

1 **THIRD AMENDMENT TO**  
2 **AMENDED AND RESTATED LEASE NO. WDL-96**  
3 **30565**

4 THIS THIRD AMENDMENT TO AMENDED AND RESTATED LEASE NO.  
5 WDL-96 ("Amendment") is dated, for reference purposes only, as of  
6 APRIL 15, 2009, pursuant to minute order adopted by the City Council of  
7 the City of Long Beach on April 14, 2009 and minute order adopted by the BOARD OF  
8 WATER COMMISSIONERS OF THE CITY OF LONG BEACH on April 2, 2009, by and  
9 between KILROY REALTY, L.P, a Delaware Limited Partnership, hereinafter referred to  
10 as "Developer", and the BOARD OF WATER COMMISSIONERS OF THE CITY OF  
11 LONG BEACH, acting for and on behalf of the City of Long Beach, a municipal  
12 corporation, and the CITY OF LONG BEACH ("City"), a municipal corporation, hereinafter  
13 collectively referred to as "Landlord". Landlord and Developer hereby agree as follows:

14 **RECITALS**

15 A. On April 1, 2003, Landlord and Developer pursuant to uncodified  
16 Ordinance No. C-7808 enacted by the City Council of the City of Long Beach on May 21,  
17 2002 entered into that certain Amended and Restated Lease Agreement No. WDL-96 (as  
18 amended, the "Lease").

19 B. Landlord and Developer executed that certain First Amendment to  
20 Amended and Restated Lease No. WDL-96, dated as of October 9, 2007.

21 C. Landlord and Developer executed that certain Second Amendment  
22 to Amended and Restated Lease No. WDL-96, dated as of July 1, 2008.

23 D. Landlord and Developer desire to further amend the Lease in order  
24 to conclude the Initial Ground Rent Negotiation.

25 **AGREEMENT**

26 1. Subsections 3.1.1 through Subsection 3.1.2.3 of the Lease are  
27 hereby amended and restated in their entirety to read as follows:  
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1                   “3.1.1 Holding Rent. Developer shall pay a Holding Rent (“Holding Rent”)  
2 for the Premises in the sum of Twelve Thousand Five Hundred and No/100 Dollars  
3 (\$12,500.00) per month prorated for any partial month, and shall continue until  
4 completion of the office building on the Premises by Developer, or September 30, 2009,  
5 whichever first occurs.

6                   3.1.2 Initial Ground Rent. Initial Ground Rent shall commence upon  
7 completion of the office building on the Premises or October 1, 2009, whichever first  
8 occurs. Completion of the office building shall be deemed to occur on the earliest of six  
9 (6) months after issuance of an initial temporary certificate of occupancy of a building  
10 shell or commencement of subtenant rent.

11                   3.1.2.1 Initial Ground Rent Negotiation Period. Upon the execution of  
12 this Third Amendment to the Amended and Restated WDL-96, Developer and Landlord  
13 shall continue negotiating the amount of the Initial Ground Rent for the Premises  
14 (“Ground Rent Negotiation Period”) which Ground Rent Negotiation Period shall last from  
15 its commencement until September 30, 2009.

16                   3.1.2.2 Initial Ground Rent Determined by Appraisal. The Initial  
17 Ground Rent for the Premises shall be the then fair market land value of the Premises  
18 multiplied by the prevailing rate of return based upon the highest and best use of the  
19 Premises. Landlord and Developer agree for the purpose of determining the Initial  
20 Ground Rent that the highest and best use of the Premises is similar to the office park  
21 complex developed by Developer under the Existing Leases. The fair market land value  
22 and prevailing rate of return shall be determined by appraisals prepared by two  
23 appraisers, one appointed by the Landlord at its expense and one appointed by the  
24 Developer at its expense, both of whom shall be licensed by the State of California as a  
25 Certified General Appraiser and members of the American Institute of Real Estate  
26 Appraisers or a successor organization in the event the American Institute of Real Estate  
27 Appraisers ceases to exist. Said appraisers for both Developer and Landlord have been  
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1 appointed prior to the execution of this Third Amendment and are currently updating or  
2 will be updating their previous appraisals of the Premises with April 1, 2009 as the date of  
3 valuation. Both appraisals shall be completed and submitted to the Landlord and  
4 Developer no later than May 26, 2009. The two appraisals shall be averaged unless the  
5 higher of the two appraisals exceeds the lesser by ten percent (10%) or more, in which  
6 case the two appraisers shall appoint a third appraiser, also licensed by the State of  
7 California as a Certified General Appraiser and a member of the American Institute of  
8 Real Estate Appraisers or equivalent organization. Selection of the third appraiser shall  
9 begin no later than June 5, 2009 and conclude with the selection of a third appraiser no  
10 later than June 18, 2009. The cost of such third appraiser shall be shared equally by the  
11 parties to this Lease. Disagreements between the two appraisers as to the method of  
12 appraisal shall be resolved by a third appraiser. The third appraiser's decisions as to the  
13 method of appraisal shall be final for purposes of the appraisal process. In order to  
14 select such third appraiser, if the two appraisers do not agree on a third appraiser, the  
15 appraisers shall obtain a list of five appraisers from the President of the Southern  
16 California Chapter of the American Institute of Real Estate Appraisers and shall  
17 alternately strike names from such list until one remains to become the third appraiser.  
18 The two appraisers shall flip a coin to determine which appraiser first strikes a name from  
19 the list. If the selected third appraiser is unwilling or unavailable to serve or cannot  
20 complete the appraisal report within the required time limit, the fourth stricken name shall  
21 be the third appraiser, and so on in reverse order until the third appraiser is selected.  
22 The third appraiser shall complete and submit the required appraisal to both parties  
23 within ninety (90) days after appointment. Landlord and Developer shall cause a copy of  
24 the appraisals prepared by their respective appraisers to be delivered to the third  
25 appraiser upon the selection of the third appraiser. All appraisals shall be in the form of  
26 complete, self-contained narrative written appraisal reports supported by facts and  
27 analysis. All selected market data used in the appraisal reports shall be gathered,  
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1 reviewed and analyzed independently by the respective appraisers. The two of the three  
2 appraisers arriving at values closest to each other shall attempt to concur on a value. If  
3 they are unable to do so within fifteen (15) days or by September 29, 2009, whichever  
4 occurs first, after completion of the third appraisal, the two closest appraisals shall be  
5 averaged and that value shall be the fair market value of the land or the prevailing rate of  
6 return, as appropriate.

7                   3.1.2.3           Commencement of Construction. Upon the completion of the  
8 appraisal process described in subsection 3.1.2.2, and in the event Developer has not  
9 commenced construction of improvements, Developer shall effective October 1, 2009 as  
10 referred to in subsection 3.1.2 (i) commence construction of improvements, (ii)  
11 commence payment of Initial Ground Rent, or (iii) terminate this Lease by written notice  
12 to Landlord. If Developer elects to commence payment of Initial Ground Rent without  
13 concurrently commencing construction of improvements, this Lease shall terminate at the  
14 end of the twenty-fourth (24th) month (September 30, 2011) after October 1, 2009.  
15 Provided, however, if Developer has commenced construction within the twenty-four (24)  
16 month period, this Lease shall continue in full force and effect. Construction of  
17 improvements shall be deemed to have commenced upon the date of issuance of a  
18 foundation permit for the first building intended to produce revenue on the Premises.

19                   2.           Capitalized terms not otherwise defined herein shall have the  
20 meaning ascribed to such terms in the Lease.

21                   3.           Except as herein amended, the Lease shall remain unchanged and  
22 in full force and effect.

23                   IN WITNESS WHEREOF, Landlord and Developer have signed this Third  
24 Amendment to Amended and Restated Lease No. WDL – 96 as of the date opposite their  
25 signature.

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OFFICE OF THE CITY ATTORNEY  
ROBERT E. SHANNON, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

(Signatures on following page)

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4/29/2009

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5-14, 2009

May 7, 2009

KILROY REALTY, L.P., a Delaware limited partnership

By: KILROY REALTY CORPORATION, a Maryland corporation,

By: [Signature]  
Name: JUSTIN SMARZ

By: [Signature]  
Name: JEFFREY C. HAWKEN  
**EXECUTIVE VICE PRESIDENT  
CHIEF OPERATING OFFICER**

DEVELOPER

CITY OF LONG BEACH, a municipal corporation

**Assistant City Manager**

By: [Signature]  
City Manager **EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.**

BOARD OF WATER COMMISSIONERS OF THE CITY OF LONG BEACH

By: [Signature]  
General Manager

LANDLORD

APPROVED AS TO FORM

May 6, 2009  
ROBERT E. SHANNON, City Attorney

By: [Signature]  
PRINCIPAL DEPUTY CITY ATTORNEY