



**COUNTY OF LOS ANGELES
DEPARTMENT OF BEACHES AND HARBORS**



December 11, 2002

STAN WISNIEWSKI
DIRECTOR

KERRY GOTTLIEB
CHIEF DEPUTY

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**ASSIGNMENT OF LEASEHOLD INTEREST AND AMENDMENT TO LEASE
PARCEL 64T (VILLA VENETIA APARTMENTS) - MARINA DEL REY
(FOURTH DISTRICT)
(3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed Amendment No. 14 to Lease No. 4709 for Parcel 64T (Lease) and the proposed assignment of the leasehold interest in Parcel 64T are categorically exempt under the provisions of the California Environmental Quality Act pursuant to Class 1 (r) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chair to execute the attached copies of Consent to Assignment of Lease for Parcel 64T (Consent) from Tuxedo Real Estate Limited Partnership, a Delaware Limited Partnership ("Tuxedo"), to Villa Venetia Apartments, LLC, a Delaware limited liability company ("VVA").
3. Approve and authorize the Chair of the Board to sign Amendment No. 14 to Lease No. 4709, the final form of which is attached hereto, which defines those changes in management and ownership of a limited liability company that will be considered an event of assignment under Section 22 of the Lease, upon presentation by the Director of the Department of Beaches and Harbors (DBH) of the amendment executed by VVA to the Executive Officer of the Board.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Tuxedo is requesting the County's consent to approve the assignment of its leasehold interest in Parcel 64T, commonly known as the Villa Venetia Apartments, to VVA. The

Department is requesting that your consent to the proposed assignment be conditioned upon execution by VVA of Amendment No. 14 to the lease, which defines those changes in ownership and control of a limited liability company that will be considered events of assignment requiring the County's prior consent, as well as to financing conditions and assumption of all leasehold past, present and future liabilities.

Marina del Rey leases provide that the County's consent is required on most lease assignments and that such consent may not be unreasonably withheld. Department policy provides that the County's approval or denial of any assignment will be based on one or more of the following: a) the financial condition of the assignee; b) the price to be paid for the leasehold as it relates to the improvements or potential development thereon; and c) the management of the leasehold by the new lessee being in the best interest of the whole Marina

Our review has found that: a) the proposed assignee, VVA, a Delaware limited liability company formed for the purpose of owning and operating the leasehold, has demonstrated adequately its financial ability to provide for the continued operation and maintenance of the leasehold; b) although the \$34 million purchase price appears to be at the upper end of value for the leasehold and improvements, it is acceptable given the assignee has arranged for a satisfactory financing package that will provide appropriate debt service coverage during the term of its interim financing and a future significant buy-down of the loan balance, ensuring that the long term financing will also provide adequate debt service coverage, ensuring operating income for appropriate maintenance and management of the leasehold throughout the remaining lease term, and, c) the proposed property manager, JDC Management Company, LLC, a California limited liability company and an affiliate of the assignee, is recognized as an experienced apartment project manager.

The lease provides that subject to enumerated exceptions, the lessee may not assign all or part of its interest in the lease without the prior written consent of the County and that for purposes of Section 22C of the lease, the change in one or more general partners in a limited partnership and the sale or transfer of fifty percent (50%) or more of the stock in a corporation that owns the leasehold constitutes an event of assignment. County Counsel has indicated that since the proposed new lessee is a limited liability company, it is appropriate to expand the definition of an assignment in this lease beyond limited partnerships and corporations to cover similar changes that may be undertaken by a limited liability company. Therefore, the proposed amendment, requested by the County as a condition of the assignment, will be executed by the new lessee upon close of escrow and will define that the change in one or more of the managing members or the sale, assignment, or transfer of fifty percent or more of the ownership interests of a limited liability company shall be considered an event of assignment subject to County's approval.

Implementation of Strategic Plan Goals

This recommendation is consistent with the County's Strategic Plan Goal, Service Excellence, in that it allows the transfer of the leasehold interest from one legal entity to another to accommodate completion of a bona fide financial transaction, while maintaining appropriate management of the leasehold.

FISCAL IMPACT/FINANCING

No cost to County.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On July 21, 1961, the County entered into a 60-year lease, effective from the date of May 10, 1961, for the premises currently known as Parcel 64T, Villa Venetia Apartments. The parcel occupies 6.4 acres of land and is improved with 224 apartment units.

The proposed assignee, VVA, is a single purpose entity created to hold and operate the leasehold interest. VVA is 98% owned by Edward M. Czucker, an individual, and 1% by each of EMC Investment Company, a Nevada corporation, with Edward M. Czucker as the primary principal, and Jan Development Company, a California corporation, with Jan Czucker as the primary principal, father of Edward M. Czucker. The managing member of VVA is EMC Investment Company.

Our review of the financial structure for this transaction can be summarized as follows: VVA will be capitalized by its member's contribution of \$3,000,000. The proposed primary and secondary financing for the purchase consists of a first mortgage loan of \$27 million and a mezzanine loan of \$6,120,000, both for a term of 4 years with an additional one (1) year extension available. The terms of the financing require that the assignee reduce the principal balances of the loans by \$8 million dollars at their maturity in the event the loans have not been refinanced in the interim. This principal reduction is personally guaranteed by one of VVA's principals and further supported by the pledge of approximately \$8 million of equity in a separate property controlled by the assignee. The \$8 million reduction of the principal loan amount will result in a debt level that qualifies for a conventional refinancing that is fully amortizable over the then remaining lease term, with debt service coverage at acceptable levels to provide for the continued operation and maintenance of the leasehold throughout its remaining term.

The assignment documents provide that VVA will assume all outstanding obligations under the lease as well as all obligations accruing following the assignment.

On the 11th day of December 2002, the Small Craft Harbor Commission unanimously endorsed the Director's recommendation that the Board consent to this assignment.

ENVIRONMENTAL DOCUMENTATION

The proposed lease amendment and assignment of the lease are categorically exempt under the provisions of the California Environmental Quality Act pursuant to Class 1 (r) of the County's Environmental Document Reporting Procedures and Guidelines.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Not applicable.

CONCLUSION

Please have the Chair of the Board of Supervisors sign three copies of the Consent and direct the Executive Officer of the Board to acknowledge the Chair's signature and return two executed copies of the Consent to the Department of Beaches and Harbors.

Upon execution by VVA, the Director will provide copies of Amendment No. 14 to the Lease to the Executive Officer of the Board, for execution by the Chair. Please send two executed copies of Lease Amendment No. 14 to the Department of Beaches and Harbors.

Respectfully submitted,


Stan Wisniewski
Director

Attachments (2)

SW:PW

c: Chief Administrative Officer
Executive Officer, Board of Supervisors
County Counsel
Auditor Controller

**AMENDMENT NO. 14 TO LEASE NO. 4709
PARCEL NO. 64T – MARINA DEL REY SMALL CRAFT HARBOR**

THIS AMENDMENT TO LEASE is made and entered into this ____ day of _____, 2002, (the "Effective Date").

BY AND BETWEEN

**COUNTY OF LOS ANGELES,
hereinafter referred to as "County",**

AND

**Villa Venetia Apartments LLC, a
Delaware limited liability company,
hereinafter referred to as "Lessee"**

WITNESSETH

WHEREAS, County and Lessee's predecessor in interest entered into Lease No. 4709 under terms of which County leases to Lessee's predecessor in interest that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly know as Parcel 64T, which leasehold premises (the "Premises") are more particularly described as Exhibit "A" attached to and incorporated in said lease (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 22C of the Lease provides that subject to enumerated exceptions, Lessee may not assign all or any part of its interest in the Lease without the prior written consent of the County, and that for purposes of said Section 22C, the change in one or more general partners in a limited partnership and the sale or transfer of fifty percent or more of the stock in a corporation which owns the leasehold constitutes an event of assignment; and

WHEREAS, in consideration of the County's approval of the transfer of the Lease to Lessee, the parties desire to amend Section 22C of the Lease to define what changes in management and ownership of a limited liability company shall be considered an event of assignment under said Section;

NOW, THEREFORE, in consideration of the mutual agreements, covenants and restrictions contained herein, the parties, and each of them, agree as follows:

1. **SUBLEASES, ASSIGNMENTS, TRUST DEED BENEFICIARIES, MORTGAGEES AND SUCCESSORS.** Commencing as of the Effective Date, Section 22C is amended by adding subsection (3) immediately after subsection (2) to read as follows:

"(3) The change in one or more of the managing members in a limited liability company which owns the leasehold, except by death of a managing member and his or her replacement by a vote of the remaining members; or the sale, assignment, or transfer of fifty percent (50%) or

more of the ownership interest in a limited liability company which owns, or is the general partner in a partnership which owns, the leasehold.”

2. **MISCELLANEOUS.** Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and reacknowledges its respective obligations under the Lease as amended hereby.

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment to Lease to be subscribed by the Chair of said Board and attested by the Clerk thereof, and the Lessee has executed the same.

VILLA VENETIA APARTMENTS, L.L.C., a Delaware limited liability company

By: EMC Investment Company, a Nevada corporation, its managing member

By: _____

Its: _____

COUNTY OF LOS ANGESES

By: _____
Chair of the Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS,
Executive Officer of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:
LLOYD W. PELLMAN,
County Counsel

By: _____
Deputy

LEGAL DESCRIPTION

Marina Del Rey
Lease Parcel No. 64T

Parcels 892 to 898 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, filed in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said County.

Excepting therefrom that portion thereof which lies northeasterly, easterly and southeasterly of a curve concave to the west, having a radius of 55 feet, tangent to the northeasterly line of said parcel and tangent to the southeasterly line of said parcel.

Also excepting therefrom that portion thereof which lies northerly of said northeasterly line and its northwesterly prolongation.

Also reserving and excepting unto the County of Los Angeles rights of way for sanitary sewers, access, fire access and harbor utility purposes in and across those portions thereof designated on said map as easements to be reserved by said County for such purposes.

DESCRIPTION APPROVED

NOV 12 1974

HARVEY T. BRANDT
County Engineer

By Aeynd. Alvaro Deputy

ASSIGNMENT OF LEASE

TUXEDO REAL ESTATE LIMITED PARTNERSHIP, a Delaware limited partnership ("Tuxedo"), does hereby assign, transfer, grant, convey and set over to VILLA VENETIA APARTMENTS, LLC, a Delaware limited liability company ("Villa Venetia"), all of its right, title and interest in and to that certain Lease No. 4709, dated July 21, 1961, as amended (hereinafter, the "Lease"), made and entered into by and between the COUNTY OF LOS ANGELES ("County"), as lessor, and JACKBILT, INC., as lessee, covering the leased premises situated in the Marina del Rey Small Craft Harbor of the County, hereinafter sometimes referred to as Parcel 64T, legally described in Exhibit "A," attached hereto and incorporated herein.

To have and to hold the same for and during the rest, residue and remainder of the term of the Lease.

This assignment shall be conditioned and effective upon the close of escrow and upon the full satisfaction of those conditions imposed by the County as set forth in its Consent to Assignment of Lease relating to this assignment.

This assignment and Villa Venetia's acceptance of this assignment and Villa Venetia's assumption of past, present and future obligations created by the terms, covenants and conditions of the Lease shall in no way serve to cancel, limit or impair, as between Tuxedo and Villa Venetia, any separate agreements between them relating to any past, present and/or future obligations under the Lease, except that any such agreement shall not serve to cancel this assignment once it has become complete, or to impair County's right to obtain Villa Venetia's full compliance with the terms of the Lease.

Dated this ___ day of _____, 2002.

TUXEDO REAL ESTATE LIMITED
PARTNERSHIP, a Delaware limited partnership

By: Frontage (Road) Corp., an Illinois corporation,
its general partner

By:
Its:

By: _____
Its: _____

ACCEPTANCE OF ASSIGNMENT OF LEASE

VILLA VENETIA APARTMENTS, LLC, a Delaware limited liability company ("Villa Venetia"), does hereby accept from TUXEDO REAL ESTATE LIMITED PARTNERSHIP, a Delaware limited partnership ("Tuxedo"), the assignment of that certain Lease No. 4709, dated July 21, 1961, as amended (hereinafter, the "Lease"), made and entered into by and between the COUNTY OF LOS ANGELES ("County"), as lessor, and JACKBILT, INC., as lessee, covering the leased premises situated in the Marina del Rey Small Craft Harbor of the County, hereinafter sometimes referred to as Parcel 64T, legally described in Exhibit "A", attached hereto and incorporated herein, and does hereby assume and agree to perform all obligations past, present and future, created by the terms, covenants and conditions of said Lease on the part of the lessee therein named to be performed.

Villa Venetia acknowledges that the County has advised it that rent and other charges due from the lessee have been paid through January 31, 1999, as verified by formal audit, and that all sums determined to be due to County as a result of that audit have been satisfactorily paid to County and that rent and other charges due from the lessee have been received by the County in a timely manner for the time period from January 31, 1999, to the present, but that such payments are subject to formal audit to confirm that the lessee met its rental payment obligations under the Lease. Villa Venetia further acknowledges that once this assignment is complete, it will be responsible for payment of such amounts, if any, determined by any such audit to be due and payable to the County, as well as such future audits conducted for time periods during which Villa Venetia is lessee under the Lease.

Villa Venetia further acknowledges that the County has advised it that, in accordance with section 15 of the Lease, the decennial adjustment of square foot rent, all categories of percentage rent and liability insurance requirements, with an effective date of May 10, 2002, has not been completed and that such readjustment may result in the requirement that the lessee pay additional rent, retroactive to May 10, 2002, as a result of such adjustment. Villa Venetia acknowledges that it will be responsible for the payment of any retroactive rent, plus interest as provided in the Lease, determined to be owing as a result of such decennial adjustment process.

Villa Venetia further acknowledges that the County has advised it that, by letter dated February 26, 2002, the California Coastal Commission claimed that a violation of the California Coastal Act had occurred on the leased premises in connection with the lessee's trimming of certain Cypress trees, and that to the County's knowledge, no final action has been taken by the Commission on such claimed violation. Villa Venetia acknowledges that it will be responsible for compliance with any actions ultimately determined to be required of the lessee as a result of such claimed violation.

This assignment shall be conditioned and effective upon the close of escrow and upon the full satisfaction of those conditions imposed by the County as set forth in its Consent to Assignment of Lease relating to this assignment.

This acceptance of this assignment and Villa Venetia's assumption of past, present and future obligations created by the terms, covenants and conditions of the Lease shall in no way serve to cancel, limit or impair, as between Tuxedo and Villa Venetia, any separate agreements between them relating to any past, present and/or future obligations under the Lease, except that any such agreement shall not serve to cancel this assignment once it has become complete, or to impair County's right to obtain Villa Venetia's full compliance with the terms of the Lease.

Dated this ____ day of _____, 2002.

VILLA VENETIA APARTMENTS, LLC,
a Delaware limited liability company

By: EMC Investment Company, a Nevada
corporation, its Managing Member

By: Edward McGee
Its: President

CONSENT TO ASSIGNMENT OF LEASE

The COUNTY OF LOS ANGELES ("County"), lessor under that certain lease No. 4709, dated July 21, 1961, as amended ("Lease"), applicable to those certain premises commonly known as Parcel 64T, Marina del Rey Small Craft Harbor, described in Exhibit "A," attached hereto and incorporated herein by this reference, does hereby consent to the assignment of said Lease by the present lessee, TUXEDO REAL ESTATE LIMITED PARTNERSHIP, a Delaware limited partnership ("Tuxedo"), to VILLA VENETIA APARTMENTS, LLC, a Delaware limited liability company ("Villa Venetia"), in accordance with that certain Assignment of Lease and that certain Acceptance of Assignment of Lease prepared in connection with the proposed assignment contemplated thereby (the, "Assignment"). County further agrees that upon the effective date of said Assignment, Tuxedo shall be fully relieved of, and released from, any and all obligations to County under the Lease accruing on or after the effective date of said Assignment. It is further understood and agreed that the County's consent to the Assignment is subject to the following express conditions:

- A. This Consent to Assignment shall be null and void and of no further force or effect, until and unless the Assignment is complete and irrevocable in all respects within forty-five (45) days of the date of execution on behalf of the County of this Consent to Assignment of Lease.
- B. This Consent to Assignment is contingent upon Villa Venetia's assumption and agreement to perform all obligations past, present and future, created by the terms, covenants and conditions of said Lease on the part of the lessee therein named to be performed, as set forth in the Acceptance of Assignment relating to the Assignment, and as otherwise required under the Lease.
- C. This Consent to Assignment is contingent upon Villa Venetia's execution and prompt delivery to County of Amendment No. 14 to the Lease, a copy of which is attached hereto as Exhibit "B," immediately following the close of the escrow created between Assignor and Assignee in connection with the Assignment.
- D. This Consent to Assignment is contingent upon the approval by the Director of the Department of Beaches and Harbors (the "Director") of the financing plan of Villa Venetia for its ownership of the project and all documentation to be entered into in connection with such financing, which financing must be completed not later than the date set forth in Section A above. This Consent to Assignment shall not in any way be construed or

interpreted to constitute County or Director's approval of such financing, and any assignment of the Lease by Tuxedo to Villa Venetia shall not be effective until Director has approved such financing. Without limitation of any other terms or conditions that may be required by Director as a condition to Director's consent to Villa Venetia's financing plan, such financing shall meet the following minimum requirements: (i) Villa Venetia shall have an equity requirement of not less than \$3,000,000; (ii) Villa Venetia shall obtain a new first priority loan from an institutional lender acceptable to Director in an amount not to exceed \$33,120,000 (the "New Loan"), with no other subordinate or other loans encumbering the property; (iii) the New Loan shall be for a term (including extensions) of not less than five (5) years; (iv) the New Loan shall be interest only for a period of two (2) years; (v) if an extension of the Lease is not agreed to between Lessee and County, principal amortization payments shall commence not later than the beginning of year three (3) of the New Loan in an amount equal to seventy-five percent (75%) of available cash flow (after interest payments); (vi) Edward Czucker shall execute a guaranty of the New Loan in an amount not less than \$8,000,000; (vii) such guaranty shall be secured by a first lien security interest in not less than forty-nine percent (49%) of the ownership interest in the Century Place Apartments project located in Paramount, California, and such forty-nine percent (49%) ownership interest shall have an appraised value acceptable to Director, but in no event less than \$8,000,000; and (viii) Director shall have the right to impose such additional conditions or requirements as Director considers necessary or appropriate in Director's discretion.

- E. The Assignment, having once become complete and irrevocable in all respects, shall thereafter be fully binding upon Villa Venetia whether or not Tuxedo and Villa Venetia have entered into a separate agreement or understanding to which the County is not a party and which provides for or otherwise purports to affect the Assignment, and whether or not in such event any part thereto alleges, claims or otherwise shows or proves that there has been a breach, default, violation, or termination of any such separate agreement.
- F. Villa Venetia shall not make any further assignment or sublease of the Lease, nor any portion thereof, without the written consent of County as lessor having first been obtained thereto in accordance with, and to the extent required by, the provisions of Section 22 of the Lease.

SIGNATURES FOLLOW ON NEXT PAGE

Dated this _____ day of _____, 2002.

COUNTY OF LOS ANGELES

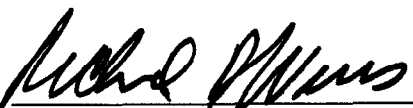
By: _____
Chair, Board of Supervisors

ATTEST:
VIOLET VARONA-LUKENS,
Executive Officer of
The Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM
BY COUNTY COUNSEL

LLOYD W. PELLMAN

By:  _____
Deputy