-interest, heirs, successors, and assigns (such persons and entities other than Borrower are referred to collectively as the “**Other Releasors**”), releases, discharges and acquits Lender and each of its assignees, members, investors and participants (if any), and each of their respective officers, directors, shareholders, agents, employees, affiliates, successors, and assigns (collectively, the “**Released Parties**”), of and from any and all rights, claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or any relationship, acts, omissions, misfeasance, malfeasance, causes of action, promises, damages, costs, losses and expenses of every kind, nature, description or character which exist or which could or may be claimed to exist, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, claimed or unclaimed, whether based on contract, tort, breach of any duty, or other legal or equitable theory of recovery, each as though fully set forth herein at length (collectively, the “**Claims**”), which in any way arise out of, are connected with or relate to any or all of the following, existing or occurring as of or prior to the execution of this Agreement: (a) the Secured Loan or the administration of the Secured Loan, as well as any action or inaction of the Released Parties or any of them with respect to the Secured Loan or the administration thereof; (b) any or all of the transactions which are the subject of or contemplated by any or all of the Loan Agreement or other Loan Documents; (c) the Property, Collateral or the Project; or (d) any fact, matter, transaction or act or omission by any or all of the Released Parties and relating to the Secured Loan, the Loan Documents, the Property, Collateral or the Project.

a. **Waiver.** As to all matters being released by Borrower pursuant to this Section 11, Borrower, for itself and on behalf of the Other Releasors, expressly waives any and all rights under Section 1542 of the California Civil Code and any and all rights under any similar statute, rule or regulation of any state or territory of the United States, and any and all rights under any similar statute, rule or regulation of the United States or any of its agencies. Section 1542 of the California Civil Code provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

b. **No Assignment.** Borrower, for itself and on behalf of all Other Releasors, warrants and represents to Lender that Borrower and the Other Releasors have not sold, assigned, transferred, conveyed or otherwise disposed of any Claims that are the subject of this Section.

c. **Discovery of Unknown or Different Facts.** Borrower for itself and on behalf of all Other Releasors, acknowledges and agrees that the facts with respect to which the release of Claims contained in this Section is executed may hereafter be found to be different from the facts now believed by Borrower to be true, and Borrower, for itself and on behalf of all Other Releasors, expressly accepts and assumes the risk of such possible differences and agrees that the release of Claims contained in this Section shall be and remain effective notwithstanding such differences in facts.

14. **Effect of Agreement.** All of the representations, warranties, terms, and conditions of the Loan Documents remain unaltered and in full force and effect in accordance

with their respective terms. Borrower acknowledges that it has consulted with counsel and such other experts and advisors as they deem necessary in connection with the negotiation, execution and delivery of this Agreement, or have had an opportunity to so consult and have knowingly chosen not to do so. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto, their respective successors and assigns. No other person shall be entitled to claim any right or benefit hereunder, except the parties hereto.

15. **Severability.** In case any provision of this Agreement shall be invalid, illegal, or unenforceable, such provision shall be severable from the remainder of this Agreement and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

16. **Counterparts; Validity.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. The failure of any party to execute this Agreement shall have no effect on its validity or enforceability as to or among the other parties.

17. **Entire Agreement.** This Agreement and the Loan Documents are intended by the parties as the final expression of their agreement and therefore contain the entire agreement between the parties and supersede all prior understandings or agreements concerning the subject matter hereof. This Agreement may only be amended in a writing signed by Lender and Borrower.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed and delivered as of the date first above written.

[Remainder of page intentionally left blank; signatures follow]

BORROWER:

_____, a

By: _____
Name: _____
Its: _____

LENDER:

_____, a

By: _____
Name: _____
Its: _____

_____, a

By: _____
Name: _____
Its: _____

With copy to:

Fax:
Attn: