*"To enrich lives through effective and caring service"*

Los Angeles County
Caring for Your Coast
Beaches & Harbors

**Stan Wisniewski**
Director

**Kerry Silverstrom**
Chief Deputy

December 8, 2005

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan W.

SUBJECT: **COMMISSION AGENDA – DECEMBER 14, 2005**

Enclosed is the December 14, 2005 meeting agenda, together with the minutes from your meeting of November 9, 2005. Also enclosed are reports related to Agenda Items 3a, 3b, 5a and 6a.

Please feel free to call me at (310) 305-9522 if you have any questions or need additional information.

SW:tm

Enclosures

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://beaches.co.la.ca.us

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Los Angeles County Beaches & Harbors — Caring for Your Coast

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# SMALL CRAFT HARBOR COMMISSION

**AGENDA**
**DECEMBER 14, 2005**
**9:30 a.m.**

**BURTON W. CHACE PARK COMMUNITY ROOM**
**13650 MINDANAO WAY**
**MARINA DEL REY, CA. 90292**

1. Call to Order, Action on Absences and Pledge of Allegiance

2. Approval of Minutes: Meeting of November 9, 2005

3. **REGULAR REPORTS** (DISCUSS REPORTS)

   a. Marina Sheriff
      - Crime Statistics
      - Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance

   b. Marina del Rey and Beach Special Events

   c. Marina del Rey Convention and Visitors Bureau (PRESENTATION BY EXECUTIVE DIRECTOR OF MdR CVB)

4. **OLD BUSINESS**

   a. None

5. **NEW BUSINESS**

   a. Option for Amended and Restated Lease to Facilitate Redevelopment – Parcels 55, 56S and W (Fisherman's Village) – Marina del Rey (RECOMMEND TO BOARD OF SUPERVISORS)

13837 Fiji Way • Marina del Rey • CA 90292 ● 310.305.9503 • fax 310.821.6345 ● internet: http://beaches.co.la.ca.us

6. **STAFF REPORTS** (DISCUSS REPORTS)

a. Ongoing Activities

- Board Actions on Items Relating to Marina del Rey
- Design Control Board Minutes
- Local Coastal Program Periodic Review - Update
- Parcel 20 (Capri Apartments) Request for In-Lieu Fee - Update

7. **COMMUNICATION FROM THE PUBLIC**

8. **ADJOURNMENT**

**PLEASE NOTE:**

1. The Los Angeles County Board of Supervisors adopted Chapter 2.160 of the Los Angeles Code (Ord. 93-0031 § 2 (part), 1993), relating to lobbyists. Any person who seeks support or endorsement from the Small Craft Harbor Commission on any official action must certify that he/she is familiar with the requirements of this ordinance. A copy of the ordinance can be provided prior to the meeting and certification is to be made before or at the meeting.

2. The agenda will be posted on the Internet and displayed at the following locations at least 72 hours preceding the meeting date:

Department of Beaches and Harbors' Website Address: http://beaches.co.la.ca.us

Department of Beaches and Harbors
Administration Building
13837 Fiji Way
Marina del Rey, CA 90292

MdR Visitors & Information Center
4701 Admiralty Way
Marina del Rey, CA 90292

Burton Chace Park Community Room
13650 Mindanao Way
Marina del Rey, CA 90292

Lloyd Taber-Marina del Rey Library
4533 Admiralty Way
Marina del Rey, CA 90292

Si necesita asistencia para interpretar esta informacion llame al (310) 305-9547.

Small Craft Harbor Commission
November 9, 2005
Minutes

Commissioners Present

Harley Searcy, Chairman
Carole Stevens, Vice-Chairperson
Russ Lesser
Joe Crail

| | |
|---|---|
| Department of Beaches & Harbors: | Stan Wisniewski, Director<br>Roger Moliere, Deputy Director<br>Dusty Crane, Chief, Community & Marketing Services Division |
| Other County Departments: | Thomas Faughnan, Principal Deputy County Counsel<br>Deputy Paul Carvalho, Sheriff's Department |
| Also Present: | Beverly Moore, Executive Director, MdR Convention & Visitors Bureau |

## 1. CALL TO ORDER, ACTION ON ABSENCES AND PLEDGE OF ALLEGIANCE

Chairman Searcy called the meeting of the Los Angeles County Small Craft Harbor Commission to order at 9:40 a.m. in the Burton W. Chace Park Community Room, Marina del Rey.

The Commissioners, staff and members of the public stood and recited the Pledge of Allegiance.

## 2. APPROVAL OF MINUTES

The Commission took the following actions on the May, June, July, August and October 2005 meeting minutes:

***Commissioner Lesser moved and Commissioner Crail seconded a motion to approve the May 25, 2005 minutes. The motion passed unanimously.***

***Chairman Searcy moved and Commissioner Lesser seconded a motion to approve the June 8, 2005 minutes. The motion passed unanimously.***

***Commissioner Lesser moved and Commissioner Crail seconded a motion to approve the July 7, 2005 minutes. The motion passed unanimously.***

***Vice-Chairperson Stevens moved and Chairman Searcy seconded a motion to approve the August 10, 2005 minutes. The motion passed unanimously.***

***Commissioner Lesser moved and Vice-Chairperson Stevens seconded a motion to approve the October 12, 2005 minutes. The motion passed unanimously.***

**CHAIRMAN SEARCY OPENED THE FLOOR TO PUBLIC COMMENT**

Ms. Carla Andrus expressed her concern that part of her testimony pertaining to Parcel 18 at the August 18, 2005 Design Control Board (DCB) meeting was not included in the DCB's meeting minutes and the included testimony was distorted.

Chairman Searcy explained to Ms. Andrus that the Commission just approved the Small Craft Harbor Commission minutes and had not yet discussed Agenda Item 6a--Ongoing Activities Report, to which the DCB minutes are attached.

Chairman Searcy proceeded to Agenda Item 3a.

## 3 REGULAR REPORTS

### a. *Marina Sheriff*

**-- Crime Statistics**

Deputy Paul Carvalho informed the Commission that Lt. Nelson was unable to attend the meeting due to a scheduling conflict; therefore, Deputy Carvalho would report on the crime statistics.

Deputy Carvalho reported that there was no significant spikes or trends during the month of October. The Department plans to issue an arrest warrant for an individual who has caused problems over the last few months breaking into vending machines, particularly at the Marina-Marriott Hotel.

**-- Enforcement of Seaworthy & Liveaboard Sections of the Harbor Ordinance**

Deputy Carvalho reported that no new Notices to Comply or citations have been issued. The Department is planning to reinstitute its dock-walking program, which will help to identify unseaworthy vessels. The Department is making progress with discarding some of the impounded vessels. He anticipates that only three or four vessels will remain in the near future.

Relative to the Seaworthy & Liveaboard Compliance Report, Deputy Carvalho clarified that there is no increase in the number of reported liveaboards from last month because some people chose not to renew their permit.

Commissioner Lesser asked the procedure followed for liveaboards who don't have a permit.

Deputy Carvalho responded that officers visit the site and issue a warning to the individuals. The ordinance states that without a permit a person can only live on a vessel 7 days a month. When a person exceeds this limit, the dockmaster provides the officers with documentation and they issue a citation.

Commissioner Lesser asked whether a person could obtain a permit if he/she applied for one. Deputy Carvalho responded that he/she could obtain a permit if the vessel passed the inspection.

Commissioner Lesser noted that the Commissioners have heard in the past from members of the public who say that liveaboards are discouraged in the Marina; however, if people looked at the number of liveaboard permits issued as a percentage of slips in the Marina, they would see that it is at the level or higher than many of the marinas around.

Mr. Wisniewski commented that the Department does not discourage liveaboards, which have been maintained at approximately 10% over the years. This is a good balance for the harbor.

**CHAIRMAN SEARCY OPENED THE FLOOR TO PUBLIC COMMENT**

Mr. Donald Klein referred to the May 25, 2005 Commission minutes, where Deputy Carvalho indicated that the Board of Supervisors approved the master agreement for the disposal of impounded vessels. Mr. Klein asked whether the document is available for public viewing.

Chairman Searcy explained that there are so many public documents it would be an undue burden for staff to copy and make every single one of them available. Staff is prepared and willing, upon request, to make documents available. He suggested that members of the public who wish to obtain copies of the master agreement contact the Sheriff's Department.

Mr. Wisniewski asked Mr. Klein whether he previously requested the master agreement from the Sheriff's Department. Mr. Klein responded that he hadn't previously requested the document.

Mr. Wisniewski expressed his concern that Mr. Klein has addressed the Commission on many occasions and inferred that public documents are not made available to the public. Mr. Wisniewski wanted to make clear that, to his knowledge, there has been no instance when documents haven't been available to Mr. Klein or other members of the public.

Further, Mr. Wisniewski said the public does not have to wait until the occurrence of a Small Craft Harbor Commission meeting to request documents but can contact staff if a document is desired. He suggested that Mr. Klein request the document from the Sheriff's Department after today's meeting and inform Beaches and Harbors staff if he has a problem obtaining it.

Additionally, Mr. Wisniewski requested that Mr. Klein discontinue the inference that staff protects documents as this is something that public officials are not supposed to do.

Mr. Klein said that he requested and received documents in the past; however, documents need to be discussed at public meetings because there are members of the public who aren't aware of them and/or won't write a government agency to request copies.

Mr. Thomas Faughnan mentioned that at a previous meeting Mr. Klein was referred to the Board of Supervisors' Executive Office to obtain a copy of the master agreement. The Board of Supervisors approved the document at a public meeting and it is available, pursuant to the Public Records Act, at the Board's Executive Office.

Mr. Etter commented that the master agreement could be placed online on the computer so that the public can access it.

Mr. Faughnan informed the Commission that Board-approved contracts are available on the County website.

Mr. Etter said that a couple of years ago the Department of Beaches and Harbors and the Sheriff's Department discussed ways to increase Marina revenue. They decided that boaters stood in the way and should be eliminated. They then utilized every single ordinance to get rid of the boaters. He said it is outrageous that the Sheriff's Department applied for a grant from the Department of Boating and Waterways when grant funds come from fuel tax paid by boaters. The money is then used to destroy the boats for which boaters paid taxes.

Mr. Etter asked where else in the County could a property owner be told he can't live on his property. He said that only boaters are discriminated against in this way.

Mr. Etter also expressed his belief that the Sheriff's Department isn't aware of how many days a person actually lived on a boat or whether the person exceeded the 7-day limit. Officers rely on

the dockmaster's word that the person exceeded the limit; no proof is submitted and no hearing is held. When dockmasters want to get rid of someone, they pick on him and kick him out.

Chairman Searcy expressed appreciation for the public's opinions and said that everyone is entitled to express opinions. He commented that there has been an issue in the past concerning unsafe boats, etc. and certain procedures were followed in these instances. Chairman Searcy said that some members of the public believe government agencies are just waiting for an opportunity to confiscate boats and sell or destroy them. It's a bad situation when members of the public have such an opinion but they are entitled to have it.

**b. *Marina del Rey and Beach Special Events***

Mr. Stan Wisniewski informed the Commission that the report includes the 43rd Annual Holiday Boat Parade and he encouraged everyone to attend. The report also includes the Fisherman's Village Concerts and Beach Events.

**c. *Marina del Rey Convention and Visitors Bureau (CVB)***

Ms. Beverly Moore reported that the bureau is continuing with its media relation efforts. Two weeks ago, the bureau hosted a diverse group of travel writers on a world wind tour of the Marina. They represented consumer and travel trade publications from Southern and Central California, Las Vegas and included Black Travel and Meetings magazine, another national meetings magazine and a Western regional publication.

Ms. Moore continued, stating that the travel writers visited hotels, sampled restaurants, rented kayaks, rented bikes, toured the harbor and the community. They loved their hands-on experience. The bureau is optimistic that these types of visits go a long way in helping to generate positive coverage of the community.

Ms. Moore also distributed copies of a recent news article that appeared in the New York Times Travel Sunday section on October 2. The article describes the Marina as an attractive option for travelers en route from one part of the world to the other or from the East Coast to Australia. Many of these travelers come to the MdR Convention and Visitors Bureau, particularly people traveling between Great Britain and Australia who need a layover for a couple of days before getting back on a long airplane ride.

In conclusion, Ms. Moore reported on the bureau's participation last month in a media marketplace in San Francisco sponsored by the State tourism office. The bureau's participation enabled staff to make one-on-one contact with 25 different travel writers and pitch the Marina.

Commissioner Lesser commended Ms. Moore on the report that was mailed to the Commission.

**CHAIRMAN SEARCY OPENED THE FLOOR TO PUBLIC COMMENT**

Relative to media releases and perceptions of the Marina, Ms. Carla Andrus submitted both the November 4-17, 2005 Boating News and copy of an article taken from the November 7, 2005 Newsweek magazine. She pointed out that Boating News contains a few articles, one of which is titled, "An Endangered Species: MdR's Small Boats." Ms. Andrus commented that the Boating News article as well as Newsweek's "No Kitchen, Water Views" article would do nicely in the MdR Convention and Visitors Bureau and provide a different perspective. Ms. Andrus mentioned that the articles might not be what tourists are looking for but the articles would be of interest to the community.

Chairman Searcy thanked Ms. Andrus and requested that the articles be left with the secretary.

Mr. Etter commented that if the Marina were really such a nice place to be, the County would not have to provide funds to the Convention and Visitors Bureau to promote it since a good product sells itself.

Mr. Etter also informed the Commission that there have been articles in the Daily News, L.A. Times, Newsweek and Christian Science Monitor that discussed issues such as the lessees' illegal campaign contributions to Supervisor Don Knabe and others.

Mr. Etter read a paragraph from the Newsweek article, "No Kitchen, Water Views," which includes Donald Klein's comments:

> Live-aboards aren't ready to walk the plank yet; they've organized in Washington, Hawaii and California to counter their opposition. Don Klein, a Marina del Rey liveaboard for 30 years and founder of Save the Marina, Inc., has six lawsuits pending against Los Angeles County that challenge ongoing commercial projects on the waterfront--part of what he calls "boater cleansing." Regardless of the legal outcomes, the tension is unlikely to subside. "They hate us and we hate them. That's just the way it is," Klein says. For liveaboards, it seems, making waves comes naturally.

Mr. Etter commented that Mr. Klein's statements reflect the real truth.

**4. <u>OLD BUSINESS</u>**

***a. None***

**5. <u>NEW BUSINESS</u>**

**a. Consideration of Resolution Concerning Affordable Housing at Parcel 20 (Capri Apartments)**

Chairman Searcy took a moment to explain that Agenda Item 5a was placed on the agenda per his request at the October meeting after the Commission's discussion on the subject. He explained that he didn't intend for the Commission to single out Parcel 20 but to have the opportunity to express support for affordable housing in general and its inclusion as a condition of approval by the Regional Planning Commission.

Chairman Searcy stressed that the affordable housing in-lieu fee should be looked at very carefully and there should be an effort to remove opportunities for its abuse so that there aren't situations in which the County might end up with money but no affordable housing units. He expressed his support of mixed-income and mixed-use developments and said that all segments of society should have the opportunity to know each other, be it on a gender, racial, religious or economic basis.

Further, Chairman Searcy said that allowing situations resulting in no or few affordable housing units when such units are generally envisioned under the intent of the County policy is a disservice to the community and the County of Los Angeles in general.

Commissioner Lesser commented that he thought the Commission would consider a resolution pertaining specifically to Parcel 20's affordable housing. He said that there is a difference between the general issue of affordable housing and as it relates to Parcel 20's situation.

Commissioner Lesser explained that he is philosophically opposed to the concept of providing subsidized housing near the beach, Bel Air, Brentwood, etc. People should live where they can afford to live. There shouldn't be two units next to each other with one resident paying $2,000 per month while his neighbor with the same type of unit pays $800 per month because of taxpayer subsidies.

Commissioner Lesser said that he is also philosophically opposed to some of the actions taken by government agencies and private individuals to restrict beach access. He believes that the public has the right to complete beach access and a right to enjoy it; however, this doesn't mean that people can live at the beach if they can't afford it. One example of an effort by private individuals to restrict beach access are those residents with mansions in Malibu who have spent years trying to block public access to the beach in front of their homes.

Commissioner Lesser commented that the City of Hermosa Beach's resident parking requirement is an example of a government agency's effort to restrict public access. Members of the public who don't have a resident sticker and want to park on a public street during May through September can only remain at a parking space for one hour or go through a bureaucratic process to obtain a day pass. Parking officers issue citations for those people who remain for even more than one minute over the hour limit. The goal is to keep people from enjoying the beach.

Commissioner Lesser mentioned that he resides in Manhattan Beach near the beach and that city doesn't restrict beach access. He's seen people park their cars in the morning and leave them all day while enjoying the beach.

Commissioner Lesser said that although he is philosophically opposed to the agreement, once a deal has been made it should be kept. The County made a deal with the Parcel 20 lessee to provide affordable housing units and the lessee should be required to adhere to the agreement. He said that he would vote to support the County's position and require the lessee to provide the affordable housing units.

Vice-Chairperson Stevens asked the status of the Regional Planning Commission's (RPC) hearing on the issue. Mr. Wisniewski responded that the hearing was held in October and is continued to November 30. Three departments, Regional Planning, Community Development Commission and Beaches and Harbors, submitted a report to the RPC that recommended against giving the lessee the option of paying the in-lieu fee and supported the provision of ten on-site affordable housing units at Parcel 20 (Capri Apartments). The RPC considered the report and took public testimony at the hearing.

Chairman Searcy requested that staff post the Regional Planning Commission's November 30, 2005 hearing on the Beaches and Harbors' website.

**CHAIRMAN SEARCY OPENED THE FLOOR TO PUBLIC COMMENT**

Mr. David Levine, president, Marina del Rey Lessees Association, said the Board of Supervisors spent a considerable amount of time and had input from a considerable number of County agencies as well as departments when it crafted an affordable housing policy for Marina del Rey approximately 2½ to 3 years ago. The Lessees Association supports the policy, which provides for a case-by-case analysis of whether or not it is feasible or infeasible to provide units on site and/or to meet the goals of the Mello Act and County policy through provision of the affordable units off-site or payment of an in-lieu fee.

Mr. Levine said that, while the opinions may differ on individual cases, his point is to reiterate that there is a policy in place and it was crafted after a considerable amount of time, effort and public input. There is a reason there are alternatives and tests of infeasibility and flexibility in the policy

and possibility of an in-lieu fee. The Lessees Association supports the policy and going through that process on a case-by-case basis.

Ms. Dorothy Franklin, 22-year Marina del Rey resident, informed the Commission that she is a legal liveaboard and past president of the Professional Marine Services Association, which is a group of business owners within Marina del Rey. She has owned a boat-detailing business for several years.

Ms. Franklin expressed her support for enforcing the Mello Act and belief that it applies throughout California. There are low-income seniors who have lived in the Marina for many years and who have worked many years but experienced an income reduction after retiring. She questioned why they should be forced to move to another area because of financial reasons.

Ms. Franklin said that she is personally aware of eight or nine people who applied for affordable housing units at Capri Apartments. A couple of them watched the development of the Capri Apartments and applied as soon as the units became available. One of the people was given an application and the other person was not. Both qualified as far as age and income are concerned. As it currently stands, she's only aware of one of these applicants being granted an apartment.

Ms. Franklin said that the Mello Act should be enforced and she expressed appreciation for the Commission's support of affordable housing at Capri Apartments.

Ms. Andrus thanked the Commission for its special meeting and for empowering the Commission and the public by agendizing the affordable housing issue.

Ms. Andrus informed the Commission that there is an ongoing investigation of Parcel 18 (Monte Carlo Apartments). She added that she isn't sure whether the investigation is official.

Ms. Andrus requested that the Commission recommend the provision of affordable housing units with every Marina development in accordance with the Mello Act and adjust whatever is needed, including adjusting the high profit guarantee to developers. She said that the general plan is up for revision. A Regional Planning Dept. staff person informed her that because of budget constraints it would not be available until 2008. This shows that a high value or priority is not being placed on the Mello Act, which was enacted to ensure against gentrification of the coastal zone. Ms. Andrus is sure the County can cut corners somewhere to ensure the general plan is reviewed.

Further, Ms. Andrus said that when 2008 rolls around, one would be led to believe that the Marina is a retirement community. The small craft harbor is getting smaller every day and is a recreational facility intended to serve all of the surrounding community. So far, every developer that has passed through the regulatory process has positioned himself to use seniors. Not because there is concern for seniors obviously, when you look at the time to open the doors, but because Title 22 allows for special considerations, so they justify zone changes. They justify density and parking and they get all of these things. They put it on the backs of the seniors. That's why there's no general affordable housing in the Marina, which is ridiculous. That general plan needs to be reviewed.

Ms. Andrus continued, stating that while tenants are moving in, none are welcome that have applied for the affordable aspect that was promised. The creation of homelessness is occurring faster than the coast can supply affordable housing. The County policy needs to be changed and the Mello Act strengthened. This 800-acres is a public asset. It belongs to the public after all. The County can certainly make allowances for the developers if it needs to, to ensure there is affordable housing compliance.

Ms. Andrus also requested that there be a grandfathering in of the liveaboards to preserve liveaboard status as a historical use in the Marina. This has been an affordable aspect of the Marina for a long-time this living on the water, and the issue is becoming quite urgent.

Mr. Etter expressed appreciation to Commission members for their pleasant demeanor with the public.

Relative to personal vs. private property, Mr. Etter said that property owners have a right to decide what is allowable on their property. Since the County taxpayers own the land in Marina del Rey, they should be able to establish terms that please them. If the taxpayers want to increase the percentage of affordable housing units to 30%, they should be allowed to do it.

Mr. Etter said the Commission's and County's statements contradict their actions, which have contributed to gentrification. He said that the County committed acts, such as stealing the Boy Scout Sea Base. Small businesses are being eliminated. The only thing that seems to be allowed is what the developer wants to construct, which are condominiums and apartments that only benefit a few rich people.

Mr. Etter continued, stating that there is no policy to require a sufficient amount of affordable housing in the Marina. Whenever the issue comes up there is always a backdoor for the developers. If a person reviewed every single project constructed in the Marina, what was originally promised has never happened and there has always been a fight to the death for members of the public to get what they want. Every developer has violated its permit.

Mr. Etter said that he attended the last DCB meeting and the Capri Apartments' lessee was told to take down seven illegal signs. They obtained a permit for one sign. He noticed at the site that only half of the signs have been taken down. He has continuously asked the Planning Division why the signs haven't been taken down, but staff doesn't care about the DCB's instructions.

Vice-Chairperson Stevens asked whether the County's affordable housing policy applies to all new developments in the Marina. Mr. Wisniewski responded that a couple of developments were approved before the policy's approval. From the date the policy was approved all of the apartment developments were subject to the policy. Even those apartments that were subject to deals approved before the affordable housing policy have elements of affordable housing in each one of them.

***Commissioner Lesser moved and Chairman Searcy seconded a motion that the Small Craft Harbor Commission support the Department of Beaches and Harbors, Department of Regional Planning's and Community Development Commission's joint report and encourage the Regional Planning Commission to not allow the Parcel 20 (Capri Apartments) developer to pay an in-lieu fee, but be required to provide the affordable housing units. The motion passed with Chairman Searcy, Vice-Chairperson Stevens and Commissioner Lesser voting in favor. Commissioner Crail abstained.***

Mr. Wisniewski clarified that both the Board of Supervisors and Regional Planning Commission would be informed of the Commission's position on the matter.

**b. Exercise Options for the Early Termination of a Portion of Leasehold Parcel 44U (Pier 44) and all of 77W (77 Del Rey) – Marina del Rey**

Mr. Wisniewski distributed copies of a map delineating Parcels 44 and 77. He noted that the map shows the Department proposes to exercise an option that relates to just a portion of Parcel 44 as well as all of Parcel 77. The option price is $5.6 million plus interest accruing at the prime rate as of February 26, 2004.

Mr. Wisniewski reported that there are funds available in the Marina Accumulative Capital Outlay (ACO) Fund to exercise the option and the Department intends to minimize the effect on the ACO by using extension fees that were negotiated with the lessee of other parcels. Mr. Michael Pashaie and Mr. David Taban are the lessees and they have a number of other deals with the County. There are extension fees already due the County and is payable over a period of years. At the County's option, it can request that money and use it to pay down the $5.6 million plus interest extension fee, which the Department intends to do. Mr. Wisniewski said that between three parcels, 140, 97 and 56, there

would be a total of approximately $1.4 million in fees, which will reduce the draw on the ACO Fund to approximately $4.2 million plus interest. The ACO balance is $10.6 million. There is about $2 million in committed projects leaving a balance of $8.6 million in the ACO Fund. The Chief Administrative Office has agreed to place in the current year, and may possibly in future years, $3 million into the fund for Marina del Rey, which will be used to fund infrastructure projects for which the Department can't find other funding sources. There is always an effort to locate funding sources, such as the State Department of Boating and Waterways, which funded a long-term loan for the seawall repair project. In the past, the Department has been successful in obtaining dredging money, which is a federal responsibility.

Further, Mr. Wisniewski said that the plan is to include Parcel 77 in the Burton Chace Park expansion. There is currently a boat repair business at Parcel 77 and dry storage tenants. The new dry storage and mast-up facility will be constructed at Parcels 52 and GG. One condition of Almar's deal was for the company to install a small boat repair business. This deal is currently under negotiation. The Department is essentially implementing its long-term vision of expanding Chace Park and ensuring that there are homes for dry storage tenants and not minimizing the number of options available for boat repair services in Marina del Rey. There are two major boat repair yards, the BoatYard and Windward, and a number of small boat repair businesses, one of which is located on Parcel 77.

Mr. Wisniewski said that a portion of the land and water area on Parcel 44 would be used. The Department hopes to relocate the Santa Monica Windjammers Yacht Club onto that land portion of Parcel 44 so that Parcels 77 and 47 can be utilized for Chace Park's expansion. Preliminary work on Chace Park's master plan has been done and the Department will submit the plans to the Commission when they become available.

Chairman Searcy asked whether there are plans to ensure the new boat storage and repair facilities are operating before Parcel 77's old facilities are closed.

Mr. Wisniewski responded that the Parcel 77 dry storage tenants would have the opportunity to transition to Almar's facilities. The Department would want to make sure that Almar's facilities are completed and available so that this transition can occur.

Mr. Wisniewski also clarified that Almar is required to construct a boat repair business and it is up to Almar to decide who would operate the business.

Mr. Moliere added that the boat hoist at Parcel 77 would be replaced and a number of other additional facilities would be available, such as wash down spaces.

**CHAIRMAN SEARCY OPENED THE FLOOR TO PUBLIC COMMENT**

Mr. Steve Weinman referred to a paragraph (that he brought to the meeting) taken from the Marina del Rey Land Use Plan:

> At a minimum, the existing level of boating-related support facilities and services shall be maintained for the boating public...parcels 1 and 55, boat repair yards on parcels 53 and 54, the mast up storage and hoist on parcel 77....

Mr. Weinman said he interprets the sentence to mean that at a minimum, there should be boating-related support facilities at Dock 77 or Parcel 77. He continued reading:

> With the exception of the facilities located on parcels 1, 54, 55 and 56, which shall not be displaced...

Mr. Weinman said this sentence is contradictory indicating that Parcels 1, 54, 55 and 56 would not be displaced. The paragraph also states, "boating facilities would be relocated." He said that it would be conspicuous by the relocation that the facilities would not be the same and won't offer the same

amenities, which is the ability of boat owners to keep their boats on trailers. The boat owners will have their boats on a rack and won't be able to work on it like they do currently.

Mr. Moliere explained that in addition to the dry stack there would be replacement of the mast-up storage on trailers. There will be the same system as is in place on Parcel 77. New dry stack and mast-up storage facilities will be constructed on Parcel 52.

Mr. Weinman asked whether Mr. Moliere meant that the boat owners of the 150 boats presently at Parcel 77 would be able to have their boats on their trailers, walk to their boats and work on them as they do currently.

Mr. Wisniewski responded that Almar would provide some mast-up storage spaces and some stack storage spaces. There will be a net gain in storage for vessels as well as additional facilities. Mr. Moliere added that there would be the same number of mast-up storage spaces as currently exist on Parcel 77, which is to what the policy speaks.

Mr. Weinman said that he has friends with boats at Parcel 77 and they're curious about Almar's amenities. Currently, boaters can walk through the gates and access their boats without having to deal with boat racks. He said that there is also a cost issue and he would like to think that Almar has worked this out.

Mr. Weinman asked what a person with a 23' boat who currently pays $125 per month for storage fees would pay for a boat rack at the Almar facility.

Mr. Wisniewski responded that he did not know the specific cost; however, tenants can be assured that the new rates will be market rates.

Chairman Searcy asked Mr. Weinman whether he charges market rates at his repair business. Mr. Weinman responded that he believes he pays a fair rate to the lessee and a percentage is paid to the County.

Chairman Searcy asked Mr. Faughnan whether the lease has a provision pertaining to price control. Mr. Faughnan responded that all County leases have a controlled prices provision requiring all charges to be fair and reasonable.

Chairman Searcy asked the recourse if a person believes he/she isn't charged fairly. Mr. Faughnan responded that the person should bring the matter to the attention of Mr. Wisniewski.

Mr. Ted Faute, boat owner, said that he'd like to codify some of the promises made at today's meeting and see them in writing. He questioned whether the fair market rate at Almar's boat storage facility would be a percentage above the current rate. He considers the percentage above the current rate to be fair. Mr. Faute said that he would like to hear the fair market rate at today's meeting or at the next Commission meeting.

Mr. Faute asked the number of boats currently at Parcel 77 and whether Almar would have enough storage space to accommodate them. He has his trailer and boat at Parcel 77 and his fee covers storage for both. He expressed concern that his expenses would double if his boat and trailer were stored separately. Mr. Faute questioned whether there would be room for his trailer at Almar.

Commissioner Lesser responded that the Commission was told, and members have insisted, that the new facilities would accommodate at least what is currently accommodated at Parcel 77 and that the new facilities would open for business before destruction of the old facilities.

Mr. Moliere clarified that there are currently mast-up sailboats on trailers at Parcel 77. The new Almar facility will provide at least the same number of boat spaces. There are also a number of other boats on Parcel 77, most on trailers, and more than that number of spaces will be replicated on Parcel 52.

Mr. Moliere explained that one reason for providing dry stack is to increase the amount of storage and make it available so that boats can easily and quickly be launched into the water. One way to accomplish this is to replicate the hoist. The Almar dry stack system itself launches the boats through an overhead crane system into the water. Trailers and dollies will be available at the Almar facility for people who want to use them.

Mr. Donald Klein asked whether the project would be presented to the Regional Planning Commission and California Coastal Commission.

Mr. Wisniewski responded that the Almar project requires a Local Coastal Plan (LCP) amendment. In the LCP, Parcel 52 is encumbered with the use for public facilities and was intended as the location for the Department's administration building. However, the administration building will now be constructed on Parcel 21, thus freeing up Parcels 52 and GG for the dry stack storage facility. It will have to go the Board of Supervisors, Regional Planning Commission and Coastal Commission.

Mr. Moliere clarified that the Parcels 44/77 transaction presented to the Commission at today's meeting pertains to exercising the option. There is no plan to change any use and only the Board of Supervisors' approval is required. Chairman Searcy further clarified that the Parcels 44/77 transaction discussed today would allow the early termination of the lease for a portion of Parcel 44U and all of Parcel 77.

Mr. Wisniewski gave some background, explaining that today's discussion of the Board letter is from a proprietary standpoint. Whenever a lease is amended, it's a proprietary deal. The issues raised by Mr. Klein are in anticipation of development, which requires the regulatory process involving the Regional Planning Commission, Board of Supervisors and in most cases the Coastal Commission.

Chairman Searcy asked whether the Department would submit to the Commission specific details pertaining to the Almar project as it goes through the regulatory process.

Mr. Wisniewski responded that the project's architectural plans, etc. would be submitted to the Design Control Board; however, staff would provide the Commission with this information if members wish to have it. Chairman Searcy affirmed that the Commission would like to receive this information.

Mr. Klein questioned whether dredging is a federal requirement. He said that House Document 389 of Public Law 780 indicates the County would bear the responsibility for dredging.

Mr. Wisniewski responded that the federal government has responsibility to dredge. The County has had differences of opinion with the federal government on the matter and has to work hard to obtain federal funding. In fact, the County participated to a great extent on funding one of the last dredging projects.

Mr. Klein said that the public never saw the Almar plans, such as the architectural drawings and three- dimensional views. As he understands it, the Coastal Commission did not look favorably on the project.

Mr. Wisniewski responded that the Almar project was not presented to the Coastal Commission. There were preliminary discussions with staff as well as a couple of Coastal Commission members who indicated that the project would receive fair consideration. The Department has reason to believe that it will receive, in its current state, Coastal Commission approval.

Mr. Klein said that the public should receive a special deal in the Marina given the fact that the Marina is public land. He questioned why private entities should be given special treatment on public land. He said that Mr. Wisniewski believes that Marina del Rey is his own little oyster with which he can do whatever he likes. This is public land and there needs to be a wake up call that the Marina is public land and it belongs to the public, which pays County employees' salaries. The public isn't getting a good deal and don't like it.

Mr. Klein also commented that staff has been remiss in providing the public with adequate information on the Parcels 44/77 lease option. He questioned whether the lessee is getting a pickup on other properties elsewhere in the Marina. The public demands and needs to be provided specific information on such documents that are submitted for Board approval.

Mr. Wisniewski responded that the lessee is getting the option price, not a land swap.

Ms. Carla Andrus asked whether the Parcels 44/77 project is a catalytic project. Mr. Wisniewski responded that it is not a catalytic project as defined in the Marina del Rey Asset Management Strategy.

Ms. Andrus questioned whether there is a catalytic project that will be an element of the Parcels 44/77 project and involves relocating the Department's offices to Parcel 21.

Mr. Wisniewski reiterated that the Parcels 44/77 project doesn't have anything to do with a catalytic project.

Ms. Andrus commented that the Design Control Board isn't well attended because the meeting time makes it difficult for many people to participate. She suggested an evening Commission meeting to present an overview of the development plans. Because of the issues complexity, the Small Craft Harbor Commission and Design Control Board should have a joint evening meeting to provide an overview of the various plans. She questioned how accountability could exist when projects continue to be rushed through the approval process.

Mr. Thomas Cook informed the Commission that he doesn't necessarily oppose the Parcels 44/77 option on principle; however, he wanted to inform the Commission of what a boater with a trailer is looking at in terms of the uncertainty of the future. Mr. Cook questioned whether his trailer would need to be placed in dry storage and require him to pay a parking fee, which is a cost he doesn't currently have.

Mr. Cook said that one disadvantage of dry storage is that when boaters want to work on their boats and not launch them, they will need to have the boats taken from dry storage and put on a crate in order to work on them. He questioned whether Almar would require a fee for this service. If so, this is a fee that Mr. Cook doesn't currently have to pay at Dock 77.

Additionally, Mr. Cook said he doesn't hear any guarantee that the Almar rate will not be exorbitant or 3-4 times more than what he currently pays.

Mr. Faughnan said that all leases have a controlled pricing provision that requires prices to be fair and reasonable. People with pricing concerns should bring them to Mr. Wisniewski's attention.

Mr. Cook commented that the public's redress appears to be an appeal process. He questioned whether the burden of proof is on the public since they are required to inform Mr. Wisniewski and prove that fees are exorbitant.

Mr. Faughnan responded that a letter should be written to Mr. Wisniewski. Staff will investigate the allegation(s) consistent with Policy Statement No. 27.

Mr. Hans Etter commented that Almar is another big corporation that is allowed to move in while small business is kicked out.

Mr. Etter said that he didn't have information about the bidding process and he questioned whether the bidding process was fixed and involved a payoff to a County Supervisor. Mr. Etter said that it appears every single developer in the Marina is happy to be here because it's easy money; they can pay off a Supervisor, come in, and do business. Small businesses are kicked out of the Marina.

Chairman Searcy responded that Almar competed in a Request for Proposals process. He expressed astonishment that Mr. Etter questioned the process when he attends most of the meetings.

Mr. Etter said that he has attended enough meetings to know what the Department really means when it discusses market value and market prices. He saw how people were treated at Marina Harbor, where boat slips were constructed and only new boats permitted. Mr. Etter thinks it was in the conditional use permit where they were going to move boaters around. The boat owners with old boats weren't allowed back in.

Mr. Etter said that the Almar project would displace existing docks and create a major inconvenience to boaters. Not only will it be more difficult to access the boats, but there will be damage to the boats pulling them in and out of dry storage.

Mr. Etter said that when plans are discussed with the Commission, staff never reveals the exact costs for the services the lessee plans to provide. The Department allows the lessee to prohibit boat owners with old boats from returning to the anchorages even though they might have been good tenants. Lessees arbitrarily choose which boaters are not allowed to return.

Mr. Etter said that a night meeting is needed so the public will have the opportunity to learn about the Almar project. He commented that the Parcels 44/77 item doesn't need to be approved today given the lack of information made available to the public and the fact that the Coastal Commission hasn't approved the project. He questioned: 1) whether the Commissioners and staff have read the lease's fine print; 2) whether the lessee will pay for square footage and whether the amount is reasonable; and 3) how anyone knows that the public isn't being ripped off.

Commissioner Lesser commented that the Almar project is positive and will involve change, which is tough, but the plans will lead to improvements.

In response to the notion that fair market value should not be paid on public land, Commissioner Lesser commented that it is true that the Marina is on public land; however the land is owned by the County of Los Angeles, which consists of several million County residents. If those millions of people subsidized the several thousand Marina residents, money that could be used for healthcare and other purposes would be taken away.

***Commissioner Lesser moved and Commissioner Crail seconded a motion recommending approval to exercise options for the lease terminations of a portion of Parcel 44U (Pier 44) and all of Parcel 77W (77 Del Rey) – Marina del Rey. The motion was unanimously approved.***

## 6. STAFF REPORTS

### a. Ongoing Activities Report

Chairman Searcy announced that this item would be received and filed.

Chairman Searcy opened the floor to public comment as the Commission received several requests to speak on this item.

**CHAIRMAN SEARCY OPENED THE FLOOR TO PUBLIC COMMENT**

Ms. Andrus informed the Commission that the August 18, 2005 Design Control Board (DCB) minutes were approved despite her objections, which pertained to the fact that the essence of what she said at the meeting was not provided in the minutes. She wrote a letter in September about the matter and requested that the letter be included irrespective of whether the DCB approved the minutes; however, the letter was not included with the September minutes. Ms. Andrus said that she had made it clear to the secretary and reiterated it several times that Mr. Wisniewski could take the letter to the meeting. She also requested the secretary to ensure the letter was brought to the meeting whether or not Mr. Wisniewski planned to attend.

Ms. Andrus said that she had also provided a letter that she wrote to the Audit Commission concerning the DCB. She did not supply the letter only for the consumption of DCB staff or Beaches and Harbors. The letter was also intended to be for public information. Ms. Andrus spoke to Ms. Julie Carpenter and Ms. Latrina Hancock about the matter. There were two agenda items, three minutes each, on which she spoke at the meeting. To correct this Brown Act violation, she suggests that the Board do a full three minutes, although the DCB doesn't typically do that. Ms. Andrus thinks this would help remedy the situation. She explained that she didn't take off time from work to have her testimony omitted. Ms. Andrus said that providing testimony about Goldrich and Kests affordable housing violations in their presence is nerve-racking. Not having the testimony included in the minutes is outrageous and is a violation she cannot let go. Ms. Andrus requests a remedy to the matter.

Mr. Wisniewski suggested that Ms. Andrus address concerns pertaining to the DCB minutes to the Design Control Board. If the Design Control Board approved minutes that did not reflect her testimony, it is the Design Control Board's, rather than the Small Craft Harbor Commission's (SCHC), responsibility. The DCB minutes are provided as a courtesy to the SCHC and the Commission has no control over the DCB or its minutes.

Chairman Searcy assured Ms. Andrus that the SCHC minutes would reflect her comments; however, the SCHC does not have any control over the DCB.

## 7. COMMUNICATION FROM THE PUBLIC

Mr. Fred Newman expressed his understanding that there are plans to construct a new apartment complex at the corner of Palawan Way and Admiralty Way, which is the current location of the Admiralty Apartments. He asked whether the new complex would have mixed use.

Mr. Moliere responded that the new complex will not have mixed-use and will only have apartments.

Mr. Newman mentioned that Mr. Steve Napolitano from Supervisor Knabe's office is at today's meeting. Mr. Newman said that Mr. Napolitano brought him some reports about traffic control and it's the first time he has ever seen them so he hasn't had time to read them; however, he noticed information about improvements that were planned in the 1990s at various locations in

the Marina. Mr. Newman said that none of the improvements have taken place in the 29 years he's been in the Marina.

Mr. Moliere responded that if Mr. Newman was referring to the 1996 LCP, which detailed some future traffic improvements that were suggested, many of them are in the planning stages, which takes many years. The plans include the Admiralty Way widening and the Marina extension, one of which is in the EIR process.

Mr. Newman said that nothing gives the Department the authority to proceed with development plans and add to traffic congestion without traffic improvements.

Mr. Moliere said that in addition to the traffic study in the LCP, each project has to have an EIR, which includes a full traffic study, which would suggest improvements in addition to those listed in the LCP.

Mr. Wisniewski commented that after listening to Mr. Newman's concerns over the years, he perceives that most of them pertain to traffic. Mr. Wisniewski clarified that the Small Craft Harbor Commission deals with proprietary issues. While it's important for the Commission to be aware of Mr. Newman's traffic concerns, they would be better addressed to the Regional Planning Commission, Board of Supervisors and Coastal Commission as projects work their way through the regulatory process.

Mr. Wisniewski said that to the extent Mr. Newman wants to see proof that traffic mitigation measures are going to occur, it's important to deal directly with the groups involved in the regulatory process. Mr. Wisniewski assured Mr. Newman that no project would be constructed without addressing traffic issues.

In response to Commissioner Lesser's comment about subsidizing Marina residents, Mr. Etter said that taxpayers pay millions of dollars each year to the County and the County invests little of this money in the Marina. The lessees are being subsidized and the reason is that Supervisor Knabe takes illegal campaign contributions. If there were honest officials, a lot more small business projects would be constructed in the Marina. The Marina's gentrification, exclusion of small business, etc., is because of Supervisor Knabe, who is taking money from the developers.

## 8. ADJOURNMENT

Chairman Searcy adjourned the meeting at 11:30 a.m.

Respectfully submitted,

Toni Minor
Commission Secretary

# LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
# MARINA DEL REY STATION
# PART I CRIMES- NOVEMBER 2005

| | West Marina 2760 | East Marina 2761 | Lost R.D. 2762 | Marina Water 2763 | Upper Ladera 2764 | County Area 2765 | Lower Ladera 2766 | Windsor Hills 2767 | View Park 2768 | TOTALS |
|---|---|---|---|---|---|---|---|---|---|---|
| **Homicide** | | | | | | | | | | 0 |
| **Rape** | | | | | | | | | | 0 |
| **Robbery: Weapon** | | | | | | | | 3 | 2 | 5 |
| **Robbery: Strong-Arm** | | | | | | | | 1 | | 1 |
| **Aggravated Assault** | 1 | | | 1 | | | | 2 | 1 | 5 |
| **Burglary: Residence** | 1 | | | 1 | | | 2 | 1 | 9 | 14 |
| **Burglary: Other Structure** | 1 | 1 | 1 | 1 | | 1 | 1 | | | 6 |
| **Grand Theft** | 5 | 3 | | 2 | | | 2 | 2 | | 14 |
| **Grand Theft Auto** | 5 | | | | | | | | 2 | 7 |
| **Arson** | | | | | | | | | | 0 |
| **Boat Theft** | | | | | | | | | | 0 |
| **Vehicle Burglary** | 6 | | | | | | 1 | 2 | 5 | 14 |
| **Boat Burglary** | | 1 | | 1 | | | | | | 2 |
| **Petty Theft** | 10 | 2 | | 3 | 1 | | | 2 | 2 | 20 |
| **REPORTING DISTRICTS TOTALS** | **29** | **7** | **1** | **9** | **1** | **1** | **6** | **13** | **21** | **88** |

**Note-** The above numbers may change due to late reports and adjustments to previously reported crimes.

**Source-** LARCIS, **Date Prepared** - December 1, 2005
CRIME INFORMATION REPORT - OPTION B

# LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

## MARINA DEL REY STATION

## PART I CRIMES- NOVEMBER 2005

| Part I Crimes | MARINA AREA (RD'S 2760-2763) | EAST END (RD'S 2764-2768) |
|---|---|---|
| | | |
| Homicide | 0 | 0 |
| Rape | 0 | 0 |
| Robbery: Weapon | 0 | 5 |
| Robbery: Strong-Arm | 0 | 1 |
| Aggravated Assault | 2 | 3 |
| Burglary: Residence | 2 | 12 |
| Burglary: Other Structure | 4 | 2 |
| Grand Theft | 10 | 4 |
| Grand Theft Auto | 5 | 2 |
| Arson | 0 | 0 |
| Boat Theft | 0 | 0 |
| Vehicle Burglary | 6 | 8 |
| Boat Burglary | 2 | 0 |
| Petty Theft | 15 | 5 |
| | | |
| Total | 46 | 42 |

**Note**- The above numbers may change due to late reports and adjustments to previously reported crimes.

**Source-** LARCIS, **Date Prepared – December 1, 2005**
CRIME INFORMATION REPORT - OPTION B

# MARINA DEL REY HARBOR ORDINANCE
# SEAWORTHY & LIVEABOARD COMPLIANCE REPORT

| | October | November |
|---|---|---|
| **Liveaboard Permits Issued** | 2 | 2 |
| **Warnings Issued (Yellow Tags)** | 0 | 0 |
| **Notices to Comply Issued** | 0 | 0 |

**Total Reported Liveaboards By Lessees - 583**
**Total Liveaboard Permits Issued - 475**
**Percentage of Compliance - 81**

No new Warnings were issued in the month of November.

No new Notices to Comply were issued in the month of November.

No new citations were issued for violations of 19.12.1110 L.A.C.C. (liveaboard permit) or 19.12.1060 L.A.C.C. (unseaworthy vessel) in the month of November.

**Number Of Impounded Vessels Demolished**

To date, one hundred and eighty one (181) vessels have been removed from the marina for disposal. Currently, nine (9) vessels are ready for disposal and twelve (12) are awaiting lien sale procedures.

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Los Angeles County
Caring for Your Coast
Beaches & Harbors

**Stan Wisniewski**
Director

**Kerry Silverstrom**
Chief Deputy

December 7, 2005

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan W.

SUBJECT: **ITEM 3b - MARINA DEL REY AND BEACH SPECIAL EVENTS**

# ***MARINA DEL REY EVENTS***

## TALL SHIPS AT FISHERMAN'S VILLAGE

December 15th – 27th

Lady Washington will arrive in Marina del Rey on Thursday, December 15th. Travel back in time aboard the Lady Washington, a reproduction of the great tall ships that sailed in the late 1700s. There will be battle re-enactment sails and dockside tours open to the public beginning Thursday, December 15, through Tuesday, December 27.

For fee schedule and reservations call: Lady Washington at 1 (800) 200-LADY or visit its website at http://ladywashington.org.

## MARINA DEL REY GREETS THE NEW YEAR WITH FIREWORKS SPECTACULAR

Saturday, December 31
Sponsored by the Department of Beaches and Harbors
and presented by Zambelli Fireworks Internationale

Marina del Rey will usher in the New Year with a spectacular free fireworks show off the Marina South Jetty on New Year's Eve, Saturday, December 31. The fireworks will begin at the 30-second countdown to midnight and continue into the opening minutes of 2006.

The fireworks can be viewed throughout Marina del Rey. The best locations for viewing fireworks are Fisherman's Village on Fiji Way and Burton Chace Park. Parking is available in County lots throughout the Marina.

For event information call: Marina del Rey Visitor Center at (310) 305-9545.

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://beaches.co.la.ca.us

**FISHERMAN'S VILLAGE WEEKEND CONCERTS**
Sponsored by Pacific Ocean Management, LLC
All concerts from 1:00 p.m. – 4:00 p.m.

**Saturday, December 17**
Bobby Griffin, playing Blues

**Sunday, December 18**
Phyllis Chang, playing Contemporary Pop & Jazz

**Saturday, December 24**
Tim Peterson Singers, performing Gospel

**Saturday, December 31**
Son Candela, playing Afro/Cuban Jazz

**Sunday, January 1**
Unkle Monkey, playing Tropical Rock

For more information call: Dee Lavell Gilbert at (310) 822-6866.

## *BEACH EVENTS*

**VENICE PENGUIN SWIM CLUB ANNUAL SWIM**
Sunday, January 1, 2006
11:00 a.m.

The famous club goes into the ocean for its annual "chilly" wintertime swim at Venice Beach.

For event information call: The Venice Penguin Swim Club at (310) 390-5700 or visit its website at www.swim.net/scaq/.

SW:mc

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Beaches & Harbors

**Stan Wisniewski**
Director

**Kerry Silverstrom**
Chief Deputy

December 6, 2005

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan W.

SUBJECT: **ITEM 5a - APPROVAL OF OPTION FOR AMENDED AND RESTATED LEASE TO FACILITATE REDEVELOPMENT - PARCELS 55, 56S AND W (FISHERMAN'S VILLAGE) - MARINA DEL REY**

Item 5a on your agenda pertains to an option to amend and extend the lease for Parcel 56S (Fisherman's Village), including the addition of Parcels 55 and W to the leasehold, in order to facilitate redevelopment of the land-side and water-side facilities.

Attached is a copy of the Board letter that explains the details of the proposed transaction. The exhibits to the Board letter include a copy of the proposed Option to Amend Lease Agreement and a copy of the proposed Amended and Restated Lease Agreement.

Your Commission's endorsement of my recommendation to the Board of Supervisors as contained in the attached letter is requested.

SW:gb
Attachment

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Los Angeles County
Caring for Your Coast
Beaches & Harbors

**Stan Wisniewski**
Director

**Kerry Silverstrom**
Chief Deputy

December 20, 2005

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

Dear Supervisors:

**OPTION FOR AMENDED AND RESTATED LEASE TO FACILITATE REDEVELOPMENT - PARCELS 55, 56S AND W (FISHERMAN'S VILLAGE) - MARINA DEL REY (4th DISTRICT) (4 VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Find that the proposed Option to Amend Lease Agreement ("Option"), attached as Exhibit A, is categorically exempt under the California Environmental Quality Act pursuant to classes 1 (r) and 4 (j) of the County's Environmental Document Reporting Procedures and Guidelines.

2. Approve and authorize the Mayor of the Board to sign the attached Option granting to Gold Coast Village, LLC, a Delaware limited liability company ("Lessee"), upon fulfillment of stated conditions, the right to extend the term of its existing ground lease on Parcel 56S by 39 years and granting a new coterminus lease for Parcels 55 and W.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

Your Board previously authorized the release of the Request For Proposals For Development Of Eastside Parcels, intended to seek competitive proposals for the use of available entitlements that would both enable development and allow for the concurrent evaluation of multiple proposals for such development in order to determine the proposal(s) which best maximize the County's benefit from those available entitlements. Your Board also previously authorized exclusive negotiations for a lease Option and Lease Extension with Lessee for the proposed development. The proposed Option is the result of

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negotiations with Lessee and is designed to allow the Lessee to exercise its option and receive the benefits of the Amended and Restated Lease (Restated Lease) ("Exhibit B") upon demonstration that it has satisfied all of the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project. If the Lessee does not exercise the Option, the new percentage rents and a number of improved lease terms will nonetheless be incorporated by amendment into the current lease.

The Restated Lease provides for a 39-year lease extension for Parcel 56S and a new lease for Parcels W and 55, currently operated by the County as parking lots for Parcel 56S; payment of a $200,000 lease extension fee; the demolition of all existing land-side and water-side improvements, except for the iconic lighthouse, which will be completely remodeled; construction of 65,750 square feet of new retail/restaurant space and a 132-room hotel (60,500 square feet); approximately 900 parking spaces in subterranean, surface and structured parking; construction of new commercial dock facilities with not less than 30 berths; establishment of a reserve for capital improvements; establishment of a Renovation Fund equal to .5% of restaurant/retail and hotel gross revenues derived from the parcel that must be fully expended to physically reposition the project to then current market requirements in 2021, 2036 and 2051; establishment of a furniture, fixture and equipment ("FF&E") fund of 3.0% of gross receipts from hotel operations; establishment of new minimum and percentage rents; County participation in leasehold sale and/or refinance; revised arbitration procedures; County right to recapture the leasehold if the Lessee pursues its sale; establishment of a sinking fund to remove leasehold improvements at lease termination; liquidated damages of $100 per day (adjusted for inflation) for each cited maintenance deficiency that remains uncured after the specified cure period; and other miscellaneous improvements to the lease (e.g., payment of late fees and interest on overdue County payments and enhanced audit and record-keeping standards). Once the Lessee has obtained all necessary project entitlements and has fulfilled the other requirements entitling it to exercise the Option, we will return to your Board for authority to execute the Restated Lease in substantially the form attached.

The Department has obtained an appraisal that confirms the returns to the County from the lease extension for Parcel 56S and new lease for Parcels W and 55 are equivalent to, or greater than, fair market value.

Implementation of Strategic Plan Goals

In furtherance of County Goal #4, "Fiscal Responsibility," the recommended action will allow the Department to implement that portion of its Strategic Plan that enhances strategic partnerships with existing and prospective lessees through proactive implementation of the Marina del Rey Asset Management Strategy toward both revenue maximization and property redevelopment. The County's goal of "Service Excellence" is promoted through

the development of new, improved visitor-serving facilities in a superior main channel location, thereby increasing access of the public to the Marina's waterfront.

The following chart details the proposed deal terms of the Restated Lease providing for the 39-year lease extension as they relate to your Board's existing lease extension policy:

| BOARD POLICY ITEM | PROPOSED DEAL TERMS – PARCELS 56S/W/55 |
|---|---|
| **REDEVELOPMENT**<br>Redevelopment of existing improvements | • Demolition of existing land-side improvements, except for the lighthouse that will be completely remodeled, and construction of 65,750 square feet of new retail/restaurant space, 60,500 square feet of hotel space (132 rooms) and approximately 900 parking spaces located in subterranean, surface and structured parking; demolition of existing docks and construction of new reconfigured commercial dock facilities with not less than 30 berths. Construction to be completed within 30 months of exercise of option, subject to Force Majeure, which in no event shall exceed an additional 2 years. All anchorage facilities to be replaced again not later than between the 30th and 40th anniversaries of the effective date of the extended lease.<br>• Total development cost not less than $40,000,000.<br>• A Capital Improvement Fund to be funded annually by Lessee in the amount of 4.0% of hotel annual gross revenue plus 1.5% of restaurant/retail gross revenue to be phased in over a 5-year period to be fully expended for Permitted Capital Expenditures not later than 10 years prior to the expiration date of the lease.<br>• A Renovation Fund to be funded annually by Lessee in the amount of .5% percent of retail/restaurant and hotel gross revenue to start in the 6th year of the lease to be used to physically reposition the project in 2021, 2036 and 2051.<br>• An FF&E Fund to be funded annually by Lessee in the amount of 3.0% percent of hotel revenue to be phased in over a 4-year period and to be fully expended for Permitted Capital Expenditures not later than 10 years prior to the expiration date of the lease. |
| **EXTENSION TERM** | • Option to extend lease on Parcel 56S by 39 years, from 8/31/2027 to 8/31/2066, and a new lease on Parcels W and 55 coterminus with the term of Parcel 56S lease.<br>• Option Fee of $100,000, payable immediately upon Board approval of Option. Option Fee payment is applicable to Extension Fee, but non-refundable if Option is not exercised. |
| **EXTENSION FEE**<br>Fee equal to or commensurate with value of the extension | • Extension Fee of $200,000; $100,000 payable upon execution of option as the Option Fee (see above); balance to be payable at exercise of Option or in 10 equal annual installments of principal plus interest on the unpaid balance at 5% per annum, payable on the anniversary date of the exercise of the Option. |

| | |
|---|---|
| **MARKET RATE RENTS**<br>Ensure fair market rents | • Minimum annual rent during the demolition and construction period to equal the sum of 75% of previous 3 years' average annual total rent paid to County from Parcels 56S and 55 plus 5% of previous 3 years' average annual parking lot revenue for Parcel W.<br>• Minimum annual rent upon completion of construction: Years 1-3 minimum rent same as during construction; Years 4-9 minimum rent to be adjusted every 3 years to equal 75% of annual total rent paid to County (after any rent credits) for previous 3 years but never less than the rent during the 1st 3 years. In year 10 and every 10 years thereafter, Minimum Annual Rent to be readjusted to Fair Market Rental Value.<br>• Percentage rent on Gross Receipts:<br>Slips – 25%<br>Commercial Boat Activities – 3% to 6% depending on activity<br>Food & Beverage – 3.5%<br>Retail – 1.5%<br>Parking – 7.5%<br>Hotel Room – 7.5%<br>Telephone – 5%<br>Rentals & Other Income – 5%<br>Fuel – 6%<br>Misc. Income – 5%<br>• A ramp-up, to ultimately achieve the aforementioned full market percentage rents in the 10th year, in the form of rent credits, occurs over the 1st 9 years of the lease (not to exceed a cumulative $7.25 million). If excess rent credits are generated, there will be a reduction in future rent credits and a repayment of excess rent credits to the County.<br>Percentage rents shall be fixed for the 1st 10 years and are subject to renegotiation as of the 1st day of the 11th year and every 10 years thereafter. |
| **PARTICIPATION IN SALE AND REFINANCE**<br>Secure County participation in sale and refinance of leasehold | • Sale Participation: Sale #1 exempt if sale occurs during the first 10 years of the extended lease term. Thereafter the County's participation shall be as follows: greater of 5.0% of gross proceeds or 20.0% of net proceeds upon assignment or other direct or indirect transfer of leasehold.<br>• Refinance Participation: 20% of net loan proceeds not reinvested in leasehold. |
| **COUNTY ADMINISTRATIVE COSTS**<br>Ensure payment for County costs for lease extension and administration | • Reimbursement of County costs for extension negotiations/lease documentation. |
| **COUNTY INCOME CONTINUITY**<br>Ensure County revenue flow during redevelopment | • Minimum annual rent to be adjusted upon exercise of Option to equal the sum of 75% of previous 3 years' average annual total rent paid to County from Parcels 56S and 55 plus 5% of previous 3 years' average annual parking lot revenue for Parcel W. |

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| **RIGHT TO RECAPTURE** | • County has right to recapture the leasehold if Lessee desires to either assign or sell the leasehold or a controlling interest in Lessee. |
| **LEASE ASSIGNMENT-DISCLOSURE ISSUES** | • Lessee has agreed to County disclosure requirements as to identity, operating experience and character/reputation of proposed assignees, as well as to disclosure of financial information in conformity with County policies. |
| **APPRAISAL** | • The Department has obtained an independent appraisal confirming the return to the County from the lease extension is equivalent to, or greater than, fair market value. |
| **REGULATORY APPROVALS** | • Lessee must obtain all regulatory approvals within 18 months of grant of Option by Board of Supervisors. If Lessee is unable to obtain all necessary approvals within the 18-month requirement, the Director may grant one 6-month extension if Lessee can demonstrate it has diligently pursued those approvals. The foregoing 18-month (or 24-month) period is subject to litigation and appeal tolling provisions. |

## Additional Matters

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| **OTHER TERMS** | 1. 10 years prior to expiration of lease, Lessee to structure funding for removal of improvements (at County's election).<br>2. Rental renegotiation and insurance disputes subject to rent-a-judge procedure pursuant to "baseball" type arbitration.<br>3. Maintenance standards for improvements to conform to Marina del Rey standards as revised from time to time.<br>4. Lease administrative items include: a) late fee of 6% plus interest at prime plus 3% for any late payments, b) security deposit equal to 3 months' minimum rent, c) insurance levels reset/renegotiated upon execution of the Restated Lease and every 5 years thereafter, d) County approval rights over all construction plans and specifications, e) enhanced audit and record-keeping standards.<br>5. Liquidated damages of $100 per day (adjusted for inflation) for each cited maintenance deficiency that remains uncured after a specified cure period, to be assessed against the security deposit. |

If the Lessee does not or is unable to exercise the Option on or before its stated expiration date (including any extensions), it is required to execute an amendment to the current lease which will add the following requirements to its currently-existing lease: a) new market rate percentage rents; b) County participation in sale and refinance; c) the obligation to reimburse the County's actual costs incurred for outside consultants, County Counsel and the Department's lead negotiator in the review, negotiation, preparation and documentation of the Option and Restated Lease; d) the County's right to recapture the leasehold in the event of it being offered for sale; e) a sinking fund for the removal of lease improvements upon lease termination; f) disclosure provisions in the event of lease assignment; g) assessment of a late fee and interest for late payments due the County;

h) security deposit equal to 3 months' minimum rent; i) insurance levels newly set and renegotiated every 5 years; j) provision for enhanced audit and record-keeping standards; k) leasehold maintenance in conformity with Marina standards as revised from time-to-time, including liquidated damages of $100 per day (adjusted for inflation) for each cited maintenance deficiency that remains uncured after a specified cure period, to be assessed against the security deposit; l) minimum rents to be adjusted every third year to 75% of preceding 3 years' average total rent and renegotiated with percentage rent and insurance provisions each tenth lease year; and m) modernized arbitration provisions.

## FISCAL IMPACT/FINANCING

The Restated Lease reflects the County's current market rate percentage rents for all relevant categories. It will produce two categories of fiscal benefit to the County: 1) an extension fee; and 2) rent increases due to construction of new commercial uses and a new enlarged commercial dock.

### Extension Fee

Upon exercise of the Option, Lessee will pay an extension fee of $200,000, payable as a non-refundable option fee of $100,000 concurrent with the execution of the Option with the remaining balance of $100,000 payable at time of exercise of the Option or in 10 equal annual installments of $10,000 in principal, plus interest on the unpaid balance at the rate of 5% per annum.

### Rent Increase Due to New Construction

The total rent derived from Parcel 56S during calendar year 2004 was approximately $488,000. After construction, lease-up and stabilization of the new office, hotel and retail facilities, our economic consultant has estimated that the total County rent will rise to approximately $1,410,000 annually, an annual increase of approximately $922,000.

Costs of consultants and primary County staff involved in the negotiation and development of the Option and Restated Lease are being reimbursed by the Lessee on an ongoing basis.

## FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The term of the lease for Parcel 56S commenced September 1, 1967 and will expire on August 31, 2027. There are currently 32,600 square feet of retail/restaurant buildings and a commercial marina containing 31 slips on Parcel 56S, a parking lot on Parcel W and a single former fuel dock on Parcel 55. In exchange for a lease extension to the date of August 31, 2066 that will be available upon satisfaction of the Option's enumerated conditions and your Board's approval of the Restated Lease, Lessee has agreed to raze all

of the existing improvements, except for the existing lighthouse structure that will be completely remodeled, and to construct 126,250 square feet of new commercial buildings that will contain retail and restaurant uses and a 132-room hotel, and a new concrete commercial marina containing a minimum of 30 slips on Parcels 56S, W and 55. The Restated Lease will also require renovations to the commercial buildings in 2021, 2036 and 2051 and a second replacement of the commercial docks between the 30th and 40th anniversaries of the effective date of the Restated Lease.

The Lessee has made application to the Regional Planning Department for its discretionary land use entitlements under the applicable standards of the Local Coastal Program (LCP), including those related to building height and traffic requirements. That application is under review. Approval of the Option is without prejudice to the County's full exercise of its regulatory authority in the consideration of the land use entitlements required for the possible exercise of the Option.

Amendment and extension of the existing lease for Parcel 56S and the approval of a new lease for Parcels 55 and W are authorized by Government Code Sections 25907 and 25536. The extended lease term is in conformance with the maximum 99-year period authorized by California law.

At its meeting of December 14, 2005, the Small Craft Harbor Commission is scheduled to consider the Director's recommendation to approve the Option and Restated Lease in the form attached. We will advise your Board of the Commission's recommendation prior to your consideration of the Director's recommendation. County Counsel has approved the documents as to form.

## ENVIRONMENTAL DOCUMENTATION

The Option is categorically exempt under the California Environmental Quality Act pursuant to classes 1 (r) and 4 (j) of the County's Environmental Document Reporting Procedures and Guidelines. Approval of the Option does not authorize construction or reconstruction of any improvements on the parcels. The discretionary land use entitlements and the corresponding environmental documentation necessary to implement the proposed redevelopment/replacement contemplated by the Option and the Restated Lease are under review by the Department of Regional Planning.

## CONTRACTING PROCESS

The Lessee's proposal for a lease extension was received in response to the release of a Board-authorized solicitation document seeking proposals for new development and redevelopment on parcels on the Eastside of Marina del Rey. Subsequent negotiations with the Lessee in development of the proposed Option, as well as the Restated Lease, were based upon an evaluation committee's review of the proposal and ultimate

recommendation to proceed into negotiations, which recommendation was accepted by the Director and approved by your Board.

The new Restated Lease will be available to the Lessee upon the exercise of the Option. Upon Lessee's demonstration that it has satisfied the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project, we will return to your Board for final confirmation that the conditions and approvals for exercise contained in the Option have been satisfied and request authorization for execution of the Restated Lease.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There is no impact on other current services or projects.

**CONCLUSION**

Please authorize the Mayor of the Board of Supervisors to sign three copies of the Option and authorize the Executive Officer of the Board to acknowledge the Mayor's signature and return two executed copies of the Option to the Department of Beaches and Harbors.

Respectfully submitted,

Stan Wisniewski

Stan Wisniewski
Director

Attachments (2)

c: Chief Administrative Officer
County Counsel

SW:RM:AK:GB

**OPTION TO AMEND LEASE AGREEMENT**
**(PARCELS 55, 56S AND W)**

THIS OPTION TO AMEND LEASE AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 2005, by and between the COUNTY OF LOS ANGELES ("County") and GOLD COAST VILLAGE, LLC, a Delaware limited liability company ("Lessee").

RECITALS

A. County and Marina Del Rey Properties, Inc. (the "Original Lessee"), entered into Lease No. 12560 dated August 29, 1967, as amended (the "Existing Lease") regarding the lease from County of certain real property in the Marina del Rey Small Craft Harbor now commonly known as Parcel No. 56S, as more particularly described in the Existing Lease (the "Existing Premises").

B. Lessee has succeeded to the Original Lessee's right, title and interest as lessee under the Existing Lease.

C. The term of the Existing Lease is currently scheduled to expire on August 31, 2027 (the "Existing Expiration Date").

D. Lessee has requested County, and County is willing, to grant Lessee an option to (i) extend the term of the Existing Lease through August 31, 2066, and (ii) lease from County certain additional real property adjacent to the Existing Premises and commonly referred to as Parcels 55 and W (the "New Premises"), all subject to and in accordance with the terms and provisions of this Agreement.

E. The Existing Premises and the New Premises are described in Exhibit A attached to the Restated Lease (as defined in Section 1 of this Agreement) and are collectively referred to herein and in the Restated Lease as the "Premises."

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. Grant of Option. County hereby grants to Lessee an option (the "Option") to extend the term of the Existing Lease through August 31, 2066 (the "Extended Expiration Date") and to lease from County the New Premises. The Option shall be exercisable by Lessee, if at all, only in its entirety as to both the Existing Premises and the New Premises, and not as to the Existing Premises or the New Premises on a separate basis. If the Option is exercised by Lessee in accordance with the terms and provisions of this Agreement, such extension of the Existing Lease and lease of the New Premises shall be consummated by the parties' execution and delivery of an Amended and Restated Lease Agreement for Parcels 55, 56S and W in the form attached to this Agreement as Exhibit A (the "Restated Lease").

2. Option Term. The Option shall be exercisable by Lessee during the period commencing on the date of this Agreement and expiring on that date (the "Option Expiration Date") which is the earlier of (i) forty-five (45) days following the date of the satisfaction of the Entitlement Conditions, or (ii) twenty-four (24) months following the date of this Agreement (the date set forth in this clause (ii) is referred to as the "Outside Date").

3. Exercise of Option. The Option shall be exercisable by Lessee only by strict satisfaction on or before the Option Expiration Date of the following terms and conditions: (i) Lessee shall notify County in writing of its exercise of the Option; (ii) Lessee shall accompany the notice described in the preceding clause (i) with Lessee's (A) execution and delivery to County of the Restated Lease with any blank or bracketed terms set forth in Exhibit A completed in accordance with the terms and provisions of this Agreement, and (B) payment of the amount by which the Security Deposit required under Article 7 of the Restated Lease exceeds the amount of the security deposit then maintained by Lessee with County pursuant to Section 7 of the Existing Lease; (iii) as of the date of Lessee's delivery of the notice described in clause (i) above Lessee shall not be in breach or default of any term or provision of the Existing Lease, after notice from County and the expiration of any applicable cure period thereunder; (iv) the Entitlement Conditions (as defined below) shall have been satisfied; (v) Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by the Director of the Department of Beaches and Harbors of the County ("Director"), to complete the Redevelopment Work; (vi) Director shall have approved all plans, specifications and other materials for the Redevelopment Work required to be submitted to Director pursuant to Section 5.3 of this Agreement; and (vii) there shall be no legal action or proceeding pending to contest the issuance of the Entitlements (as defined below), or to enjoin or restrain the performance of the Redevelopment Work. Upon Lessee's proper and timely exercise of the Option, County shall execute and deliver the Restated Lease not later than forty-five (45) days following the date of Lessee's exercise of the Option. For purposes hereof, the "Entitlement Conditions" shall mean the following conditions: (a) Lessee shall have received all planning, zoning and other entitlement approvals required to be obtained from governmental authorities (including County and the California Coastal Commission) for the construction of the Redevelopment Work (as defined below), including without limitation, Design Control Board approval, and have satisfied all conditions to the issuance of any building permit(s) required for the construction of the Redevelopment Work except for the payment by Lessee of the fees required to be paid for the issuance of such building permit(s) (the "Entitlements"), and (b) any appeal period to contest the issuance of the Entitlements shall have lapsed. For purposes of this Agreement, the "Redevelopment Work" shall have the meaning given such term in Section 5.1 of the Restated Lease.

4. Option Fee/Extension Fee.

4.1 Option Fee. In consideration of County's grant of the Option to Lessee, Lessee shall pay to County concurrent with Lessee's execution of this Agreement the sum of One Hundred Thousand Dollars ($100,000.00) (the "Option Fee"). The Option Fee shall be non-refundable, but shall be applied against the Extension Fee described below if Lessee exercises the Option.

4.2 Extension Fee. If Lessee exercises the Option, Lessee shall pay County an extension fee in the amount of Two Hundred Thousand Dollars ($200,000.00) (the "Extension Fee") to compensate County for the value of the extension of the term of the Existing Lease. The Option Fee shall be applied against the Extension Fee. The remaining One Hundred Thousand Dollars ($100,000.00) of the Extension Fee shall be paid by Lessee to County either, at Lessee's election, (i) concurrent with Lessee's exercise of the Option, or (ii) in ten (10) equal annual principal installments of $10,000.00 each, plus interest accrued on the unpaid principal balance of the Extension Fee as provided below (the "Extension Fee Installment Payments"). Interest shall accrue on the unpaid balance of the Extension Fee from the date of Lessee's exercise of the Option until paid by Lessee, at an annual rate of interest equal to five percent (5%) per annum. The first Extension Fee Installment Payment shall be due on the first anniversary of the Effective Date of the Restated Lease and the remaining nine (9) Extension Fee Installment Payments shall be due on each of the next nine (9) anniversaries of the Effective Date of the Restated Lease.

5. Entitlements and Plan Preparation During Option Term.

5.1 Obtaining Entitlements. Lessee shall use its best efforts to obtain the Entitlements and to satisfy the Entitlement Conditions as soon as possible following the date of this Agreement. Such efforts shall include Lessee's expenditure of such funds, including, without limitation, application fees, travel costs, architectural fees and consulting and lobbying fees, as reasonably necessary to expedite the permit, license and other approval processes.

5.2 County Cooperation. In its proprietary capacity, the Department of Beaches and Harbors of the County of Los Angeles (the "Department") shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the Entitlements. Such cooperative efforts may include the Department's joinder in any application for the Entitlements where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Lessee and County acknowledge that the approvals given by County under this Agreement and/or the Restated Lease shall be approvals pursuant to its authority under Section 25907 of the California Government Code and given in its proprietary capacity; that approvals given under this Agreement and/or the Restated Lease in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of the Redevelopment Work and operation and other use of the Premises; and that the Department's duty to cooperate and County's approvals under this Agreement and/or the Restated Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Agreement and/or the Restated Lease.

5.3 Plans and Specifications for Redevelopment Work. The Redevelopment Work shall be constructed by Lessee in accordance with and subject to the terms and provisions of Article 5 of the Restated Lease. The requirements of Article 5 of the Lease include, without limitation, the obligation of Lessee to prepare and submit to the Director for the Director's approval certain plans, specifications, construction cost estimates and other materials pertaining to the Redevelopment Work, as set forth in more detail in Section 5.3 of the Restated

Lease. The schedule for the preparation, submittal and approval of such plans, specifications, construction cost estimates and other materials shall generally proceed in accordance with the terms and provisions of the Restated Lease. Notwithstanding the foregoing, during the period commencing on the date of this Agreement and expiring on the earlier of Lessee's exercise of the Option or the Option Expiration Date, Lessee shall prepare and submit to Director for Director's approval, any portions of the plans, specifications and other materials described in Section 5.3 of the Restated Lease that are required to be submitted to governmental authorities (including the County, the Design Control Board and the California Coastal Commission) in connection with Lessee's applications for and/or receipt of the Entitlements for the Redevelopment Work. Lessee shall accompany such plans, specifications and other materials with the construction cost estimates described in such Section 5.3, as applicable. The standards and time periods for Director's review and approval of the materials submitted by Lessee pursuant to this Section 5.3 shall be in accordance with the terms and provisions of Section 5.3 of the Restated Lease, which terms and provisions are hereby incorporated into this Agreement by reference. Such plans, specifications and other materials shall be prepared and submitted to Director by Lessee in accordance with a schedule which shall facilitate Lessee's satisfaction of all conditions precedent to the exercise of the Option on or before the Outside Date. In addition to the plans, specifications and materials required to be submitted by Lessee to Director pursuant to this Section 5.3, Lessee shall have the right, at its election, to deliver to Director, for Director's approval, additional plans, specifications and materials pertaining to the Redevelopment Work. Director shall notify Lessee of its approval or disapproval of such additional plans, specifications and materials within the time frames and in accordance with the requirements of Section 5.3 of the Restated Lease.

6. Delay in Exercise of Option.

6.1 Delay in Receipt of Entitlements. If Lessee, despite its best efforts, is unable to obtain the Entitlements within twenty-four (24) months after the date of this Agreement as a result of a delay beyond normal entitlement processing periods in the processing by the applicable governmental authorities of Lessee's applications for the Entitlements (an "Extraordinary Governmental Delay"), then the Director may, in the exercise of its reasonable discretion, grant Lessee one or more extensions of the Outside Date. Any such extension shall be limited to the period of the Extraordinary Governmental Delay and in no event shall such extensions, in the aggregate, extend beyond thirty (30) months after the date of this Agreement. In consideration of, and as a condition precedent to, the grant by Director of any extension of the Outside Date pursuant to this Section 6.1, Lessee shall pay to County the sum of Five Thousand Five Hundred Fifty-Five and 50/100 Dollars ($5,555.50) for each one month (or partial month) extension of the Outside Date. Any amounts delivered by Lessee in consideration of the extension of the Outside Date pursuant to this Section 6.1 shall be non-refundable and shall not be applied against the Extension Fee if Lessee exercises the Option. If Director shall determine not to grant Lessee an extension as provided above, then Lessee shall have the right, within thirty (30) days following Director's denial, to submit a written request to the Board of Supervisors of County to reconsider such denial by the Director.

Director shall have no discretion or obligation to extend the Outside Date under this Section 6.1 if Lessee is in material breach or default of this Agreement or the Existing

Lease. No Extraordinary Governmental Delay shall be considered to have commenced under this Section 6.1 until such time as Lessee shall have notified Director in writing of such delay. If Lessee desires to have the Outside Date extended pursuant to this Section 6.1, then Lessee must deliver written notice to Director of its request for the extension not later than thirty (30) days prior to the Outside Date, as such date may have been previously extended; provided, however, that if the basis for the extension does not arise until later than thirty (30) days prior to the Outside Date, then Lessee shall be required to deliver its written request for the extension promptly following its discovery of the basis for the requested extension.

6.2 Contest Delay Prior to Receipt of Entitlements. If as of the Outside Date (as the Outside Date may have been extended pursuant to Section 6.1 above) the Entitlement Conditions have not been satisfied (i) because the Redevelopment Work is the subject of a pending proceeding or litigation brought by a third party to contest or appeal the issuance of the Entitlements or to enjoin or restrain the performance of the Redevelopment Work, or (ii) because of a moratorium, temporary restraining order, injunction or other court order which prohibits the issuance of the Entitlements for the Redevelopment Work and all other similar projects in Marina del Rey on land leased from the County, then as long as Lessee continues to diligently prosecute or pursue the defense or removal of such proceeding, litigation, moratorium or court order, the Option Expiration Date shall be extended until not later than forty-five (45) days following the date that such proceeding, litigation, moratorium or court order is resolved in favor of the validity of the Entitlements (with no further right of appeal); provided, however, in no event shall the Option Expiration Date be extended beyond the fourth (4th) anniversary of the date of this Agreement. Lessee shall not be required to pay to County a fee for any extension of the Option Expiration Date pursuant to this Section 6.2. Notwithstanding any contrary provision hereof, in no event shall the Option Expiration Date be extended if Lessee is in material breach or default of this Option Agreement or the Existing Lease.

6.3 Contest Delay After Receipt of Entitlements. If Lessee obtains the Entitlements on or before the Outside Date (as the Outside Date may have been extended pursuant to Sections 6.1 and/or 6.2 above), but such Entitlements are contested by appeal or litigation brought by a third party, then upon the written request of Lessee, and provided that Lessee continues to use its best efforts to contest the appeal or litigation, Director shall extend the Option Expiration Date until forty-five (45) days after a final order or decision on such appeal or litigation is issued or such appeal or litigation is dismissed or otherwise resolved; provided, however, in no event shall the Option Expiration Date be extended beyond the fourth (4th) anniversary of the date of this Agreement. For purposes of Section 6.2 above and this Section 6.3, a "third party" shall mean any person or entity other than (a) Lessee or any person or entity with any direct or indirect interest in Lessee, or (b) the governmental agency, commission, board or other instrumentality that issued (or has been requested to issue) the Entitlement that is the subject of the appeal or litigation. Lessee shall not be required to pay to County a fee for any extension of the Option Expiration Date pursuant to this Section 6.3. Notwithstanding any contrary provision hereof, in no event shall the Option Expiration Date be extended if Lessee is in material breach or default of this Option Agreement or the Existing Lease.

7. Alternative Lease Amendment. If Lessee does not exercise the Option on or before the Option Expiration Date (or the Option is not exercisable by the Option Expiration

Date), then (a) the Option shall be automatically terminated, and (b) within forty-five (45) days following the Option Expiration Date, County and Lessee shall execute and deliver an amendment to the Existing Lease (the "Non-Exercise Amendment"), which amendment shall:

(i) amend and restate Sections 11 through 15 of the Existing Lease in accordance with all of the terms and provisions of Sections 4.1, 4.2, 4.4 and 4.5 of the Restated Lease, except that subsection 4.2.1 of the Restated Lease shall be modified to read as follows:

> "Throughout the Term, for the possession and use of the Premises granted herein, Lessee shall pay County a monthly amount equal to the greater of (a) Monthly Minimum Rent or (b) Percentage Rent. "Monthly Minimum Rent" shall mean one-twelfth (1/12th) of the Annual Minimum Rent. For the three (3) year period commencing with the Effective Date, "Annual Minimum Rent" shall be equal to seventy-five percent (75%) of the average total annual rent or other charges (including, without limitation, minimum rent and percentage rent) that was payable by Lessee to County under the Existing Lease for the three (3) year period immediately preceding the Effective Date. Effective as of the third (3rd) anniversary of the Effective Date and every three (3) years thereafter until the first Renegotiation Date, and thereafter each third (3rd), sixth (6th) and ninth (9th) anniversaries of each Renegotiation Date (each an "Adjustment Date" and collectively the "Adjustment Dates"), the Annual Minimum Rent shall be adjusted to the amount that equals seventy five percent (75%) of the average total Annual Minimum Rent and Percentage Rent payable by Lessee during the thirty six (36) month period immediately preceding such Adjustment Date."

(ii) add Article 16 of the Restated Lease to the Existing Lease;

(iii) amend and restate Section 7 of the Existing Lease in accordance with Article 7 of the Restated Lease;

(iv) amend and restate Sections 8 and 10 of the Existing Lease in accordance with Sections 5.3 through 5.8 of the Restated Lease;

(v) amend and restate Section 18 of the Existing Lease in accordance with Sections 2.3 and 2.4 of the Restated Lease;

(vi) amend and restate Sections 22A and 22C of the Existing Lease in accordance with Sections 11.1, 11.2 (excepting subsections 11.2.4 and 11.2.5) and 11.3 of the Restated Lease;

(vii) amend Section 26 of the Existing Lease to adjust the amount and scope of general liability, automobile liability, garagekeeper's legal liability, workers compensation, and employer's liability insurance coverage required to be carried by Lessee to equal the amounts and coverages set forth in Sections 9.1.1, 9.1.2 and 9.1.3 of the Restated Lease, and to add the provisions of Section 9.6 of the Restated Lease to Section 26 of the Existing Lease;

(viii) amend and restate Sections 30, 31 and 32 of the Existing Lease in accordance with Article 14 of the Restated Lease; and

(ix) incorporate into the Existing Lease the definitions of capitalized terms used in the Restated Lease to the extent such terms are used in the Non-Exercise Amendment pursuant to clauses (i) through (viii) above.

For purposes of the Non-Exercise Amendment, all references in the Restated Lease to the "Effective Date" shall mean and refer to the date of the execution and delivery of the Non-Exercise Amendment, but not later than forty-five (45) days following the Option Expiration Date.

8. County Costs. Regardless of whether Lessee exercises the Option, Lessee shall promptly reimburse County for (i) one hundred percent (100%) of the Actual Costs (as defined in the Restated Lease) incurred by County prior to May 19, 2004 in the review, negotiation, preparation and documentation of the Restated Lease, the Non-Exercise Amendment, this Agreement and the term sheets and memoranda that preceded the foregoing, and (ii) fifty percent (50%) of the Actual Costs incurred by County on and after May 19, 2004 in the review, negotiation, preparation and documentation of the Restated Lease, the Non-Exercise Amendment, this Agreement and the term sheets and memoranda that preceded the foregoing. The parties acknowledge that Lessee has deposited the sum of Twenty Thousand Dollars ($20,000.00) toward those costs. County shall deliver to Lessee an initial report detailing such expenditures within ninety (90) days after the date of this Agreement. County shall thereafter deliver supplemental reports to Lessee for costs, if any, incurred subsequent to the initial report.

9. Miscellaneous.

9.1 Time is of the Essence. Time is of the essence of this Agreement, including, without limitation, with respect to all times, restrictions, conditions and limitations set forth herein.

9.2 Waivers. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or provision of this Agreement, nor shall failure on the part of either party to require exact, full and complete compliance with any of the covenants, conditions, terms or provisions of this Agreement be construed to in any manner change the terms hereof or estop that party from enforcing the full provisions hereof.

9.3 Notices. All notices required or permitted to be given under this Agreement shall be given in accordance with the terms and provisions of Section 15.10 of the Restated Lease.

9.4 Captions. The captions contained in this Agreement are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Agreement.

9.5 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Agreement, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation, attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party.

9.6 No Assignment. Lessee shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of County, which consent may be withheld by County in its sole and absolute discretion.

9.7 Entire Agreement. This Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supercedes any and all agreements, understandings and representations made prior hereto with respect to such matters.

9.8 Joint Effort. Preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than against the other.

9.9 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

9.10 Counterparts. This Agreement may be signed in any number of counterparts. Each counterpart shall represent an original of this Agreement and all such counterparts shall collectively constitute one fully-executed document.

9.11 Successors and Assigns. Subject to Section 9.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

9.12 Exhibits. Exhibit A attached to this Agreement is hereby expressly incorporated herein by reference.

9.13 Right of Inspection. During the period from the date of this Agreement until the earlier of the termination of this Agreement or Lessee's exercise of the Option, County shall permit Lessee and its authorized agents and representatives to enter upon the New Premises at reasonable times during normal business hours to inspect and conduct tests and studies of the New Premises that Lessee desires to conduct, subject to County's right to approve any intrusive tests or studies, which approval shall not be unreasonably withheld. Lessee shall notify County, in writing, of its intention, or the intention of its agents or representatives, to enter the New Premises at least forty-eight (48) hours prior to such intended entry and shall obtain Seller's prior written consent to any intrusive inspections, tests and studies to be conducted. As a condition to any entry onto the New Premises, Lessee shall first execute a right of entry agreement in form satisfactory to County. County shall have the right to be present

for any inspection, test or study. Lessee shall bear the cost of all inspections, tests and studies pertaining to the New Premises.

IN WITNESS WHEREOF, County and Lessee have entered into this Agreement as of the day and year first written above.

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
COUNTY COUNSEL

By: _____
Deputy

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

GOLD COAST VILLAGE, LLC, a Delaware limited liability company

By: Michael Pastine
Its: managing member

By: _____
Its: managing member

ATTEST:

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

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

# EXHIBIT A

## RESTATED LEASE

# AMENDED AND RESTATED LEASE AGREEMENT

by and between

County of Los Angeles

and

Gold Coast Village, LLC

(Parcels 55, 56S and W — Lease No. ___)

Dated as of _____, _____

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**AMENDED AND RESTATED LEASE AGREEMENT**
**PARCELS 55, 56S AND W— MARINA DEL REY**

THIS AMENDED AND RESTATED LEASE AGREEMENT ("Lease") is made and entered into as of the _____ day of _____, ____ ("Effective Date"), by and between the COUNTY OF LOS ANGELES ("County"), as lessor, and GOLD COAST VILLAGE, LLC, a Delaware limited liability company (together with its permitted successors and assigns, "Lessee"), as lessee.

WITNESSETH

WHEREAS, County and Marina Del Rey Properties, Inc. (the "Original Lessee"), entered into Lease No. 12560 dated August 29, 1967 (as amended prior hereto, the "Existing Lease") whereby prior to the Effective Date Lessee has leased from County that certain real property in the Marina del Rey Small Craft Harbor now commonly known as Parcel No. 56S and which is more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the "Parcel 56S Premises"), the term of which commenced on or about September 1, 1967 and currently extends through August 31, 2027 (the "Existing Expiration Date"); and

WHEREAS, Lessee has succeeded to the Original Lessee's right, title and interest as lessee under the Existing Lease; and

WHEREAS, County and Lessee have entered into that certain Option to Amend Lease Agreement dated _____, 2004 (the "Option Agreement"), pursuant to which County has granted Lessee an option (the "Option") to amend and restate the Existing Lease in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, (i) the addition to the premises under the Existing Lease of that certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcels 55 and W and which is more specifically described as Parcels 55 and W on Exhibit A attached hereto (the "Parcels 55 Premises" and "Parcel W Premises," respectively, and the "Parcels 55 and W Premises," collectively), (ii) the extension of the term of the Existing Lease through August 31, 2066, and (iii) the commercial redevelopment of the Premises, all in accordance with the terms and provisions hereof; and

WHEREAS, Lessee has exercised the Option in accordance with the terms and provisions of the Option Agreement.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree that the Existing Lease is hereby amended and restated in its entirety, as follows:

1. BACKGROUND AND GENERAL.

1.1 Definitions. The defined terms in this Lease shall have the following meanings:

1.1.1 "ACCOUNTING YEAR" shall have the meaning set forth in Section 14.7.

1.1.2 "ACTUAL COST" shall mean (i) the reasonable out-of-pocket costs and expenses incurred by County with respect to a particular activity or procedure, including without limitation, expenditures to third party legal counsel, financial consultants and advisors, (ii) costs incurred in connection with appraisals, (iii) the reasonable value of services actually provided by County's in-house counsel, and (iv) the reasonable value of services actually provided by County's lead lease negotiator/administrator and any other lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below County department head) required by the lead lease negotiator/administrator for technical expertise or assistance. In those instances in which Lessee is obligated to reimburse County for its Actual Costs incurred in performing obligations required to be performed by Lessee under this Lease which Lessee fails to perform within the applicable cure period, if any, provided under this Lease, Actual Costs shall also include a reasonable allocation of County overhead and administrative costs to compensate County for performing such obligations on behalf of Lessee.

1.1.3 "ADA" shall have the meaning set forth in Section 1.2.

1.1.4 "ADJUSTMENT DATES" shall have the meaning set forth in subsection 4.2.1.4.

1.1.5 "ADMINISTRATIVE CHARGE" shall have the meaning set forth in Section 4.6.

1.1.6 "AGGREGATE TRANSFER" shall have the meaning set forth in subsection 4.6.3.

1.1.7 "ALTERATIONS" shall have the meaning set forth in Section 5.2.

1.1.8 "ANCHORAGE FACILITIES" shall mean all anchorage-related Improvements on the Premises, including without limitation, all docks, gangways and related components.

1.1.9 "ANCHORAGE FACILITIES QUALITY STANDARD" shall have the meaning set forth in Section 5.14.

1.1.10 "ANNUAL MINIMUM RENT" shall have the meaning set forth in subsection 4.2.1.

1.1.11 "APPLICABLE COSTS" shall have the meaning set forth in subsection 4.8.1 or 4.8.2, as applicable.

1.1.12 "APPLICABLE LAWS" shall have the meaning set forth in subsection 1.2.1.

1.1.13 "APPLICABLE RATE" shall mean an annually compounded rate of interest equal to the lesser of (a) ten percent (10%) per annum or (b) the Prime Rate, as defined in subsection 4.4.5, plus three percent (3%) per annum; however, the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws. In the event that the Applicable Rate as determined by the first sentence of this definition exceeds such maximum rate of interest, then the Applicable Rate shall be deemed the maximum rate permissible under Applicable Laws notwithstanding the first sentence of this definition.

1.1.14 "APPROVED GOVERNMENTAL CHANGES" shall mean any changes to the Redevelopment Work (or other Alterations, as applicable) required by the California Coastal Commission or other applicable governmental agency as a condition to the issuance of required governmental permits and approvals for such Redevelopment Work (or other Alterations, as applicable), except for any change that is a Material Modification.

1.1.15 "ASSIGNMENT STANDARDS" shall have the meaning set forth in Section 11.2.

1.1.16 "AUDITOR-CONTROLLER" shall mean the Auditor-Controller of the County of Los Angeles, California.

1.1.17 "AWARD" shall have the meaning set forth in subsection 6.1.3.

1.1.18 "BASE VALUE" shall have the meaning set forth in subsection 4.8.1.1.

1.1.19 "BENEFICIAL INTEREST" shall have the meaning set forth in subsection 4.6.4.

1.1.20 "BOARD" shall mean the Board of Supervisors for the County of Los Angeles.

1.1.21 "BUSINESS DAY" shall have the meaning set forth in Section 17.3.

1.1.22 "CALCULATION NOTICE" shall have the meaning set forth in Section 4.7.

1.1.23 "CAPITAL IMPROVEMENT FUND" shall have the meaning set forth in Section 5.13.

1.1.24 "CHANGE OF OWNERSHIP" shall have the meaning set forth in subsection 4.6.1.

1.1.25 "CHANGE OF CONTROL" shall have the meaning set forth in subsection 4.6.1.

1.1.26 "CITY" shall mean the City of Los Angeles, California.

1.1.27 "COMPLETION DATE" shall have the meaning set forth in subsection 4.2.1.1.

1.1.28 "CONDEMNATION" shall have the meaning set forth in subsection 6.1.1.

1.1.29 "CONDEMNOR" shall have the meaning set forth in subsection 6.1.4.

1.1.30 "CONSUMER PRICE INDEX" shall mean the Consumer Price Index--All Urban Consumers for Los Angeles-Riverside-Orange County, as published from time to time by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as may be agreed upon by County and Lessee.

1.1.31 "COUNTY" shall have the meaning set forth in the first paragraph of this Lease.

1.1.32 "COUNTY OPTION" shall have the meaning set forth in subsection 11.2.4.

1.1.33 "COUNTY OPTION PRICE" shall have the meaning set forth in subsection 11.2.4.

1.1.34 "COUNTY POOL RATE" shall have the meaning set forth in subsection 4.4.5 of this Lease.

1.1.35 "DATE OF TAKING" shall have the meaning set forth in subsection 6.1.2.

1.1.36 "DEPARTMENT" shall mean the Department of Beaches and Harbors of the County of Los Angeles.

1.1.37 "DEVELOPMENT PLAN" shall have the meaning set forth in Section 5.1.

1.1.38 "DIRECTOR" shall mean the Director of the Department of Beaches and Harbors of the County of Los Angeles or any successor County officer responsible for the administration of this Lease.

1.1.39 "DISQUALIFICATION JUDGMENT" shall have the meaning set forth in subsection 16.15.1.

1.1.40 "DOCUMENTED TRANSACTION COSTS" shall have the meaning set forth in subsection 4.8.1.2.

1.1.41 "EFFECTIVE DATE" shall mean the date set forth in the first preamble paragraph of this Lease.

1.1.42 "ENCUMBRANCE" shall have the meaning set forth in subsection 12.1.1.

1.1.43 "ENCUMBRANCE HOLDER" shall have the meaning set forth in subsection 12.1.1.

1.1.44 "ENR INDEX" shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or such substitute index as the parties may mutually agree upon if such index is no longer published or otherwise available.

1.1.45 "EVENTS OF DEFAULT" shall have the meaning set forth in Section 13.1.

1.1.46 "EXCESS PERCENTAGE RENT CREDITS" shall have the meaning set forth in subsection 4.3.1.

1.1.47 "EXCLUDED TRANSFERS" shall have the meaning set forth in subsection 4.6.2.

1.1.48 "EXISTING EXPIRATION DATE" shall have the meaning set forth in the preamble to this Lease.

1.1.49 "EXISTING LEASE" shall have the meaning set forth in the preamble to this Lease.

1.1.50 "EXTENDED TIME" shall have the meaning set forth in Section 15.15.

1.1.51 "FAIR MARKET RENTAL VALUE" shall have the meaning set forth in subsection 4.4.1.

1.1.52 "FF&E Fund" shall have the meaning set forth in Section 5.15.

1.1.53 "FINAL PLANS AND SPECIFICATIONS" shall have the meaning set forth in subsection 5.3.3.

1.1.54 "FINANCING EVENT" shall have the meaning set forth in Section 12.1.

1.1.55 "FIRST SUBSEQUENT RENOVATION" shall have the meaning set forth in Section 5.11.

1.1.56 "FORCE MAJEURE" means fire, earthquake, flood, tornado or other act of God, civil disturbance, war, organized labor dispute, freight embargo or other similar cause or event beyond the control of Lessee.

1.1.57 "FORCE MAJEURE DELAY" shall have the meaning set forth in subsection 5.6.1.

1.1.58 "GROSS ERROR" shall have the meaning set forth in subsection 16.15.4.

1.1.59 "GROSS PROCEEDS" shall have the meaning set forth in Section 4.8.

1.1.60 "GROSS RECEIPTS" shall have the meaning set forth in subsection 4.2.2.3.

1.1.61 "HOTEL" shall have the meaning set forth in Section 3.9.

1.1.62 "IMPROVEMENTS" means all buildings, structures, fixtures, fences, anchorage facilities, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems and other improvements now or hereafter located on the Premises.

1.1.63 "IMPROVEMENT COSTS" shall have the meaning set forth in subsection 4.8.1.1.

1.1.64 "INCOME APPROACH" shall have the meaning set forth in Section 6.5.

1.1.65 "INITIATING PARTY" shall have the meaning set forth in the first paragraph of Article 16.

1.1.66 "INSTITUTIONAL LENDER" shall have the meaning set forth in subsection 12.1.3.1

1.1.67 "INSURANCE RENEGOTIATION DATE" shall have the meaning set forth in Section 9.3.

1.1.68 "LATE FEE" shall have the meaning set forth in Section 4.5.

1.1.69 "LEASE" shall mean this Amended and Restated Lease Agreement.

1.1.70 "LEASE YEAR" shall have the meaning set forth in Section 2.1.

1.1.71 "LESSEE" shall have the meaning set forth in the first paragraph of this Lease.

1.1.72 "LESSEE SALE PRICE" shall have the meaning set forth in subsection 11.2.4.

1.1.73 "MAJOR SUBLEASE" shall have the meaning set forth in subsection 11.1.1.

1.1.74 "MAJOR SUBLESSEE" shall have the meaning set forth in subsection 11.1.1.

1.1.75 "MATERIAL MODIFICATION" shall mean a modification to the Redevelopment Work (or other Alterations, as applicable) as to which any one of the following applies: (1) the total cost of the modifications exceeds one percent (1%) of the total estimated construction cost of the Redevelopment Work (or the other Alterations that are then proposed to be constructed by Lessee); (2) the proposed modification is structural in nature; (3) the modification affects or is visible from the exterior of the Improvements; (4) the modification is not in compliance with the Permitted Uses under this Lease; (5) the modification (a) changes the total square footage of the restaurant and retail facilities by more than five percent (5%), (b) changes the number of Hotel rooms to more than 132 rooms or less than 120 rooms, (c) reduces the number of parking spaces to less than 884 parking spaces, or (d) reduces the number of commercial slips to less than thirty (30) slips or eliminates the large side tie dock in front of the Parcel 55 Premises; or (6) the modification pertains to the Promenade.

1.1.76 "MINIMUM STANDARDS" shall mean the requirements of Policy Statement No. 25 and the Specifications and Minimum Standards of Architectural Treatment and Construction for Marina del Rey approved in 1989, as modified by County or the Department from time to time in a manner consistent with commercially reasonable standards applicable to other comparable commercial projects and marina facilities in Marina del Rey.

1.1.77 "MONTHLY MINIMUM RENT" shall have the meaning set forth in subsection 4.2.1.

1.1.78 "NET AWARDS AND PAYMENTS" shall have the meaning set forth in Section 6.7.

1.1.79 "NET PROCEEDS SHARE" shall have the meaning set forth in Section 4.6.

1.1.80 "NET REFINANCING PROCEEDS" shall have the meaning set forth in subsection 4.8.5.

1.1.81 "NET TRANSFER PROCEEDS" shall have the meanings set forth in subsections 4.8.1 and 4.8.2.

1.1.82 "NOTICE OF COMPLETION" shall have the meaning set forth in subsection 5.7.7.

1.1.83 "OPERATION EXCEPTIONS" shall have the meaning set forth in Section 3.3.

1.1.84 "OPTION AGREEMENT" shall have the meaning set forth in the preamble to this Lease.

1.1.85 "PARCEL 55 PREMISES" shall have the meaning set forth in the preamble to this Lease.

1.1.86 "PARCEL 56S PREMISES" shall have the meaning set forth in the preamble to this Lease.

1.1.87 "PARCEL W PREMISES" shall have the meaning set forth in the preamble to this Lease.

1.1.88 "PARTIAL TAKING" shall have the meaning set forth in Section 6.5.

1.1.89 "PAYMENT BOND" shall have the meaning set forth in subsection 5.4.3.2.

1.1.90 "PERCENTAGE RENT" shall have the meaning set forth in subsection 4.2.2.

1.1.91 "PERCENTAGE RENT CREDIT PERIOD" shall have the meaning set forth in Section 4.3.

1.1.92 "PERCENTAGE RENT CREDITS" shall have the meaning set forth in Section 4.3.

1.1.93 "PERFORMANCE BOND" shall have the meaning set forth in subsection 5.4.3.1.

1.1.94 "PERMITTED CAPITAL EXPENDITURES" shall have the meaning set forth in Section 5.13.

1.1.95 "PERMITTED USES" shall have the meaning set forth in Section 3.1.

1.1.96 "POTENTIAL COUNTY CREDIT" shall have the meaning set forth in subsection 4.3.3.

1.1.97 "PREMISES" shall mean the Parcel 55 Premises, Parcel 56S Premises and Parcel W Premises, collectively.

1.1.98 "PRIME RATE" shall have the meaning set forth in subsection 4.4.5.

1.1.99 "PROMENADE" shall have the meaning set forth in Section 15.20.

1.1.100 "PROPOSED TRANSFER" shall have the meaning set forth in subsection 11.2.4.

1.1.101 "PUBLIC WORKS DIRECTOR" shall mean the Director of the Department of Public Works of the County of Los Angeles.

1.1.102 "PURCHASE MONEY NOTE" shall have the meaning set forth in subsection 4.7.2.

1.1.103 "REDEVELOPMENT WORK" shall have the meaning set forth in Section 5.1.

1.1.104 "RENEGOTIATION DATES" shall have the meaning set forth in Section 4.4.

1.1.105 "RE-OPENING DATE" shall mean the date that any of the Improvements first re-open for business after the construction or renovation of such Improvements pursuant to the Redevelopment Work described in Section 5.1 of this Lease.

1.1.106 "REPLY" shall have the meaning set forth in Section 16.5.

1.1.107 "REQUIRED COMPLETION DATE" shall have the meaning set forth in Section 5.6.

1.1.108 "REQUIRED HOTEL STANDARD" shall have the meaning set forth in Section 3.9.

1.1.109 "RESPONDING PARTY" shall have the meaning set forth in the first paragraph of Article 16.

1.1.110 "REVERSION AMENDMENT" shall have the meaning set forth in subsection 5.6.2.

1.1.111 "SEAWALL" shall have the meaning set forth in Section 10.4.

1.1.112 "SECOND SUBSEQUENT RENOVATION" shall have the meaning set forth in Section 5.11.

1.1.113 "SECTION" shall mean a section of this Lease.

1.1.114 "SECURITY DEPOSIT" shall have the meaning set forth in Section 7.1.

1.1.115 "SHALL" and "WILL" are mandatory and the word "MAY" is permissive.

1.1.116 "STATE" shall mean the State of California.

1.1.117 "STATEMENT OF POSITION" shall have the meaning set forth in subsection 16.6.

1.1.118 "SUBLEASE" shall have the meaning set forth in subsection 11.1.1.

1.1.119 "SUBLESSEE" shall have the meaning set forth in subsection 11.1.1.

1.1.120 "SUBSECTION" shall mean a subsection of a Section of this Lease.

1.1.121 "SUBSEQUENT RENOVATION" shall have the meaning set forth in Section 5.11.

1.1.122 "SUBSEQUENT RENOVATIONS FUND" shall have the meaning set forth in Section 5.12.

1.1.123 "SUBSEQUENT RENOVATION PLAN" shall have the meaning set forth in Section 5.11.

1.1.124 "TERM" shall have the meaning set forth in Section 2.1.

1.1.125 "THIRD SUBSEQUENT RENOVATION" shall have the meaning set forth in Section 5.11.

1.1.126 "TIME OF THE ESSENCE" shall have the meaning set forth in Section 15.2.

1.1.127 "TRANSIENT SLIP" shall have the meaning set forth in Section 15.23.

1.1.128 "WATER TAXI SLIP" shall have the meaning set forth in Section 15.24.

1.1.129 "UNINSURED LOSS" shall have the meaning set forth in Section 10.2.

1.1.130 "UNREASONABLE COUNTY ACTIVITY" shall have the meaning set forth in subsection 5.6.2.

1.1.131 "WRITTEN APPRAISAL EVIDENCE" shall have the meaning set forth in subsection 16.7.

1.2 Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, County hereby leases to Lessee, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined) and upon the terms and conditions and subject to the requirements set forth herein. This Lease fully amends, restates and supercedes the Existing Lease.

1.2.1 As-Is. Lessee acknowledges that (1) it is currently in possession of the Parcel 56S Premises, (2) Lessee or its predecessors-in-interest have continuously occupied and/or managed and operated the Parcel 56S Premises since 1967, and (3) the Improvements now existing on the Parcel 56S Premises were constructed by Lessee or its predecessors with contractors selected by them. Except as provided in subsection 1.2.3, Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the Effective Date and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS WITH ALL FAULTS". Lessee hereby accepts the Premises on an "AS IS WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or

employees, as to any matters concerning the Premises and/or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises and/or any Improvements located thereon, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land and within the Improvements and within each space therein, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises and/or any Improvements located thereon, (iv) the development potential of the Premises, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy of the Premises and/or any Improvements located thereon for any particular purpose, (v) the zoning or other legal status or entitlement or lack thereof of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises and/or any Improvements located thereon with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of the County, State, the United States of America, the California Coastal Commission and/or any other governmental or quasi-governmental entity ("Applicable Laws") or of any other person or entity (including, without limitation, relevant provisions of the Americans with Disabilities Act ("ADA"), (vii) the presence of any underground storage tank or hazardous materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any Improvements, (ix) subject to subsection 1.2.2 below, the condition of title to the Premises, and (x) the economics of the operation of the Premises and/or any Improvements located thereon. Notwithstanding the foregoing, this subsection 1.2.1 shall not alter the parties' rights and obligations under the Existing Lease with respect to any environmental conditions existing on the Parcel 56S Premises as of the Effective Date.

1.2.2 Title. County represents that County owns fee title to the Premises and that County has authority to enter into this Lease. Lessee hereby acknowledges the title of County in and to the Premises, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure that Lessee may occupy the Premises pursuant to the terms and conditions of this Lease.

1.2.3 Excluded Conditions. Notwithstanding anything to the contrary set forth herein, the terms and provisions of subsection 1.2.1 shall not be applicable to any sewer, storm drain or other improvements which have been dedicated to (and such dedication has been accepted by) the Department of Public Works of the County ("Excluded Conditions"); provided, however, that this Lease (as opposed to any separate dedication acceptance or other contractual or legal obligation) shall not create any obligation or liability on the part of County with respect to such sewer, storm drain and other improvements.

2. TERM.

2.1 Term. The term of the Lease ("Term") for the Parcel 56S Premises commenced on or about September 1, 1967. The Term for the Parcels 55 and W Premises shall commence on the Effective Date set forth herein. Unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on August 31, 2066. For purposes of this Lease, "Lease Year" shall mean each calendar year (or partial calendar) during the Term of this Lease. Notwithstanding the foregoing, with respect to any provision in this Lease that refers to a specified number of Lease Years after the Effective Date, the number of Lease Years after the Effective Date shall be calculated based on the following: (a) if the Effective Date is prior to July 1 of a calendar year , then the first Lease Year after the Effective Date shall mean the period from the Effective Date through December 31 of the calendar year during which the Effective Date occurs, and (b) if the Effective Date is on or after July 1 of a calendar year, then the first Lease Year shall mean the period from the Effective Date through December 31 of the calendar year following the calendar year during which the Effective Date occurs.

2.2 Extension Fee Installment Payments. In consideration of the extension of the term of the Existing Lease as provided herein, Lessee shall be required to pay to County the Extension Fee Installment Payments described in Section 4.2 of the Option Agreement. The Extension Fee Installment Payments shall be considered as additional rent payable by Lessee under this lease. The parties hereto agree and acknowledge that prior to the Effective Date, County has conducted an appraisal of the thirty-nine (39) year extension of the Term from September 1, 2027 to August 31, 2066 as provided herein, and that the Extension Fee payable under the Option Agreement is not less than the appraised value of the Lease extension provided herein.

2.3 Ownership of Improvements During Term. Until the expiration of the Term or sooner termination of this Lease and except as specifically provided herein, Lessee shall own all Improvements now existing and constructed by Lessee or its predecessors or hereafter constructed by Lessee upon the Premises, and all alterations, additions, or betterments made thereto by Lessee.

2.4 Reversion of Improvements. Upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise:

2.4.1 County's Election to Receive Improvements. At the election of County, all structures, buildings, Improvements and all alterations, additions, and betterments thereto, and all other Improvements made to or upon the Premises shall remain upon and be surrendered with the Premises as part thereof and title thereto shall vest in County without compensation therefor to Lessee. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to receive any and all proceeds which are attributable to the Condemnation of business installations, Improvements, structures and buildings belonging to Lessee immediately prior to the taking of possession by the Condemnor as said rights are set forth in Article 6 of this Lease, or to remove any furniture or equipment not intended to be permanently affixed to, or reasonably necessary for the operation of, the Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the Premises and associated Improvements), or any personal property, upon the expiration of

the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee's obligations under this Lease to use the Premises for the Permitted Uses.

2.4.2 Duty to Remove. No earlier than eight (8) years, and no later than seven (7) years prior to the expiration of the Term, Lessee shall deliver to County a report prepared by a construction and demolition expert approved by County, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of removing all Improvements on the Premises at the expiration of the Term. County may give written notice (the "County Removal Notice") at any time, no later than six (6) years prior to the expiration of the Term or concurrently upon any earlier termination, of County's election to require Lessee to remove, at the sole cost and expense of Lessee, not later than the expiration of the Term or earlier termination of this Lease, all or any portion of the at grade, above grade and below grade structures, buildings and Improvements of any kind whatsoever placed or maintained on the Premises, whether placed thereon or maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings; and if such structures are required to be removed by Lessee, then Lessee shall, upon the expiration or termination of this Lease, immediately restore, and quit, and peacefully surrender possession of, the Premises to County in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps. If County has elected to required Lessee to remove the Improvements, then Lessee shall have the right, by written notice to County not later than thirty (30) days prior to the expiration of the Term, to extend the date by which Lessee must complete the Improvement removal and Premises surrender obligations under this subsection 2.4.2 and/or the Lessee's removal obligations under subsection 2.4.4 below to a date not more than one hundred twenty (120) days after the expiration of the Term; provided, however, that all of the Lessee's obligations and liabilities under the Lease (other than the obligation to affirmatively operate the Premises) shall be applicable during such additional period, including without limitation, the Lessee's obligations with respect to insurance and indemnification, and Lessee's obligation to pay County compensation for such period in an amount equal to the Monthly Minimum Rent rate in effect immediately prior to the expiration of the Term.

If County elects to require Lessee to remove Improvements hereunder pursuant to the County Removal Notice, Lessee shall, no later than the date which is thirty (30) days after Lessee's receipt of the County Removal Notice, provide County with a written plan which sets forth Lessee's proposed method of securing the discharge of Lessee's removal and restoration obligations pursuant to this subsection. Such security plan shall detail (i) the form of security proposed by Lessee, which security shall be either a deposit of funds, or a letter of credit, bond or other form of security in form and amount, and from an issuer, satisfactory to County, and (ii) a schedule satisfactory to County for the delivery by Lessee of the security described in clause (i) above, which schedule shall in all events provide for a full funding of the security not later than two (2) years prior to the expiration of the Term. The amount of the deposit or letter of credit, bond or other security shall be no less than the estimated costs to remove the Improvements set forth in the report described above, adjusted annually to reflect the increase or decrease, if any, in the ENR Index over the ENR Index as of the date of cost estimation set forth in such expert report; provided, however, that in no event shall such adjustment result in a

deposit or letter of credit, bond or other security of an amount less than that set forth in the expert report. Any uncured failure by Lessee to deliver the removal and restoration security described in this subsection 2.4.2 shall constitute an Event of Default. If County fails to elect to require Lessee to remove the buildings, structures and Improvements on the Premises as provided above, then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall turn over the Premises to County in good and workmanlike condition, consistent with the condition of other buildings, structures and Improvements of comparable age and construction quality.

2.4.3 County's Right to Remove Improvements. If Lessee fails to perform demolition, removal and restoration obligations required to be performed by Lessee hereunder, then County may, at its election, sell, remove or demolish the Improvements, and such event, Lessee shall reimburse County for any cost or expense thereof in excess of any funds received by County through the security above provided and any consideration received by County as a result of such sale, removal or demolition.

2.4.4 Duty to Remove Equipment, Etc. No later than the expiration of the Term or sooner termination of this Lease (or within the additional one hundred twenty (120) day period described in subsection 2.4.2 above), Lessee shall in any event remove at its cost and expense such furniture, equipment and personal property as are not firmly affixed to said structures, buildings and Improvements or reasonably necessary for the orderly operation of the Premises. Should Lessee fail to so remove said furniture, equipment and personal property within said period, and said failure continues for thirty (30) days after written notice from County to Lessee, Lessee shall lose all right, title and interest in and thereto, and County may elect to keep the same upon the Premises or to sell, remove, or demolish the same, in event of which sale, removal, or demolition Lessee shall reimburse County for its Actual Costs incurred in connection with such sale, removal or demolition in excess of any consideration received by County as a result of said sale, removal or demolition.

2.4.5 Title to Certain Improvements Passes to County; Lessee to Maintain. As between County and Lessee, title to all utility lines, transformer vaults and all other utility facilities constructed or installed by Lessee upon the Premises shall vest in County upon construction or installation to the extent that they are not owned by a utility company or other third party provider. Notwithstanding that title shall vest in County, all utility lines, transformer vaults and all other utility facilities (other than any sewer, storm drain or other utility systems which have been dedicated to and accepted by County pursuant to a dedication separate from this Lease), shall be maintained, repaired, and replaced, if and as needed, by Lessee during the Term.

3. USE OF PREMISES.

3.1 Specific Primary Use. The Premises shall be used by Lessee for the operation and management of (i) retail and restaurant uses, including without limitation kiosks, (ii) hotel facilities, (iii) commercial dock facilities (including a fuel service dock facility if elected by Lessee or required pursuant to the last sentence of this paragraph), and (iv) such other related and incidental uses as are specifically approved by County (collectively, the foregoing shall be

referred to herein as the "Permitted Uses"). At Lessee's election, the Permitted Uses shall also include office use ancillary to a specific retail, restaurant or marine use operated on the Premises, provided that the total gross leasable area of space used for office purposes shall not exceed twenty percent (20%) of the aggregate gross leasable area of all buildings on the Premises excluding the Hotel. Lessee shall be required to install and operate a fuel service dock facility on the Premises if and to the extent required by Applicable Law, including without limitation, the Local Coastal Plan and/or the Entitlements (as defined in the Option Agreement).

Prior to entering into the Option Agreement Lessee had most recently utilized the dock facilities for the following commercial uses: (a) a sport fishing business operated by Del Rey Sport Fishing; (b) a dinner cruise operation conducted by FantaSea; and (c) a Catalina Island excursion operation conducted by Catalina Cruises. Lessee shall be required to continue to use the dock facilities for commercial purposes as long as, and to the extent that, there continue to exist operator(s) that are willing to conduct commercial operations at a lease rental rate that is equal to or greater than the lesser of (i) seventy-five percent (75%) of the lease rental rate (in absolute dollars per month) that was paid to Lessee for such particular use as of the Effective Date of this Lease, if applicable (such lease rental rates as of the Effective Date are set forth in Exhibit F attached hereto), increased by the percentage increase, if any, in the Consumer Price Index during the period from the Effective Date to the date of the execution of the lease for such use, or (ii) the then-prevailing lease rates paid by other similar commercial operators of comparable dock facilities in Marina Del Rey and other marinas in Southern California (herein referred to as an "Available Qualified Operator"). Specifically, (1) Lessee shall make available to an operator or operators a portion of the dock facilities for a sport fishing operation of a scale and scope at least comparable to that operated under the Del Rey Sport Fishing leasehold as of March, 2005 as long as there continues to exist an Available Qualified Operator that is willing to conduct such a sport fishing operation; (2) Lessee shall make available to an operator or operators a portion of the dock facilities for a dinner cruise operation of a scale and scope at least comparable to that operated under the FantaSea leasehold as of March, 2005 as long as there continues to exist an Available Qualified Operator that is willing to conduct such a dinner cruise operation; and (3) Lessee shall make available to an operator or operators a portion of the dock facilities for a Catalina Island excursion operation of a scale and scope at least comparable to that operated under the Catalina Cruises leasehold as of March, 2005 as long as there continues to exist an Available Qualified Operator that is willing to conduct such a Catalina cruise operation. Director shall have the right to approve any use of the dock facilities for a purpose other than the sport fishing, dinner cruise and Catalina cruise uses currently conducted at the dock facilities, which approval shall not be unreasonably withheld as long as the use is for commercial purposes and otherwise complies with the provisions of this Lease, including without limitation, this Section 3.1. If, and to the extent that, in the future there no longer continue to exist Available Qualified Operators that are willing to use the dock facilities for commercial purposes, then Lessee shall be permitted to convert the use of the portion of the dock facilities for which there is no such Available Qualified Operator to a non-commercial use that is approved in writing by Director, which approval shall not be unreasonably withheld. If at any time during the Lease Term the dock facilities (or a portion or portions thereof) are converted to a non-commercial use in accordance with the provisions of this paragraph and at the end of the Lessee's contractual commitment to such non-commercial user there once again exists an Available Qualified Operator(s) to conduct a commercial use of such dock facilities, then Lessee shall be required to re-convert the use of such dock facilities to commercial use for so long as such Available

Qualified Operator or another Available Qualified Operator is willing to use the dock facilities for the commercial purposes permitted under this Section 3.1 or otherwise approved by Director. Lessee shall provide written notice to County of the termination or expiration of any lease or other contractual commitment with a non-commercial user so that a determination can be made as to whether an Available Qualified Operator is available for commercial use.

Except as specifically provided herein, the Premises shall not be used for any purpose other than the Permitted Uses, without the prior written consent of County. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

3.2 Prohibited Uses. Notwithstanding the foregoing:

3.2.1 Nuisance. Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Premises, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except in appropriate receptacles intended for such purposes, nor shall any portion of the Premises be maintained so as to render said Premises a fire hazard or unsanitary, unsightly, offensive, or a risk to public health and safety, nor shall any similar activity be permitted on any adjacent public street or adjacent property. Lessee shall be permitted to perform the Redevelopment Work on the Premises, provided that such work is conducted in compliance with Article 5 of this Lease.

3.2.2 Restrictions and Prohibited Uses. Without expanding upon or enlarging the Permitted Uses of the Premises as set forth in this Lease, the following uses of the Premises are expressly prohibited:

3.2.2.1 The Premises shall not be used or developed in any way which is in violation of any Applicable Laws;

3.2.2.2 The Premises shall not be used or developed in any way in a manner inconsistent with the Permitted Uses. Without limiting the foregoing, no part of the Premises shall be used by any person for any adult entertainment purposes, as such term refers to graphic, explicit and/or obscene depictions of sexual activity;

3.2.2.3 No improvement on the Premises shall be permitted to fall into disrepair and all Improvements shall at all times be kept in good condition and repair consistent with the requirements of Section 10.1 of this Lease;

3.2.2.4 No condition shall be permitted to exist upon the Premises which shall induce, breed or harbor infectious plant diseases, rodents, or noxious insects and Lessee shall take such measures as are appropriate to prevent any conditions from existing on the Premises which create a danger to the health or safety of any persons residing or working at, or persons patronizing, the Premises;

3.2.2.5 Without the prior written reasonable approval of Director, no antennae or other device for the transmission or reception of television signals or any

other form of electromagnetic radiation shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Premises, whether attached to an improvement or otherwise; provided that the foregoing requirement to obtain Director's approval as to any antennae or other transmission or reception devices shall be inapplicable to the extent that such requirement violates Applicable Law;

3.2.2.6 No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon or adjacent to the Premises, except (a) as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease, and (ii) for such boring or drilling as necessary to perform water testing or monitoring, or any dewatering program to relieve soil water pressure;

3.2.2.7 Except for the Excluded Conditions and the Seawall, no adverse environmental condition in violation of Applicable Laws shall be permitted to exist on any portion of the Premises, nor shall any toxic or hazardous wastes be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate from the Premises or any portion thereof, including, without limitation, into the surface waters and subsurface waters thereof; provided, however, that toxic or hazardous substances may be stored or used, so long as such storage and use is (a) ancillary to the ordinary course of business of an otherwise Permitted Use with the intent that such substances will be used in the ordinary course of business, and (b) conducted in compliance with all Applicable Laws; and

3.3 Active Public Use. The parties acknowledge that the ultimate objective of this Lease is the complete and continuous use of the facilities and amenities located in Marina del Rey by and for the benefit of the public, without discrimination as to race, gender or religion, along with the generation and realization of revenue therefrom. Accordingly, Lessee agrees and covenants that it will operate the Premises fully and continuously (except to the extent that Lessee is prevented from doing so due to Force Majeure or due to temporary interruption for maintenance and repair, renovation, alteration and tenant improvement work permitted under this Lease, but only during the period reasonably required to complete such work (collectively, "Operation Exceptions")) in light of these objectives, consistent with the operation of comparable retail, restaurant, hotel and commercial dock facilities, and that it will use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Lease. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives.

3.4 Days of Operation. The Improvements on the Premises shall be open every day of the year for at least hours commensurate with the hours of operations of other similar retail, restaurant, hotel and commercial facilities in Los Angeles County, California, except for such holidays during which similar businesses in Marina del Rey are customarily closed, and except to the extent Lessee is prevented from doing so due to Operation Exceptions.

3.5 Signs and Awnings. Any and all art, displays, identifications, monuments, awnings, advertising signs and banners which are placed on, or are visible from, the exterior of

the Premises shall be only of such size, design, wording of signs and color as shall have been specifically submitted to and approved by Director (and to the extent required under then Applicable Law, the Design Control Board), whether pursuant to Article 5 of this Lease or otherwise, in writing, prior to the erection or installation of said art, sign, display, identification, monument, awning or advertising sign. Director shall not unreasonably withhold its approval of the matters described in this Section 3.5. Any dispute as to whether Director has unreasonably withheld its approval of a matter described in this Section 3.5 shall be submitted to arbitration pursuant to Article 16 of this Lease.

3.6 Compliance with Regulations. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises. Without limitation of the foregoing, Lessee shall comply with (i) all conditions and requirements of Coastal Development Permit No(s). _____ **[PRIOR TO LEASE EXECUTION INSERT COASTAL DEVELOPMENT PERMIT NO(S). ISSUED FOR REDEVELOPMENT WORK]**, which conditions and requirements are attached to this Lease as Exhibit D and incorporated herein by this reference, and (ii) all public access requirements of the Marina del Rey Local Coastal Program, as amended.

3.7 Rules and Regulations. Lessee agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Premises as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other retail, restaurant, hotel, and commercial anchorage facilities in Marina del Rey, and delivered in writing to Lessee. Any dispute as to whether County has acted unreasonably in connection with the matters described in this Section 3.7 shall be submitted to arbitration pursuant to Article 16 of this Lease.

3.8 Reservations. Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way (a) existing (i) as of the date of the Existing Lease with respect to the Parcel 56S Premises, or (ii) as of the date hereof with respect to the Parcel 55 Premises and the Parcel W Premises, or (b) otherwise referenced in this Lease in, to, over or affecting the Premises for any purpose whatsoever, or (c) consented to by Lessee.

Without limiting the foregoing, Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record and the right of County or any other governmental authority, existing as of the Effective Date or otherwise disclosed to or known to Lessee, as their interests may appear, to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of County or the City to convey such easements and transfer such rights to others. Notwithstanding the foregoing or anything herein to the contrary, County agrees to cooperate with Lessee, at Lessee's cost, in Lessee's efforts to address title matters, if any, which would prevent Lessee from proceeding with the redevelopment of the Premises in accordance with the Redevelopment Work, as long as such efforts do not materially adversely affect the County (e.g., cooperating with Lessee in the relocation at Lessee's cost of any easements which

interfere with the Redevelopment Work, to the extent such relocation is reasonably acceptable to County).

3.9 Operation of Hotel. Lessee is required to design, construct and operate on the Premises a hotel with a minimum of one hundred twenty (120) and a maximum of one hundred thirty-two (132) hotel rooms, and ancillary facilities (the "Hotel"). Upon completion, the Hotel shall be operated throughout the Term in accordance with a standard at least equivalent to the Required Hotel Standard (as defined below). For purposes hereof, "Required Hotel Standard" shall mean a standard of operation at least commensurate with the standard of operation of a three diamond hotel under the hotel rating system of the American Automobile Association (or its successor), provided that if the American Automobile Association (or its successor) changes its rating system or ceases to publish hotel ratings, then the Required Hotel Standard shall mean a standard of operation at least commensurate with the standard of operation of the most substantially equivalent rating to the above-described rating that is then generally recognized by the hotel industry. Notwithstanding the foregoing, Lessee and County acknowledge that in some cases limitations on the site layout as approved by County under Article 5 might not accommodate exterior facilities, hotel grounds, public areas, ancillary retail and restaurant facilities and other physical improvements of a size and scope required for a three diamond hotel rating as described above (collectively, "Physical Facility Limitations"). As long as the Hotel is constructed in accordance with the provisions and requirements of Article 5 of this Lease, Lessee shall not be in breach of its obligation to operate the Hotel in accordance with the Required Hotel Standard to the extent it is unable to satisfy the Required Hotel Standard solely due to Physical Facility Limitations. However, in all cases Lessee shall be required to satisfy the Required Hotel Standard with respect to (a) quality of management and staff operations, (b) housekeeping and maintenance, (c) room décor, ambiance and amenities, (d) guest services and (e) other matters (except for amenities, guest services and other matters pertaining to Physical Facility Limitations).

The Hotel shall be operated throughout the Term by a hotel management entity that either (1) has demonstrated experience in the operation of similar high quality beach or waterfront specialized hotels or resorts that meet the Required Hotel Standard, which experience shall be manifested by at least five years experience with each of at least two such properties in California, (2) in the event that the entity has been in existence for less than five years, at least two of its principals have demonstrated experience of at least five years in the operation of similar high quality beach or waterfront specialized hotels or resorts that meet the Required Hotel Standard, and such entity can demonstrate a liquid net worth equal to at least three times the amount of its projected initial annual management fee, or (3) contracts with a franchisor that (i) operates a nationwide reservation system in which the Hotel participates, and (ii) manages or maintains a franchisor relationship with an owner or manager of at least ten (10) hotels of one hundred (100) rooms or more in the State of California that meet the Required Hotel Standard. If at any time during the Term the Hotel fails to be operated in accordance with the Required Hotel Standard and Lessee does not cure such failure within thirty (30) days after written notice from County, then in addition to any other rights and remedies that County may have in connection with such failure, County shall have the right to require Lessee to replace the manager of the Hotel with a new hotel management entity reasonably acceptable to County that meets the requirements of this paragraph.

4. PAYMENTS TO COUNTY.

4.1 Net Lease. The parties acknowledge that the rent to be paid by Lessee under this Lease is intended to be absolutely net to County (subject to any Percentage Rent Credits to which Lessee is entitled under Section 4.3 and any Excess Percentage Rent Payment under subsection 4.2.2.4). Except for any Percentage Rent Credits to which Lessee is entitled under Section 4.3 and any Excess Percentage Rent Payment under subsection 4.2.2.4, the rent and other sums to be paid to County hereunder are not subject to any credit, demand, set-off or other withholding. Except as specifically set forth herein, Lessee shall be solely responsible for all capital costs (including, without limitation, all structural and roof repairs or replacements) and operating expenses attributable to the operation and maintenance of the Premises, including without limitation the parking areas included within the Premises.

4.1.1 Utilities. In addition to the rental charges as herein provided, Lessee shall pay, or cause to be paid, all utility and service charges for furnishing water, power, sewage disposal, light, telephone service, garbage and trash collection and all other utilities and services, to said Premises.

4.1.2 Taxes and Assessments. Lessee agrees to pay before delinquency all lawful taxes, assessments, fees, or charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Premises covered hereby or to the Improvements thereon for any reason, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Premises. Lessee's obligation to pay taxes and assessments hereunder shall include but is not limited to the obligation to pay any taxes and/or assessments, or increases in taxes and/or assessments arising as a result of the grant to Lessee of the Option or Lessee's exercise thereof. Lessee shall have the right to contest the amount of any assessment imposed against the Premises or the possessory interest therein; provided, however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Lessee.

The parties acknowledge that the Premises are and shall continue to be subject to possessory interest taxes, and that such taxes shall be paid by Lessee. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. Lessee shall include a statement in all Subleases to the effect that the interests created therein are derived from the Lessee's interest under this Lease and that Lessee's interest requires the payment of a possessory interest tax.

4.2 Rental Payments. Throughout the Term, for the possession and use of the Premises granted herein, Lessee shall pay County a monthly amount equal to the greater of (a) Monthly Minimum Rent or (b) Percentage Rent.

4.2.1 Annual Minimum Rent and Monthly Minimum Rent. Lessee shall pay to County the minimum rent described in this subsection 4.2.1 (subject to adjustment pursuant to Section 4.4 below) during each Lease Year of the Term (the "Annual Minimum Rent"). Annual Minimum Rent shall be payable by Lessee to County on a

monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "Monthly Minimum Rent"); provided, however, if any Lease Year is shorter or longer than a calendar year, then the Annual Minimum Rent shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to 365, and provided, further that if any month during the Term is less than a full calendar month, then the Monthly Minimum Rent payable for any partial month shall be calculated on a pro rata basis based on the number of days in the partial month as compared to the total number of days in such full calendar month.

4.2.1.1 During the period from the Effective Date through the third (3rd) anniversary of the Completion Date (as defined below), the Annual Minimum Rent shall be equal to the sum of (a) seventy-five percent (75%) of the average total annual rent (including, without limitation, minimum rent and percentage rent) which was payable to County for the Parcel 56S Premises and the Parcel 55 Premises during the three (3) year period immediately preceding the Effective Date, plus (b) five percent (5%) of the average total annual parking lot revenue generated by the use of the Parcel W Premises for the three (3) most recent County fiscal years prior to the Effective Date for which such rental information is available. For purposes of this Lease, the "Completion Date" shall mean the date upon which fifty-five percent (55%) or more of the gross leaseable area of the non-Hotel space to be located on the Premises (after the performance of the Redevelopment Work) is first opened (or re-opened) for business. Promptly following the opening for business of each non-Hotel building space Lessee shall provide written notice to County of the date such space opened for business.

4.2.1.2 During the three (3) year period immediately following the period described in Subsection 4.2.1.1 above (i.e., during years four (4) through (6) following the Completion Date), the Annual Minimum Rent shall be equal to seventy-five percent (75%) of the average total Annual Minimum Rent and Percentage Rent payable by Lessee during the first three (3) years following the Completion Date (after deduction of any Percentage Rent Credits applicable during the first three (3) years following the Completion Date pursuant to Section 4.3 below); provided, however, that the Annual Minimum Rent payable under this Subsection 4.2.1.2 shall not be less than the Annual Minimum Rent payable under Subsection 4.2.1.1 above.

4.2.1.3 During the three (3) year period immediately following the period described in Subsection 4.2.1.2 above (i.e., during years seven (7) through (9) following the Completion Date), the Annual Minimum Rent shall be equal to seventy-five percent (75%) of the average total Annual Minimum Rent and Percentage Rent payable by Lessee during years four (4) through six (6) following the Completion Date (after deduction of any Percentage Rent Credits applicable during years four (4) through (6) following the Completion Date pursuant to Section 4.3 below); provided, however, that the Annual Minimum Rent payable under this Subsection 4.2.1.3 shall not be less than the Annual Minimum Rent payable under Subsection 4.2.1.1 above.

4.2.1.4 Effective as of the ninth (9th) anniversary of the Completion Date and until the first Renegotiation Date, and thereafter effective each third (3rd), sixth (6th) and ninth (9th) anniversaries of each Renegotiation Date (each an "Adjustment Date" and collectively the "Adjustment Dates"), the Annual Minimum Rent shall be adjusted as provided in this subsection 4.2.1.4. The Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy five percent (75%) of the average total Annual Minimum Rent and Percentage Rent payable by Lessee during the three (3) year period immediately preceding the Adjustment Date, without regard to any Percentage Rent Credits that may have been applicable during such preceding thirty-six (36) month period.

4.2.2 Percentage Rent. For the purposes of this Lease, "Percentage Rent" for any given month or year shall be defined as the sum of the amounts set forth in this Section. Gross Receipts (as defined herein) from each transaction, sale or activity of Lessee and/or any sublessee shall be reported under the applicable percentage category set forth below in this Subsection 4.2.2. It is understood that Article 3 of this Lease provides for the Permitted Uses of the Premises and that the percentage categories listed below are not all applicable to this Lease and are in no way intended to expand or modify the Permitted Uses. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel, has interpreted and may further interpret the percentage categories as set forth in this Subsection 4.2.2, with such determinations and interpretations to be a guideline in determining the appropriate categories. Within fifteen (15) days after the close of each and every calendar month of the Term hereof, Lessee shall file a report of Gross Receipts by category and pay to County a sum equal to the total of the following percentages of Gross Receipts for said previous month, less the amount of the installment of Monthly Minimum Rent paid for said previous month as provided herein:

(a) TWENTY FIVE PERCENT (25%) of Gross Receipts or other fees for the rental or use of boat slips, anchorages, moorings, dockside storage space, and such other facilities and services ancillary thereto as are generally provided in common to tenants thereof, including receipts obtained from persons who live on their boats;

(b) TWENTY PERCENT (20%) of Gross Receipts from the rental or other fees charged for the use of dry storage facilities and landside storage space;

(c) SEVEN AND ONE-HALF PERCENT (7.5%) of Gross Receipts or other fees charged for the rental, occupancy or use of the following structures: (1) apartments, (2) hotel and/or motel accommodations, and (3) meeting rooms; and SEVEN AND ONE-HALF PERCENT (7.5%) of Gross Receipts from filming or other television and/or motion picture activities;

(c1) TWELVE PERCENT (12%) of Gross Receipts or other fees charged for the occupancy of (1) offices utilized for banking, financial or investment activities, internal clerical or administrative activities, business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies, yacht club purposes, or similar uses; or (2) restaurants, stores, shops, or other commercial establishments; provided that,

except as provided in subsection 4.2.2.5, Gross Receipts or other fees charged for the occupancy of restaurants, stores, shops or other commercial establishments shall not be included in the calculation of Percentage Rent under this subsection (c1) if the Gross Receipts from the operation of such businesses are required to be reported under other subsections of this Section;

(d)(1) For new or used boat sales, the greater of:

A. ONE PERCENT (1%) of Gross Receipts from new or used boat or boat trailer sales including credits for used items taken in trade as part payment for new items, as reflected in the bill of sale; provided, however, if a used item for which a trade-in allowance was granted is subsequently sold within one hundred twenty (120) days of the date of the bill of sale for the new item for which it served as a trade-in allowance, then in connection with the subsequent sale of such used item the previous trade-in allowance may be deducted from the sale price of said used item; or

B. FIFTEEN CENTS ($0.15) per square foot per month of landside outdoor display area, if any, utilized for the sales activity plus the amount of rent that would be owed under subsection (c) of this Section 4.2.2 for any office space utilized for the sales activity if such subsection (c) were applicable;

(2) ONE PERCENT (1%) of Gross Receipts from the sale of house trailers and trailer cabanas including credits for used items taken in trade as part payment for new items, as reflected in the bill of sale; provided, however, if a used item for which a trade-in allowance was granted is subsequently sold within one hundred twenty (120) days of the date of the bill of sale for the new item for which it served as a trade-in allowance, then in connection with the subsequent sale of such used item the previous trade-in allowance may be deducted from the sale price of said used item;

(3) Notwithstanding any other provision of this Lease, the monetary amount specified in subsection (d)(1)(B) of this Section 4.2.2 shall be adjusted concurrently with each Adjustment Date to the amount that is equal to seventy five percent (75%) of the average monthly rent payable to the County per square foot of land for all parcels leased by the County to third parties within Marina del Rey for the activities specified in subsection (d)(1)(B) and for which the County receives at least twenty five thousand dollars ($25,000) per year in gross rental income;

(e) FIVE PERCENT (5%) of Gross Receipts received by Lessee or a Sublessee for commissions or other fees for boat brokerage, car rental, marine insurance, laundry, dry cleaning or other similar activities where earnings are normally received on a commission basis, in the case in which Lessee or a Sublessee is the operator of such enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee or a Sublessee from such enterprise if a third party provider is the operator of such enterprise; the parties agree and acknowledge that with respect to the sale of boats, house trailers or trailer cabanas, subsection (d) above is intended to be applicable to the extent that Lessee or its Sublessee is engaged in the actual sale of such items, while this

subsection (e) is intended to be applicable to the extent that Lessee or its Sublessee is engaged in a brokerage business for the sale, lease or use of such items, and that subsection (d) above and this subsection (e) shall not be applied on a duplicative basis;

(f) With respect to service enterprises not otherwise described in this Subsection 4.2.2, including without limitation, cable, internet, satellite, telecommunication or other antennae fees, telephone, electricity co-generation and other utility services, FIVE PERCENT (5%) of Gross Receipts received by Lessee or a Sublessee from such enterprise if Lessee or a Sublessee is the operator of such enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee or a Sublessee from such enterprise if a third party provider is the operator of such enterprise;

(g) SIX PERCENT (6%) of Gross Receipts from sport fishing and FOUR AND ONE-HALF PERCENT (4.5%) of Gross Receipts from other commercial boating activities such as charter boat or bareboat charters, but not including the boating activities described in subsection (n) below; for purposes of clarification, Gross Receipts under this subsection (g) shall include without limitation, boat rentals, ticket sales or other fees, charges or Gross Receipts from the activities included in this subsection (g), provided, however, that (i) the percentage applicable to food and beverage sales in connection with the activities described in this subsection (g) shall be THREE AND ONE-HALF PERCENT (3.5%); (ii) the percentage applicable to bait sales in connection with the activities described in this subsection (g) shall be THREE PERCENT (3%); and (iii) the percentage applicable to miscellaneous sales (i.e., sales of miscellaneous items not otherwise described in this Subsection 4.2.2) in connection with the activities described in this subsection (g) shall be FIVE PERCENT (5%);

(g1) TEN PERCENT (10%) of Gross Receipts from the rental of bicycles, cycle carriages, scooters or other similar equipment;

(h) With respect to the installation and/or operation of coin-operated vending or service machines, including pay telephones, FIVE PERCENT (5%) of Gross Receipts received by Lessee or a Sublessee from such enterprise if Lessee or a Sublessee is the operator of such enterprise, or TWENTY-FIVE PERCENT (25%) of any commissions or other fees collected by Lessee or a Sublessee from such enterprise if a third party provider is the operator of such enterprise;

(i) TEN PERCENT (10%) of Gross Receipts from the operation of a bar, tavern, cocktail lounge, discotheque, night club or other facilities engaged primarily in the on-premises sale of alcoholic beverages, except as provided for in subsection (j);

(j) THREE AND ONE-HALF PERCENT (3.5%) of Gross Receipts from the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, except that Gross Receipts from facilities established and operated as a take-out food operation shall be reported under subsection (s1); a "take-out food operation" shall mean a restaurant or other food operation a majority of the Gross Receipts from which are derived from the sale of food or beverages to be consumed off-site;

(k) SIX PERCENT (6%) of Gross Receipts from the sale of gasoline, diesel fuel or mixed fuel;

(l) SIX PERCENT (6%) of Gross Receipts from sales by a fuel sales facility of petroleum or fuel products other than those covered by subsection (k) above;

(m) FIFTEEN PERCENT (15%) of Gross Receipts from club dues, initiation fees, and assessments, except that separate assessments for capital improvements may be exempted; provided that to qualify for such an exemption Lessee must comply with the "Criteria for Eligibility for Exemption of Special Assessments from Gross Receipts" issued by the Director;

(n) With respect to the operation of excursion, sightseeing or tour boats, the percentage of Gross Receipts from such enterprise equal to the greater of (1) FOUR AND ONE-HALF PERCENT (4.5%), or (2) the percentage previously paid pursuant to another lease with County in the Marina by an excursion operator that transfers its operation from another location in the Marina to the Premises; provided, however, that (i) the percentage applicable to food and beverage sales in connection with the boating activities described in this subsection (n) shall be THREE AND ONE-HALF PERCENT (3.5%); (ii) the percentage applicable to miscellaneous sales (i.e., sales of miscellaneous items not otherwise described in this Subsection 4.2.2) in connection with the boating activities described in this subsection (g) shall be FIVE PERCENT (5%); and (iii) the percentage applicable to Gross Receipts from the operation of a water taxi shall be determined pursuant to paragraph (t) below;

(o) RESERVED;

(p) That percentage determined pursuant to paragraph (t) below, of Gross Receipts from the operation of boat repair yards, including repair, painting, tugboat, salvage and boat pump-out services and similar activities;

(q) FIVE PERCENT (5%) of Gross Receipts of cover charges or other fees charged for admission to facilities featuring entertainment, excluding movie theaters, whose Gross Receipts shall be reportable under subsection (s);

(r)(1) In the case where parking facilities are operated by a third party operator under a parking operation agreement with Lessee or a Sublessee , (i) TWENTY PERCENT (20%) of the fee or other compensation paid by such third party operator to Lessee (or Sublessee) if the operator is entitled to receive parking revenue and responsible for the payment of operating expenses; or (ii) FIVE PERCENT (5%) of the Gross Receipts from the operation of such parking if the operator collects such Gross Receipts on behalf Lessee (or Sublessee) and Lessee (or Sublessee) is responsible for the payment of the operating expenses for such parking operation (which operating expenses include a fee or other compensation to the parking operator for the rendering of such parking services);

(2) In the case where parking facilities are operated by Lessee or a Sublessee, SEVEN AND ONE-HALF PERCENT (7.5%) of Gross Receipts from such parking;

(s) FIVE PERCENT (5%) of Gross Receipts from the sale of miscellaneous goods and services consistent with the Permitted Uses but not specifically provided for elsewhere in this Section;

(s1) ONE AND ONE-HALF PERCENT (1.5%) of the Gross Receipts from the operation of any stores, shops or boutiques selling items at retail; and

(t) In the case where a specific percentage in the foregoing schedule has not been provided, then concurrent with County's or Director's approval of a specific additional or related use, Director and Lessee shall negotiate in good faith with Lessee to establish the specific percentage to be applied to such use. Such percentage shall be the greater of (1) the average percentage rent received by County with respect to that category of activities within Marina del Rey, California at the time of approval of the additional or related use, and (2) the most recent agreement between County and a Marina del Rey lessee, whether by arbitration or otherwise, with respect to the appropriate percentage to be applied to that use. The percentage rent for the additional or related use as determined pursuant to this subsection (t) shall remain in effect until the next Renegotiation Date.

4.2.2.1 Other Activities. If Director or Lessee reasonably determine that a percentage of Gross Receipts is not suitable or applicable for a particular activity not described above, although permitted hereunder, Director and Lessee shall mutually establish a minimum monthly payment to County as payment for the privilege of engaging therein, which shall remain effective until the next Renegotiation Date. Said minimum monthly amount shall be reasonable in accordance with the revenue generated by such activity and shall be included in Percentage Rent, as determined hereunder, in lieu of a percentage of Gross Receipts therefor.

4.2.2.2 Accounting Records and Procedures. Lessee agrees to and shall comply with, and shall cause all of its sublessees, licensees, permittees and concessionaires to agree to and comply with, the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to County, set forth in Article 14 of this Lease.

4.2.2.3 Gross Receipts. Except as herein otherwise provided, the term "Gross Receipts" as used in this Lease means the gross amount of all money, receipts, compensation, or other things of value, including but not limited to charges, sales price, rentals, payments, reimbursements (including, without limitation, common area maintenance or other expenses, taxes, utilities, insurance, promotional expenses or charges, and other payments or reimbursements), fees and commissions made or earned by Lessee and/or all its assignees, Sublessees, licensees, permittees or concessionaires, from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares, food, beverages or merchandise, calculated in accordance with the accounting method described in the last sentence of Section 14.1.

(1) Except as otherwise set forth herein, there shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent credit (but the value of any free rent period shall not be imputed as Gross Receipts), collection costs, discounts from credit card operations (except as provided in subsection (4)(h) below), insurance and taxes.

(2) Gross Receipts shall not include direct taxes imposed upon the consumer and collected therefrom by Lessee such as, without limitation, retail sales taxes, excise taxes, or related direct taxes paid periodically by Lessee to a governmental agency accompanied by a tax return statement.

(3) Gross Receipts reported by Lessee and its Sublessees, assignees, licensees, Lessees and permittees must include the usual charges for any services, goods, rentals or facilities provided by Lessee or its Sublessees, assignees, licensees, concessionaires or permittees. Bona fide bad debts actually accrued by Lessee or Sublesseee, as applicable, for amounts owed by subtenants, assignees, licensees concessionaries, permittees, customers or patrons may be deducted from Gross Receipts to the extent that such amounts have been previously reported as Gross Receipts; however, there shall be no deduction for bad debts based on past experience or transfer to a bad debt reserve. Subsequent collection of bad debts previously not reported as Gross Receipts shall be included in Gross Receipts at the time they are collected.

(4) In the those instances where Gross Receipts are based on the sale of merchandise, food, beverages or services, Gross Receipts shall not include any of the following items:

a. goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to any retailers without profit to Lessee, where such returns or deliveries are made solely for the convenient operation of the business of Lessee or sublessee and not for the purpose of consummating a sale made in, about or from the Premises;

b. an amount equal to the cash refunded or credit allowed on merchandise returned by customers and accepted by Lessee, or the amount of cash refunded or credit allowed thereon in lieu of Lessee's acceptance thereof, but only to the extent that the sales relating to such merchandise were made in, about or from the Premises; provided that whenever Lessee accepts a credit slip as payment for goods or services, the amount of credit shall be included in Gross Receipts;

c. sales of fixtures, equipment or property which are not Lessee's stock in trade;

d. receipts from insurance claims other than rental interruption or business interruption insurance related to the replacement of Gross Receipts;

e. interest earned by Lessee on funds arising from the Premises or the use thereof, deposited or maintained by Lessee in banks or similar financial institutions;

f. tips and gratuities paid to employees;

g. goods or meals provided to employees of the business operation at cost or less, and complimentary meals offered for promotional purposes, provided, however, that the amounts excluded under this paragraph (g) in connection with a particular business operation shall not exceed two percent (2%) of the Gross Receipts from such business operation in any year;

h. receipts from vending machines used solely by employees of the business operation;

i. fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card, provided, however, that the amounts excluded under this paragraph (i) in connection with a particular business operation shall not exceed one percent (1%) of the Gross Receipts from such business operation in any year;

j. interest or other charges paid by customers of Sublessees for the extension of credit; and

k. the sale of promotional merchandise by Sublessees at cost.

(5) Gross Receipts shall not include amounts reimbursed to Lessee for the Cost of each Sublessee's submetered electricity, water and gas for such Sublessee's space, provided that (1) each Sublessee's obligation to reimburse Lessee for such utility charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Premises; (2) the reimbursed sum is in an amount equal to the Cost of the Sublessee's usage of such utilities; and, (3) the receipt is actually credited against the cost of the Sublessee's usage of such utilities. For the purpose of the foregoing sentence, the "Cost" of the Sublessee's usage of utilities shall mean the actual costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility bill that is allocable to the Sublessee based on such Sublesse's submetered consumption of such utilities, and in paying the portion of any third party submeter reading and service charge to each submeter that is actually read and a direct allocation of the submeter service charge to each such submeter that is serviced. County shall have the right to approve all submeters and to challenge the legitimacy or amount of any Cost, and all disputes regarding such County approvals or challenges, if not resolved by the parties within thirty (30) days after notice to Lessee of such disapproval or challenge, shall be resolved by arbitration pursuant to Article 16 of this Lease.

4.2.2.4 Excess Payments Credit. If rent payments actually made by Lessee in a particular Lease Year exceed the total rentals actually due for that year as computed on an annual basis at the end of each Lease Year, Lessee shall be permitted to credit that excess amount ("Excess Percentage Rent Payment") against the succeeding monthly installments of Percentage Rent otherwise due under this Section 4.2.2 until such time as the entire Excess Percentage Rent Payment has been recouped. If Lessee makes an Excess Percentage Rent Payment in the final Lease Year of the Term, County shall refund such amount to Lessee within thirty (30) days of its discovery and verification of such overpayment.

4.2.2.5 Effect of Sublessee, etc. Doing Business. Except as specifically provided to the contrary in this Lease, where a Sublessee is conducting a business or engaged in any use or occupation or any combination thereof on Lessee's leasehold, Lessee shall pay Percentage Rent based on whichever of the following results in the greater Percentage Rent: (1) the Gross Receipts of each Sublessee under one or more of categories (a) through (t) of this Section 4.2.2; or (2) the Gross Receipts received by Lessee from such Sublessee; provided, however, that this subsection 4.2.2.5 shall not be applicable to the uses described in clause (1) of subsection (c1) of Section 4.2.2.

4.2.2.6 Interest; Etc. Interest, service or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be reported in the same percentage category as the transaction, sale or activity is reported.

4.2.2.7 Percentage Rent Does Not Affect Permitted Uses. It is understood and acknowledged by Lessee that Section 3.1 of this Lease sets forth the Permitted Uses of the Premises by Lessee; thus, the Percentage Rent categories listed in subsection 4.2.2 are not all necessarily applicable to this Lease and are in no way intended to expand the Permitted Uses.

4.2.2.8 Policy Statements. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel may further interpret the definition of Gross Receipts, with such interpretations to be a guideline in implementing the foregoing subsections of this Lease.

4.2.2.9 CVB Surcharge. In connection with the operation of the Hotel on the Premises, Lessee will be required to fund its share of the cost of the operation of the Marina del Rey Convention and Visitor's Bureau ("CVB") through the self-imposed collection from its customers of a one percent (1%) surcharge against the fees charged to its customers for the occupancy of hotel and motel sleeping accommodations (the "Surcharge") and the monthly payment of the Surcharge to the CVB (the "CVB Payment"). In recognition of the mutually beneficial services provided by the CVB and in acknowledgment of the intended use of the Surcharge, County and Lessee agree that the Surcharge shall be excluded from Gross Receipts to the extent that Lessee pays the Surcharge to the CVB in the form of the CVB Payment prior to the date on which the monthly Gross Receipts report for the month

during which the Surcharge is collected is due. Lessee shall report, as separate line items in the monthly Gross Receipts report, the amounts of the Surcharge excluded from Gross Receipts and the CVB Payment for such reported month. If for any month the CVB Payment is less than the Surcharge, then the allowable exclusion shall be limited to the actual CVB Payment, and Percentage Rent shall be payable under category (c) of subsection 4.2.2 with respect to the amount by which the Surcharge exceeds the CVB Payment. All records relating to the Surcharge and CVB Payments shall be maintained by Lessee in conformance with the requirements of Article 14 of this Lease

4.3 Percentage Rent Credits. Subject to the terms and provisions of this Section 4.3, during the Percentage Rent Credit Period (as defined below), Lessee shall be entitled to a credit against the Percentage Rent payable pursuant to this Lease in the following percentages of the Percentage Rent otherwise payable hereunder (the "Percentage Rent Credits"):

| Year | Percentage Rent Credit | Percentage of Total Percentage Rent Due after Credit |
|---|---|---|
| 1 | 75% | 25% |
| 2 | 70% | 30% |
| 3 | 70% | 30% |
| 4 | 65% | 35% |
| 5 | 60% | 40% |
| 6 | 55% | 45% |
| 7 | 50% | 50% |
| 8 | 35% | 65% |
| 9 | 20% | 80% |
| 10 & thereafter | 0% | 100% |

The "Percentage Rent Credit Period" shall mean the nine (9) year period commencing on the earliest of (a) the first January 1 that is at least six (6) months after the Re-Opening Date, (b) if the Completion Date occurs at any time during the months of January through June, then January 1 of the calendar year during which the Completion Date occurs, or (c) if the Completion Date occurs at any time during the months of July through December, then January 1 of the calendar year immediately following the calendar year during which the Completion Date occurs.

During the Percentage Rent Credit Period the rent payable by Lessee under Section 4.2 during each year shall be the greater of (i) the Annual Minimum Rent, or (ii) Percentage Rent reduced by the Percentage Rent Credit applicable to such year. In no event shall any Percentage Rent

Credit reduce the Annual Minimum Rent payable by Lessee under this Lease. In addition, notwithstanding any contrary provision hereof, the aggregate amount of Percentage Rent Credits to which Lessee is entitled during the entire Percentage Rent Credit Period shall not exceed $8,900,000 (the "Cap"). At such time, if any, as the aggregate amount of Percentage Rent Credits to which Lessee is otherwise entitled during the Percentage Rent Credit Period equals or exceeds the Cap, then Lessee shall not be entitled to any further Percentage Rent Credits hereunder. The amount of Percentage Rent Credit to which Lessee is entitled shall also be subject to reduction pursuant to the remaining terms and provisions of this Section 4.3.

4.3.1 Recapture of Excess Percentage Rent Credits. "Excess Percentage Rent Credits" shall mean the amount, if any, by which Lessee's total Net Operating Income during the Percentage Rent Credit Period exceeds the total Net Operating Income during the Percentage Rent Credit Period required to achieve a Cumulative Annual Return of 10.4% on the Total Development Costs outstanding as of the end of the year during the Percentage Rent Credit Period as of which such calculation is required to be made hereunder. An interim determination of Excess Percentage Rent Credits shall be first made at the end of the first five (5) years of the Percentage Rent Credit Period. A final, cumulative determination of Excess Percentage Rent Credits for the entire nine (9) year Percentage Rent Credit Period shall be made at the end of such nine (9) year period.

4.3.2 Interim Determination of Excess Percentage Rent Credits. Within sixty (60) days after the end of the fifth ($5^{th}$) year of the Percentage Rent Credit Period, there shall be an interim determination as to whether Excess Percentage Rent Credits were generated during the first five (5) years of the Percentage Rent Credit Period (i.e., an interim determination as to whether Excess Percentage Rent Credits were generated if the Percentage Rent Credit Period consisted only such first five (5) years). If Excess Percentage Rent Credits were generated based on the total Net Operating Income for the first five (5) years of the Percentage Rent Credit Period, then the aggregate amount of the Percentage Rent Credits to which Lessee is otherwise entitled under this Section 4.3 for years six (6) through nine (9) of the Percentage Rent Credit Period shall be reduced by the amount of the Excess Percentage Rent Credits generated during the first five (5) years of the Percentage Rent Credit Period. Such reduction shall be implemented in the form of a reduction in the Percentage Rent Credits for each of the four (4) years during years six (6) through nine (9) of the Percentage Rent Credit Period in an annual amount equal to twenty-five percent (25%) of the aggregate amount of the Excess Percentage Rent Credits generated for years one (1) through five (5). Notwithstanding the foregoing, such annual reductions in the Percentage Rent Credits for years six (6) through nine (9) shall not exceed an amount that would reduce Lessee's Cumulative Annual Return for the period from the commencement of the Percentage Rent Credit Period through the end of each such year to less than 10.4%; and provided, further, that in no event shall the Percentage Rent Credits to which Lessee would otherwise be entitled be reduced by more than fifty percent (50%) in any one year. Any annual reductions in Percentage Rent Credits during years six (6) through nine (9) shall be taken in equal monthly amounts with an annual reconciliation at the end of each such year. In the event that at any time during years six (6) through nine (9) Lessee demonstrates to the reasonable satisfaction of Director that the Lessee's Net Operating Income has declined to an extent that requires cancellation of future Percentage Rent Credit reductions in order to comply with the

limitations in this Section 4.3.2, then in accordance with and subject to directive from the Director further Percentage Rent Credit reductions shall be suspended as necessary to comply with such limitations. If Lessee demonstrates to the reasonable satisfaction of Director that cancellation of all future Percentage Rent Credit reductions is still expected to result in a Cumulative Annual Return for the full nine (9) year period of less than 10.4%, then Lessee shall be entitled to an additional one-time Percentage Rent Credit equal to the lesser of (1) a reinstatement of the total previous reduction in the Percentage Rent Credit, or (2) the amount required to achieve such Cumulative Annual Return. The additional Percentage Rent Credit described in the immediately preceding sentence may be applied against the next Percentage Rent due under the Lease after the grant of such credit until such time as the credit is fully applied. Notwithstanding any contrary provision hereof, the reductions, suspension of reductions or other adjustments in the Percentage Rent Credits under this Section 4.3.2 shall be subject to reconciliation at the end of the ninth ($9^{th}$) year of the Percentage Rent Credit Period in accordance with Section 4.3.3 below.

4.3.3 Cumulative Determination of Excess Percentage Rent Credits At End of $9^{th}$ Year. Within sixty (60) days after the end of the ninth ($9^{th}$) year of the Percentage Rent Credit Period, there shall be a final, cumulative determination as to whether Excess Percentage Rent Credits were generated for the full nine (9) year Percentage Rent Credit Period. Such determination shall be made taking into consideration Percentage Rent Credits granted to Lessee during such nine (9) year period (net of any interim reductions or other adjustments to the Percentage Rent Credits for years six (6) through nine (9) made pursuant to Section 4.3.2 above). If Excess Percentage Rent Credits were generated for such nine (9) year period, then Lessee shall repay to County fifty percent (50%) of the total Excess Percentage Rent Credits (the "Potential County Credit") in accordance with the payment schedule, and subject to the limitations, set forth in subsection 4.3.4 below.

4.3.4 Repayment of Potential County Credit. Lessee shall repay to County the Potential County Credit during the fifteen (15) year period following the Percentage Rent Credit Period. Within ninety (90) days after the end of each year during such fifteen (15) year period, Lessee shall deliver to County a statement setting forth the Net Operating Income for such year and shall accompany such statement with the payment by Lessee of the amount, if any, of the Potential County Credit payable by Lessee for such year pursuant to this subsection 4.3.4. If Lessee's Net Operating Income for such year exceeds 12.5% of the Total Development Costs outstanding as of the end of such year, then Lessee shall pay to County fifty percent (50%) of the amount of such excess until the aggregate payments made by Lessee pursuant to this subsection 4.3.4 equals the Potential County Credit. At such time as the aggregate amount of payments made by Lessee to County under this subsection 4.3.4 equals the Potential County Credit, then Lessee shall have fully satisfied its obligations under this subsection 4.3.4 and County shall not be entitled to receive any further amounts under this subsection 4.3.4. If Lessee's Net Operating Income during the fifteen (15) year period described in this subsection 4.3.4 is not sufficient to repay to County the entire Potential County Credit, then Lessee shall have no obligation to repay County the remaining portions of the Potential County Credit after the end of such fifteen (15) year period.

4.3.5 Financial Statements and Information. In addition to its obligations under Article 14 of this Lease, within ninety (90) days after the end of each year Lessee shall deliver to County a statement of Net Operating Income and Total Development Costs for the preceding year, along with a statement of such other calculations and information as may be requested by County to permit the verification by County of the amounts described in this Section 4.3. The statements to be delivered by Lessee under this Section 4.3.5 shall be certified by Lessee's chief financial officer or reviewed by an independent certified public accountant acceptable to County, as required by County.

4.3.6 Definitions. The following terms used in this Section 4.3 shall be defined as follows:

(a) "Cumulative Annual Return" shall mean for any particular period the cumulative annual return as of the end of such period received by Lessee on Total Development Costs incurred by Lessee as of the end of such period from Net Operating Income received by Lessee during such period.

(b) "Gross Revenues" shall mean all revenues, receipts, or money or other things of value received by Lessee from all sources in connection with Lessee's ownership or operation of the Premises, or the supply of any services in connection with the Premises, including without limitation, base rentals, percentage rentals, slip rentals, other rentals, parking charges or revenues (net of validations), and common area maintenance, operating expense, utility and tax payments or reimbursements. There shall be no deduction in the calculation of Gross Revenues for any costs or expenses, including without limitation, costs of operation, insurance, taxes, overhead, bad debt reserves, or any other costs or expenses. Notwithstanding the foregoing, in the calculation of Gross Revenues there shall be deducted the amount of Minimum Rent and Percentage Rent paid by Lessee to County for the applicable period.

(c) "Operating Expenses" shall mean all out-of-pocket costs and expenses incurred by Lessee for the maintenance, repair, management and operation of the Premises, the monthly contributions by Lessee to the Subsequent Renovations Fund and Capital Improvement Fund pursuant to Sections 5.12 and 5.13 of this Lease and any other contributions by Lessee during the applicable period to maintenance, repair or operation reserves required to be maintained by Lessee by an Encumbrance Holder (provided, however, that there shall be no double counting of actual expenses paid from such reserves), all as reasonably approved by Director; provided, however, that Operating Expenses shall not include (i) Minimum Rent and Percentage Rent paid by Lessee to County that has already been excluded from Gross Revenues pursuant to paragraph (a) above, (ii) any interest or other debt service or financing costs, (iii) depreciation, (iv) capital costs or expenses, (v) development costs, (vi) management or administrative fees or expenses in excess of the lesser of Lessee's actual out-of-pocket management or administrative expenses (which, if Lessee or an affiliate of Lessee manages the Premises, will be deemed to equal five percent (5%) of the prevailing market base of expenses on which management fees are calculated as of the Effective Date) or the prevailing market management and administrative fees and expenses paid by other owners of comparable projects, and (vii) any costs,

expenses, compensation, fees or other amounts paid to Lessee, any affiliate of Lessee, or any employee, officer, partner, member of Lessee or a Lessee affiliate, in excess of the prevailing market cost or expense for comparable services or goods rendered or provided on an unaffiliated basis.

(d) "Net Operating Income" for a particular year shall mean Gross Revenues for such year less Operating Expenses for such year.

(e) "Total Development Costs" shall mean the following costs reasonably approved by Director: (i) the Lessee's actual out-of-pocket costs and expenses incurred in connection with the design, permitting and construction of the Redevelopment Work, including without limitation, Lessee's actual out-of-pocket financing costs and construction period interest, out-of-pocket predevelopment costs, out-of-pocket legal fees and other consultant expenses incurred in connection with the negotiation of this Lease and the design, permitting, construction and financing of the Redevelopment Work, costs and expenses reimbursed by Lessee to County, and a development fee equal to three percent (3%) of the hard construction costs of the Redevelopment Work, (ii) the Extension Fee paid by Lessee pursuant to the Option Agreement, and (iii) capital costs incurred by Lessee after the completion of the Redevelopment Work that would constitute Permitted Capital Expenditures under Section 5.13 of this Lease, but only to the extent that there are not sufficient funds in the Capital Improvement Fund to fund such Permitted Capital Expenditures and only to the extent such costs are not in fact funded from the Capital Improvement Fund.

4.4 Renegotiation of Annual Minimum and Percentage Rents. Effective on the tenth ($10^{th}$) anniversary of the Re-Opening Date, and each subsequent tenth (10th) anniversary thereafter (each a "Renegotiation Date" and collectively, the "Renegotiation Dates"), the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises.

4.4.1 Fair Market Rental Value. As used herein, "Fair Market Rental Value" shall mean, as of each Renegotiation Date, the fair market rent (including an annual minimum rent), expressed as respective percentages of Gross Receipts in accordance with the categories enumerated in subsection 4.2.2, which the Premises would bring, on an absolute net basis, taking into account the Permitted Uses, all relevant and applicable County policies and all of the other terms, conditions and covenants contained in the Lease, if the Premises were exposed for lease for a reasonable time on an open and competitive market to a lessee for the purpose of the Permitted Uses, where County and the respective tenant are dealing at arms length and neither is under abnormal pressure to consummate the transaction, together with all restrictions, franchise value, earning power and all other factors and data taken into account in accordance with California law applicable from time to time to eminent domain proceedings.

4.4.2 Renegotiation Period. Not more than one (1) year nor less than nine (9) months prior to the Renegotiation Date, Lessee shall deliver to County written notice setting forth Lessee's determination of the Fair Market Rental Value of the Premises. Lessee's notice shall include a list of comparable properties and/or complete copies of

any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as Lessee deems relevant or as may be reasonably requested by County. Within one hundred twenty (120) days after receipt of Lessee's notice, if County disagrees with Lessee's determination, County shall deliver to Lessee written notice of such disagreement, together with County's determination of Fair Market Rental Value and a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as County deems relevant or as may be reasonably requested by Lessee, to the extent available to County. If County fails to deliver to Lessee notice of its disagreement within the aforementioned period and such failure continues for fifteen (15) days after receipt of written notice from Lessee, then Lessee's determination of Fair Market Rental Value shall be binding on County as of the Renegotiation Date; provided, however, that Lessee's notice to County shall conspicuously state in bold faced type that such determination of Fair Market Rental Value shall be binding on County unless County delivers notice of its disagreement within such fifteen (15) day period.

If Lessee fails to deliver the notice described in the first sentence of this subsection, setting forth Lessee's determination of Fair Market Rental Value, and such failure continues for fifteen (15) days after receipt of written notice from County, then County shall submit its determination of Fair Market Rental Value to Lessee. Lessee shall have fifteen (15) days after the submittal by County to Lessee of County's determination of Fair Market Rental Value to deliver to County written notice of Lessee's agreement or disagreement with County's determination. If Lessee fails to deliver notice of such disagreement within such fifteen (15) day period and County's notice to Lessee conspicuously stated in bold faced type that such determination of Fair Market Rental Value shall be binding on Lessee unless Lessee delivers notice of its disagreement within such fifteen (15) day period, then County's determination of Fair Market Rental Value shall be binding on Lessee as of the Renegotiation Date.

4.4.3 Negotiation of Fair Market Rental Value. If County (or Lessee, as the case may be) does so notify Lessee (or County, as the case may be) of its disagreement as provided in subsection 4.4.2, County and Lessee shall have sixty (60) days from the end of the applicable response period in which to agree upon the Fair Market Rental Value for the Premises. County and Lessee shall negotiate in good faith during said sixty (60) day period. If the parties do so agree, they shall promptly execute an amendment to this Lease setting forth the Fair Market Rental Value so jointly determined, to be effective upon the Renegotiation Date. Director shall be authorized to execute any such amendment on behalf of County. During the period of negotiation, Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to the obligation to continue to pay to County Annual Minimum Rent and Percentage Rent at the then-existing levels.

4.4.4 Arbitration. If County and Lessee fail to reach agreement during the sixty (60) day period set forth in subsection 4.4.3, then, unless the parties agree otherwise, the Fair Market Rental Value of the Premises shall be determined by arbitration as set forth in Article 16 of this Lease and the parties shall execute an

amendment to this Lease setting forth the Fair Market Rental Value as determined by arbitration. In order to determine the Fair Market Rental Value of the Premises, the arbitrator shall take into consideration all of the terms, conditions and covenants of this Lease, the earning power and all of the factors and data relating to such value required or proper to be considered in determining the fair rental value of leaseholds under the laws of eminent domain in the State of California. During the period of arbitration, County and Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to Lessee's obligation to pay to County Annual Minimum Rent and Percentage Rent at then existing levels.

4.4.5 Retroactivity. In the event that, pursuant to subsections 4.4.3 or 4.4.4 hereof, the parties execute an amendment to this Lease setting forth the Fair Market Rental Value and the Annual Minimum Rent, such amendment, if executed prior to the Renegotiation Date, shall be effective as of the Renegotiation Date; if executed after the Renegotiation Date, such amendment shall be retroactive to the Renegotiation Date. In the event that such amendment is executed after the Renegotiation Date, then, within thirty (30) days after such execution, Lessee shall pay to County, or County shall at its election pay or credit to Lessee, the difference, if any, between (a) such Fair Market Rental Value for the Premises and (b) the actual Annual Minimum Rent and Percentage Rent paid by Lessee to County, for the period of time from the Renegotiation Date until the date of such payment. Lessee (with respect to overpayments) or County (with respect to underpayments) shall further be entitled to interest on each portion of such payment from each date on which the applicable rental payments were payable under this Lease to the date paid or credited, whichever is applicable, at the following rates, compounded annually:

(1) the interest rate applicable to the first six (6) months following the Renegotiation Date shall be equal to the average daily rate for the non-restricted funds held and invested by the Treasurer and Tax Collector of Los Angeles County during that period, computed by the Auditor-Controller ("County Pool Rate"); and,

(2) the interest rate applicable to any period of time in excess of six (6) months following the Renegotiation Date shall be the average prime rate of interest published in the Wall Street Journal (the "Prime Rate") plus one percent (1%) for the period between the date which is six (6) months after the Renegotiation Date and the date of payment.

4.5 Payment and Late Fees. Monthly Minimum Rent shall be paid by Lessee in advance. Payments of Minimum Monthly Rent shall be received by County on or before the first day of each calendar month of the Term. Percentage Rent shall be paid by Lessee in arrears. Percentage Rent due, if any, for a given month of the Term shall be received by County on or before the fifteenth day of the calendar month following each month of the Term, calculated as follows: the Lessee shall calculate the total Percentage Rent owed to County for the relevant month of the Term; it shall deduct from said amount the total Monthly Minimum Rent paid to County for that same month; if the resulting amount is a positive number, Lessee shall pay that amount to County; if that amount is a negative number, no Percentage Rent shall be paid to County for that month but nevertheless the Monthly Minimum Rent shall be paid every month of

the Term hereof. Percentage Rent payments shall be reconciled annually at the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in subsection 4.2.2.5.

Payment may be made by check or draft issued and payable to The County of Los Angeles, and mailed or otherwise delivered to the Department of Beaches and Harbors, Los Angeles County, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, or such other address as may be provided to Lessee by County. Lessee acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand. In the event any payment hereunder is not received by County by the date due, Lessee acknowledges that County will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee ("Late Fee") of six percent (6%) of the unpaid amount shall be added to any amount that remains unpaid five (5) days after such amount was due and payable. In addition to any Late Fee, any unpaid rent due shall additionally bear interest at an annual rate equal to the Prime Rate plus three percent (3%), computed from the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County).

4.6 Changes of Ownership and Financing Events. Except as otherwise provided in this Section 4.6, each time Lessee proposes either (a) a Change of Ownership (that is not an Excluded Transfer) or (b) a Financing Event, County shall be paid (1) an Administrative Charge equal to the Actual Cost incurred by County in connection with its review and processing of said Change of Ownership or Financing Event ("Administrative Charge") and (2) subject to the remaining provisions of this paragraph, a Net Proceeds Share, in the event County approves such proposed Change of Ownership or Financing Event and such transaction is consummated. "Net Proceeds Share" shall mean the applicable amount determined pursuant to Section 4.8 of this Lease. Changes of Ownership and Financing Events are further subject to County approval as provided in Articles 12 and 13 of this Lease.

4.6.1 Change of Ownership. "Change of Ownership" shall mean (a) any transfer by Lessee of a five percent (5%) or greater direct ownership interest in this Lease, (b) the execution by Lessee of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a five percent (5%) of greater direct ownership interest in such Major Sublease, (c) any transaction or series of related transactions not described in subsection 4.6.1(a) or subsection 4.6.1(b) which constitute an Aggregate Transfer of fifty percent (50%) or more of the beneficial residual interests in Lessee or a Major Sublessee, or (d) a Change of Control (as defined below) of Lessee or a Major Sublessee.

For the purposes of this Lease, "Change of Control" shall refer to a transaction whereby the transferee acquires a beneficial residual interest in Lessee or a Major Sublessee which

brings its cumulative beneficial residual interest in Lessee or a Major Sublessee, as appropriate, to over fifty percent (50%).

4.6.2 Excluded Transfers. Notwithstanding anything to the contrary contained in this Lease, Changes of Ownership resulting from the following transfers ("Excluded Transfers") shall not be deemed to create an obligation to pay County a Net Proceeds Share or any Administrative Charge:

4.6.2.1 a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date (or as of the date on which a Change of Ownership occurred as to the interest transferred), to any other direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the immediate family (as defined in subsection 4.6.2.3 below) of any direct or indirect partner or member of Lessee who is an individual;

4.6.2.2 a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, as long as such transfer does not result in a change in the management of Lessee;

4.6.2.3 a transfer of ownership interests in Lessee or in constituent entities of Lessee (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Lessee as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this subsection 4.6.2.3 is the result of gift, devise, intestate succession or operation of law, or (iv) in connection with a pledge by any partners of a constituent entity of Lessee to an affiliate of such partner;

4.6.2.4 a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock and/or securities is/are traded publicly on a national stock exchange or is traded in the over-the-counter market and the price for which is regularly quoted in recognized national quotation services;

4.6.2.5 a mere change in the form, method or status of ownership (including, without limitation, the creation of single purpose entities) so long as the ultimate beneficial ownership remains the same as of the Effective Date, or as otherwise excluded in accordance with subsections 4.6.2.1 through 4.6.2.4 above;

4.6.2.6 any transfer resulting from a Condemnation by County; or

4.6.2.7 any assignment of the Lease by Lessee to a parent, subsidiary or affiliate of Lessee in which there is no change to the direct and indirect beneficial ownership of the leasehold interest.

4.6.3 Aggregate Transfer. "Aggregate Transfer" shall refer to the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial residual interests in Lessee or a Major Sublessee, as appropriate) transferred or assigned in one transaction or a series of related transactions (other than those enumerated in subsection 4.6.2) occurring since the later of (a) the Effective Date, (b) the execution by Lessee of this Lease or a Major Sublease, as appropriate, or (c) the most recent Change of Ownership upon which an Administrative Charge was paid to County; provided, however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

4.6.4 Beneficial Interest. As used in this Lease, "beneficial residual interest" shall refer to the ultimate direct or indirect ownership interests in Lessee (or a Major Sublessee, as applicable), regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts.

4.6.4.1 Interests Held By Entities. Except as otherwise provided herein, an interest in Lessee, this Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Lessee or a Major Sublessee, as appropriate, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the beneficial interests in Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof.

4.6.4.2 Ownership of Multiple Assets. The proceeds of any event constituting or giving rise to a Change of Ownership shall be apportioned to this Lease or a Major Sublease, whichever is appropriate, and to any other assets transferred in the same transaction in proportion to the relative fair market values of the respective assets transferred. The Net Proceeds Share shall be calculated only by reference to the amount of such proceeds apportioned to this Lease, a Major Sublease or the beneficial interests therein, whichever is appropriate.

4.7 Calculation and Payment. A deposit of Fifteen Thousand and 00/100 Dollars ($15,000) toward the Administrative Charge shall be due and payable upon Lessee's notification to County of the proposed Change of Ownership (that is not an Excluded Transfer) or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of

the Administrative Charge, if any, and the Net Proceeds Share shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership or Financing Event giving rise to the obligation to pay such fee, regardless of whether or not money is transferred by the parties in connection with such consummation. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge), together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 4.6. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay County the balance of the Administrative Charge otherwise allowable under Section 4.6. within thirty (30) days after receipt of the notice from County setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge) and any additional supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice. Together with its request for County approval of the proposed transaction, Lessee, a Major Sublessee or the holder of a beneficial interest in this Lease or a Major Sublease, whichever is appropriate, shall present to County its calculation of the Net Proceeds Share (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the payment of such Net Proceeds Share ("Calculation Notice"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Net Proceeds Share. Within thirty (30) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Net Proceeds Share set forth therein or the related adjustment of Improvement Costs, if any. Failure of County to approve the Calculation Notice in writing within such thirty (30) day period shall be deemed to constitute County's disapproval thereof. Failing mutual agreement within thirty (30) days after the expiration of said thirty (30) day period, the dispute shall be resolved by arbitration as set forth in Article 16 of this Lease in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Net Proceeds Share and (ii) Lessee shall deposit the disputed portion of the Net Proceeds Share into an interest bearing escrow account at the closing of the transaction (or deliver to County a letter of credit or other security reasonably acceptable to County in the amount of the disputed portion), which disputed portion shall be distributed in accordance with the arbitration of the dispute pursuant to Article 16 of this Lease, in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value.

4.7.1 Transfer of Less Than Entire Interest. Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial interest in Lessee, this Lease or a Major Sublease, the Net Proceeds Share shall be due and payable with respect to those portions of such beneficial interest that have been acquired by the transferee since the latest of (a) the Effective Date, (b) the most recent event creating Lessee's obligation to pay a Net Proceeds Share (including without limitation an approval

by County of a transfer at a price which falls below the threshold for paying a Net Proceeds Share) with respect to this Lease (or a Major Sublease), or (c) the date which is twelve (12) months prior to the transfer which constitutes the Change of Ownership.

4.7.2 Purchase Money Notes. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "Purchase Money Note"), such note shall be valued at its face amount; provided that if the interest rate on such Purchase Money Note is in excess of a market rate, then the value of such note shall be increased to reflect such above-market rate. Any disputes between County and Lessee as to whether the interest rate on a Purchase Money Note is in excess of a market rate or with respect to the valuation of a Purchase Money Note with an above-market rate of interest, shall be settled by arbitration pursuant to Article 16 below.

4.7.3 Obligation to Pay Net Proceeds Share and Administrative Charge. With respect to a Change of Ownership giving rise to the Administrative Charge and Net Proceeds Share, the obligation to pay the Administrative Charge and Net Proceeds Share shall be the joint and several obligation of the transferor and transferee. In the event that the Administrative Charge or Net Proceeds Share is not paid when due with respect to the beneficial interest in this Lease, then County shall have the remedies set forth in Section 13.3 hereof; provided, however, in the case of a transfer of an interest in Lessee (as opposed to a transfer by Lessee of an interest in the Lease or the Premises) in which the transferor and transferee fail to pay the Administrative Charge and/or Net Proceeds Share due hereunder, as long as Lessee uses its best efforts to cause the payment of the required Administrative Charge and Net Proceeds Share to be made, County shall, for a period of up to three (3) years following the Change of Ownership, forebear from exercising any right to terminate the Lease as a result thereof; provided further that at the end of such three (3) year period County shall no longer have any obligation to forebear from terminating the Lease if the Administrative Charge and Net Proceeds Share, plus interest as described below, has not been paid in full. An Administrative Charge and Net Proceeds Share not paid when due hereunder shall bear interest at the Prime Rate plus three percent (3%). For purposes of determining whether County is required to forebear from terminating the Lease as described above, Lessee's obligation to use its best efforts to cause the payment of the unpaid Administrative Charge and/or Net Proceeds Share shall include the obligation at Lessee's expense, to institute a legal action against the transferor and transferee within ninety (90) days following the date of the transfer and to diligently prosecute such legal action to completion..

4.8 Net Proceeds Share. In the case of the first Change of Ownership (excluding Excluded Transfers) occurring during the first ten (10) years after the Effective Date, the Net Proceeds Share shall be $0. In the case of the second and each subsequent Change of Ownership (excluding Excluded Transfers) during the ten (10) year period after the Effective Date, and in the case of each Change of Ownership (excluding Excluded Transfers) after the first ten (10) years following the Effective Date, the Net Proceeds Share shall be a sum equal to the greater of (a) five percent (5%) of the gross sale or transfer proceeds or other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor, such consideration shall in no event be deemed to be less than the fair value of the

interests transferred) (the "Gross Proceeds"), or (b) twenty percent (20%) of the Net Transfer Proceeds from such transfer. Notwithstanding the foregoing, if the Gross Proceeds are less than 105.26% of the Applicable Costs (as defined in subsection 4.8.1 or 4.8.2 below, as applicable), then the Net Proceeds Share under the immediately preceding sentence shall be calculated only in accordance with clause (b) in such sentence (i.e., the Net Proceeds Share shall be twenty percent (20%) of the Net Transfer Proceeds from such transfer). With respect to a Financing Event occurring after the Effective Date, the Net Proceeds Share (if any) shall be equal to twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event. Notwithstanding any contrary provision of this Section 4.8, in the calculation of Net Transfer Proceeds and Net Refinancing Proceeds derived from a Change of Ownership or Financing Event, as applicable, pursuant to the remaining provisions of Section 4.8 below, there shall be no duplication of any amounts to be subtracted from the total consideration received in connection with such transaction, even if a particular amount qualifies for subtraction under more than one category.

4.8.1 Transaction by Original Lessee. In the case of a transfer by Lessee (but not a successor or assignee of Lessee) constituting a Change of Ownership, "Net Transfer Proceeds" shall mean the Gross Proceeds less the sum of the following costs with respect to Lessee (but not its successors or assignees) ("Applicable Costs"):

4.8.1.1 The sum of (a) Eleven Million Five Hundred Thousand Dollars ($11,500,000.00), plus (b) the amount of the Extension Fee that has been paid by Lessee as of the date of the Change of Ownership, plus (c) actual out-of-pocket costs incurred by Lessee for its third party consultants and attorneys in connection with the negotiation and consummation of the Option Agreement and this Lease, plus (d) actual costs incurred by Lessee for the reimbursement of County's Actual Costs in connection with the negotiation and consummation of the Option Agreement and this Lease (the sum of the amounts in (a), (b), (c) and (d) are referred to as the "Base Value"), plus (e) the final actual construction costs paid by Lessee in connection with the construction of the Redevelopment Work, and other capital renovations to the Premises, or other physical capital Improvements or Alterations to the Premises in compliance with Article 5 herein, to the extent applicable (including in each case all hard and soft costs, construction period interest on Lessee's construction loan, and developer fees incurred by Lessee, as long as such developer fees do not exceed three percent (3%) of hard construction costs), which costs have been submitted to County within ninety (90) days after the completion of such Improvements, together with a written certification from Lessee and Lessee's construction lender, if any, to the effect that such costs are accurate (the amounts described in this clause (e) are referred to as "Improvement Costs"). Notwithstanding the foregoing, with respect to Improvements or Alterations which are not part of the Redevelopment Work, Lessee shall submit the cost of such Improvements on an annual basis within ninety (90) days following the end of each fiscal year. If by the date that is ninety (90) days after the completion of the Redevelopment Work (or other Improvements) the final amount of the Improvement Costs is not established because of a dispute or disputes between Lessee and its contractor(s), then Lessee shall note such dispute(s) in its submission of the Improvement Costs (including a description of the costs and the amounts under dispute). Lessee shall thereafter notify County in writing within thirty (30) days after

the resolution of any such dispute as to any final adjustment required to the amount of the Improvement Costs to reflect the resolution of such dispute.

4.8.1.2 Commissions, title and escrow costs, documentary transfer taxes, sales and use taxes, reasonable attorneys' fees, prepayment fees, penalties or other similar charges (such as yield maintenance premiums or defeasance costs) and other bona fide closing costs actually paid to third parties and documented to the satisfaction of County, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County a Net Proceeds Share, and the Administrative Charge paid by Lessee to County in connection with the transaction (collectively, "Documented Transaction Costs").

4.8.1.3 That portion of the principal amount of any Financing Event after the Effective Date that constituted Net Refinancing Proceeds on which Lessee paid County a Net Proceeds Share.

4.8.2 Transfer by Lessee's Successor. In the case of a transfer by a Lessee other than the original Lessee, "Net Transfer Proceeds" shall mean the Gross Proceeds minus the Applicable Costs. For purposes of this subsection 4.8.2, Applicable Costs shall mean the sum of the following with respect to such successor Lessee:

4.8.2.1 The greatest of (a) the sum of the Base Value, plus Improvement Costs incurred subsequent to the Effective Date but prior to the acquisition of the leasehold interest by such successor, (b) the purchase price such successor paid to Lessee or such successor's seller for the interest acquired or (c) the original principal amount of any Financing Event or Financing Events (on a non-duplicative basis) after such successor Lessee's acquisition of the leasehold, and with respect to which County was paid a Net Proceeds Share, plus the principal amount of any financing existing as of the date on which such seller acquired the leasehold or subsequently obtained by Lessee, if such financing has not been refinanced, but without duplication;

4.8.2.2 Improvement Costs actually paid by such successor Lessee after such successor Lessee's acquisition of its leasehold interest in the Premises (but not duplicative of the principal amount of any Financing Event described in clause 4.8.2.1(c) above, the proceeds of which were used to fund such Improvement Costs); provided that such costs have been submitted to County, with an appropriate lender and Lessee certification, as provided in subsection 4.8.1.1; and,

4.8.2.3 Documented Transaction Costs with respect to the transfer of the interest by the successor.

4.8.3 Transfers of Major Sublessee's Interest. With respect to any Change of Ownership described in subsection 4.6.1(b), subsections 4.8.1 and 4.8.2 shall apply, except that any rents or other amounts received by Lessee from the Major Sublessee and with respect to which a percentage is passed through to County under any provision of

this Lease (other than payment of Net Proceeds Share) shall be disregarded in the computation of Net Transfer Proceeds.

4.8.4 Other Transfers. With respect to any Change of Ownership that is not an Excluded Transfer and is not described in subsections 4.8.1 through 4.8.3 (i.e., a transfer of an interest in an entity holding a direct or indirect ownership interest in this Lease or in a Major Sublease), subsections 4.8.1 and 4.8.2 shall apply to such Change of Ownership, except that in lieu of deducting the Base Value and Improvement Costs in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred or which was transferred in the past but constitutes a portion of an Aggregate Transfer (which cost shall in no event be deemed to be less than a pro rata share of the Base Value and Improvement Costs (or following a transfer by the original Lessee, such cost shall in no event be deemed to be less than a prorata share of the sum of subsections 4.8.2.1 plus 4.8.2.2 as of the respective date of the transfer of each interest in the aggregation pool) shall be deducted. Furthermore, in the event that any such Change of Ownership produces a Net Proceeds Share, the then existing Improvement Costs shall be increased by an appropriate amount to reflect the gross amount on which such Net Proceeds Share was calculated, and the basis of the interest that was transferred and for which a Net Proceeds Share was paid shall also be increased for subsequent transfers of the same interest, as if realized by Lessee upon a transfer of a comparable interest in this Lease or in a Major Sublease, as appropriate.

4.8.5 Net Refinancing Proceeds. "Net Refinancing Proceeds" shall mean the gross principal amount of any Financing Event after the Effective Date as described in Section 4.8 above for which a Net Proceeds Share may be owed, plus in the case of secondary financing the original principal balance of any existing financing that is not repaid as a part of such secondary financing, minus (i) the greatest of (a) the Base Value, (b) the original principal amount of any subsequent refinancing by Lessee in connection with which County was paid a Net Proceeds Share (plus if the financing described in this clause (b) was secondary financing, the original principal balance of any then existing financing that was not repaid as a part of such secondary financing), or (c) in the case of a successor Lessee the purchase price such successor paid to Lessee or such successor's seller for the interest acquired, (ii) any portion of the proceeds of the Financing Event which shall be used for Improvement Costs, (iii) other Improvement Costs incurred by Lessee and not paid for or repaid with the proceeds of any Financing Event, and (iv) Documented Transaction Costs with respect to such Financing Event.

4.8.6 Transfers to which Sections 4.6 through 4.8 Apply. The provisions of Sections 4.6 through 4.8 hereof shall apply to all transfers of beneficial interests in this Lease or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise excluded pursuant to this Lease. Furthermore, the provisions of Sections 4.6 through 4.8 of this Lease, and the principles set forth therein, shall apply to any transfer or series of transfers which County can demonstrate was primarily structured for the purpose of avoiding the obligation to pay Net Proceeds Share set forth in Sections 4.6 through 4.8 of this Lease and which, viewed together, would otherwise constitute a Change of Ownership.

4.8.7 Payment. Net Proceeds Share shall be due and payable concurrently with the transfer giving rise to the obligation to pay such share and shall be the joint and several obligation of the transferee and transferor. Net Proceeds Share not paid when due shall be subject to a late fee of six percent (6%) of the amount due, together with interest on such Net Proceeds Share and late fee at the Applicable Rate from the date due until paid; provided that in the case of a dispute as to the correct amount of the Net Proceeds Share there shall be no late fee payable as long as Lessee timely pays to County the undisputed portion of the Net Proceeds Share and deposits the disputed portion thereof in an interest bearing escrow account at the closing of the transaction (or delivers to County a letter of credit or other security reasonably acceptable to County in the amount of such disputed portion). In the event that the proceeds of the transaction giving rise to the obligation to pay Net Proceeds Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Net Proceeds Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership, which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Change of Ownership described in subsection 4.6.1(b), the Net Proceeds Share shall be payable to County as and when the Net Transfer Proceeds are received, with the Net Proceeds Share being equitably apportioned to the payments derived by Lessee from said Change of Ownership (other than any payments passed through to County under this Lease).

4.8.8 Shareholder, Partner, Member, Trustee and Beneficiary List. Prior to the Effective Date, prior to each subsequent Change of Ownership or Financing Event, and upon the request of County (which requests shall be no more frequent than once per year), Lessee shall provide County with an updated schedule listing the names and mailing addresses of (i) all shareholders, partners, members and other holders of equity or beneficial interests in Lessee, this Lease or the Major Sublessee under any Major Sublease, and (ii) all shareholders, partners, members and other holders of equity or beneficial interests in any of the constituent shareholders, partners, members or other holders of equity or beneficial interests in Lessee or any Major Sublessee under any Major Sublease, if such interest exceeds a five percent (5%) or greater beneficial interest in Lessee or the Major Sublessee under a Major Sublease. In the event that such shareholder, partner, member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust with greater than a five percent (5%) actuarial interest in distributions from, or the corpus of, said trust; provided, however, that to the extent that Lessee is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its best efforts to obtain such information voluntarily and provides County with the opportunity to review any such information so obtained. Lessee agrees to use its best efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of five percent (5%) or greater beneficial interests in Lessee or a Major Sublessee.

5. REDEVELOPMENT WORK; ALTERATIONS.

5.1 Redevelopment Work. Promptly following the Effective Date Lessee shall demolish the existing Improvements located on the Premises (other than the existing Fisherman's Village Lighthouse) and perform the redevelopment work on the Premises described in the development plan attached to this Lease as Exhibit B (the "Development Plan"). The demolition and construction work described in the Development Plan, along with all associated improvements, hardscape, landscape and other site work approved by County and to be performed in connection with the work described in such Development Plan, is referred to herein as the "Redevelopment Work." Lessee's design and construction of the Redevelopment Work shall accommodate the installation and operation of a fuel service dock facility on the Premises, including without limitation, associated pumping equipment, fuel pipeline(s) and storage tank(s). Although the Anchorage Facilities and other Improvements shall be designed and constructed to accommodate the installation and operation of a fuel service dock facility, Lessee shall be required to actually install and operate the fuel service dock facility only if and when required by Applicable Law, including without limitation, the Local Coastal Plan and/or the Entitlements (as defined in the Option Agreement); provided, however, that in all events Lessee shall install as part of the initial Redevelopment Work any underground fuel pipeline and other equipment and Improvements required for a fuel service dock facility that would be impractical to install after the construction of the Redevelopment Work.

There shall be no changes, modifications or exceptions to the Development Plan, except as expressly approved in advance in writing by the Director or otherwise in accordance with this Article 5. The scope, design, density, site coverage, layout and open space, view corridors, height, construction materials, landscaping, hardscaping and other improvement specifications pertaining to the Redevelopment Work shall be in accordance with the Development Plan, and shall be subject to County's approval as set forth in this Article 5. Lessee shall be responsible for the acquisition and compliance with all required governmental (including, without limitation, County, Coastal Commission and Design Control Board) planning and entitlement approvals for the Redevelopment Work. Lessee shall be solely responsible for all costs and expenses incurred in connection with the design, entitlement and construction of the Redevelopment Work. Lessee shall expend not less than the Minimum Development Cost (as defined below) for the cost of the design, entitlement and construction of the Redevelopment Work (which amount may include a development fee not to exceed three percent (3%) of the hard construction costs), which expenditures shall be subject to the verification and reasonable approval by County. The "Minimum Development Cost" shall mean $40,200,000,000 increased by the same percentage increase (if any) in the ENR Index from October, 2005 through the date of the commencement of construction of the Redevelopment Work.

5.2 Application of Article 5 to Redevelopment Work. The remaining sections of this Article 5 pertain to the construction of the Redevelopment Work and to any other Alterations (as defined below) which Lessee may be required or desire to make to the Premises during the Term, including without limitation, the Subsequent Renovations described in Section 5.11 below. For purposes of this Lease, Alterations shall mean the construction of any alterations or modifications to the Improvements located on the Premises or the construction of any new Improvements. Both the Redevelopment Work and the Subsequent Renovations shall be considered to be Alterations. Accordingly, except as expressly provided in this Article 5, all of the terms and provisions of Article 5 of this Lease shall be applicable to the Redevelopment Work and the Subsequent Renovations.

5.3 Plans and Specifications for Alterations. Lessee shall make no Alterations without the prior written approval of the Director. Prior and as a condition precedent to the construction of any Alterations, Lessee shall submit to Director, for Director's approval, the plans, specifications and other materials described in this Section 5.3 pertaining to such Alterations (except to the extent such submittals and approvals have been previously completed with respect to Redevelopment Work pursuant to the Option Agreement). All Alterations must be consistent with the Permitted Uses set forth in Article 3 of this Lease.

5.3.1 Schematics and Narrative. Lessee shall submit to the Director six (6) sets of schematic plans together with a narrative description and construction cost estimate summary clearly delineating the nature, size, configuration and layout of the Alterations. Such plans shall, among other things, clearly delineate the architectural theme or motif of the Alterations and shall identify and illustrate all affected boundaries of the Premises and all affected rights-of-way or other areas reserved to County or third parties which are located thereon. Director shall have sixty (60) days within which to approve or disapprove such submission. Failure of Director to approve such submission in writing within said sixty (60) day period shall be deemed disapproval of said submission. Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director's objections to the submission. After approval of schematic plans (or subsequent approval of preliminary or final plans) by Director, if changes in such plans are required by conditions of approval of the Alterations imposed by the California Coastal Commission or other governmental agency having jurisdiction thereover, Lessee shall promptly advise Director in writing of such changes and Director shall not disapprove those changes that constitute Approved Governmental Changes.

5.3.2 Preliminary Plans and Specifications. After Director's approval of the materials submitted pursuant to subsection 5.3.1, Lessee shall submit to Director six (6) sets of preliminary plans, outline specifications and construction cost estimates for the Alterations. The preliminary plans, outline specifications and construction cost estimate shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the approved schematic plans and narrative. Any difference in the scope, size, configuration, arrangement or motif of the Improvements from those described in the approved schematics and narrative shall be separately identified and described. Director shall have twenty-one (21) days within which to approve or reasonably disapprove such submission, and Director may disapprove said preliminary plans only on the grounds that (i) they do not reflect a natural evolution from the approved schematic plans or that they materially differ from the approved schematic plans and narrative (exclusive of any Approved Governmental Changes), or (ii) that any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Director as a part of, the schematic plans do not meet the requirements for the Improvements set forth in this Article 5. Failure of Director to disapprove said preliminary plans within twenty one (21) days after Director's receipt thereof shall be deemed Director's approval thereof; provided, however, that in the event that the preliminary plans, outline specifications and construction cost estimates contain substantial changes from the approved schematics and narrative (other than Approved Governmental Changes), then Director shall have sixty (60) days in which to approve

said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the preliminary plans, outline specifications and construction cost estimates, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

> "PURSUANT TO SUBSECTION 5.3.2 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES (OTHER THAN APPROVED GOVERNMENTAL CHANGES) FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director's objections to the submission.

5.3.3 Final Plans and Specifications. After approval of the preliminary plans, Lessee shall submit for approval by Director six (6) complete sets of final plans, detailed specifications and a construction cost statement for the Alterations, together with one (1) set of appropriate structural computations, identical to those requested or required by the County Director of Public Works incident to the issuance of building permits under the relevant provisions of the Los Angeles County Building Code. Lessee shall file duplicate copies of the final plans, detailed specifications and construction cost statement required by this Section with the County Director of Public Works, together with the necessary and appropriate applications for building permits. Any material difference in the scope, size, configuration, arrangement or motif of the Alterations from those described in the approved preliminary plans and specifications shall be separately identified and described. Director shall have twenty one (21) days within which to approve or disapprove such submission, and Director may disapprove such submission only on the grounds that (i) they do not reflect a natural evolution from or that they materially differ from the approved preliminary plans, outline specifications and construction cost estimates (exclusive of any Approved Governmental Changes), or (ii) that any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Director as a part of, the preliminary plans do not meet the requirements for the Improvements set forth in this Article 5. Failure of Director to disapprove said materials within twenty one (21) days after Director's receipt shall be deemed Director's approval thereof; provided, however, that in the event that the final plans, detailed construction specifications and construction cost statement contain substantial changes from the preliminary plans, outline specifications and construction cost estimates (other than Approved Governmental Changes), then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the

submission of the final plans, detailed construction specifications and construction cost statement, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

> "PURSUANT TO SUBSECTION 5.3.3 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES (OTHER THAN APPROVED GOVERNMENTAL CHANGES) FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director's objections to the submission. Director's approval shall not be unreasonably withheld; provided, however, that it shall be deemed reasonable to disapprove any submission not in substantial conformity with the approved preliminary plans and specifications (exclusive of any Approved Governmental Changes), or which contains new, different or additional specifications for the Improvements which were not expressly set forth in, and approved by Director as a part of, the preliminary plans and which do not meet the requirements for the Improvements set forth in this Article 5. No material modification shall be made to the Alterations described in the approved final plans, specifications and costs (the "Final Plans and Specifications") without the prior written approval of Director, which shall not be unreasonably withheld.

5.4 Conditions Precedent to the Commencement of Construction. No Redevelopment Work or Alterations shall be commenced until each and all of the following conditions have been satisfied:

5.4.1 Permits and Other Approvals. Lessee shall have received and furnished the Department with copies of all permits, licenses and other governmental approvals necessary for commencement of the Redevelopment Work or Alterations, as the case may be. All permits, licenses and other governmental approvals necessary for subsequent stages of the Redevelopment Work or Alterations shall be furnished to the County prior to commencement of such stages.

5.4.2 Copies of Construction Contracts. Lessee shall have furnished County with copies of any contract(s) entered into between Lessee and any general contractor(s) employed for the purpose of constructing the Redevelopment Work or Alterations, as the case may be.

5.4.3 Performance and Payment Bonds. Lessee shall, at its own cost and expense, have furnished County with the following separate corporate surety bonds not less than ten business (10) days prior to the commencement of construction, which bonds must be in form and content reasonably satisfactory to County:

5.4.3.1 A corporate surety performance bond ("Performance Bond") issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the amount of all hard construction costs approved by County in conjunction with the approved work. The Performance Bond and its issuer shall be in all material respects reasonably satisfactory to County. It shall name Lessee as principal and said issuer as surety, and County as obligee, assuring full and satisfactory performance by Lessee of Lessee's obligations herein to build, construct and otherwise complete the Improvements described in the approved final plans and specifications.

5.4.3.2 A corporate surety payment bond, issued by a surety company licensed to transact business as such in the State of California, with Lessee as principal, said company as surety and County as obligee, in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with the approved work, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of said construction work or for labor done thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "Payment Bond"). The Payment Bond shall be in form and content reasonably satisfactory to County.

In the event that construction is performed by a licensed general contractor on behalf of Lessee, provided that such contractor provides County with a bond or bonds compliant with this subsection, and in all material respects reasonably satisfactory to County and otherwise complying with this subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required by this subsection 5.4.3. Any bonds provided by Lessee or its general contractor pursuant to this subsection may name the Lessee's lender as an additional obligee.

5.4.4 Alternative Security. In lieu of providing the Payment and Performance Bonds, Lessee may, in its discretion, provide any one or a combination of the following alternative security reasonably acceptable to Director : (i) a completion guaranty, in form and substance reasonably acceptable to County, made by an individual or entity with a sufficient net worth and liquidity, in the sole discretion of Director, to comply with the terms of such guaranty in view of the potential financial responsibility involved, (ii) a certificate of deposit, cash or United States governmental security, (iii) a letter of credit, or (iv) a set aside letter from Lessee's construction lender. The security described in clauses (ii), (iii) and (iv) above shall be in an amount equal to one hundred percent (100%) of the construction contract price for hard costs, and shall permit County to draw thereon to complete the construction of the Improvements if same have not been completed by Lessee or if a material Event of Default has occurred under this Lease. Any alternative security provided by Lessee pursuant to this subsection may name County and Lessee's construction lender as co-beneficiaries. A condition precedent to Lessee's right to provide the alternate security described in this subsection 5.4.4 shall be delivery by Lessee to County of an opinion of counsel from a firm and in a form acceptable to County to the effect that the construction work does not constitute a public

work of improvement requiring the delivery of the bonds described in subsection 5.4.3 above. Director shall have the authority, in his reasonable discretion, to modify, waive or reduce the amount of any bonds or alternate security required hereunder.

5.4.5 Evidence of Financing. Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by Director, to complete the Redevelopment Work or Alterations, as applicable. Lessee shall furnish Director with copies of all final notes, guarantees, partnership, shareholder or limited liability company agreements, construction loan and/or permanent loan commitments, documents evidencing equity contributions, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, together with any and all recorded documents affecting an interest in the Premises, within seven (7) days after such document or instrument becomes effective.

5.4.6 Work Schedule. With respect to the Redevelopment Work, Lessee shall have provided County with a construction schedule which will result in the substantial completion of the Redevelopment Work on or before the Required Completion Date, as such date may be extended as provided in this Article 5.

5.5 County Cooperation. In its proprietary capacity, the Department shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the performance by Lessee of the Redevelopment Work described in Section 5.1 above and the Subsequent Renovations described in Section 5.11 below, as applicable. Such cooperative efforts may include the Department's joinder in any application for such approval, consent, permit or variance, where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Cost incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Lessee and County acknowledge that the approvals given by County under this Lease are approvals pursuant to its authority under Section 25907 of the California Government Code; that approvals given under this Lease in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of Improvements on the Premises and operation and other use of such Improvements on the Premises; and that the Department's duty to cooperate and County's approvals under this Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease.

5.6 Completion of Redevelopment Work. Lessee shall comply with all time deadlines and schedules described in this Article 5 relating to the completion of the design and construction of the Redevelopment Work, subject to Force Majeure Delay (as such term is defined in subsection 5.6.1 below). Lessee's failure to do so shall, if not cured within the applicable cure period set forth in subsection 13.1.2, constitute an Event of Default. Subject to the provisions of this Section 5.6, all of the Redevelopment Work shall be substantially completed on or before thirty (30) months following the Effective Date (the "Required Completion Date"). For purposes of this Lease, the terms "substantial completion" or "substantially completed" as they pertain to the Redevelopment Work shall mean the completion of the Redevelopment Work in accordance with the Final Plans and Specifications for the

Redevelopment Work, subject to minor so-called punch list items that do not interfere with the use and occupancy of the Redevelopment Work. Without limitation of any other requirements for substantial completion, the Redevelopment Work shall not be considered substantially completed until Lessee has received a temporary certificate of occupancy or equivalent approval required for the legal occupancy and use of all of the Redevelopment Work.

5.6.1 Force Majeure Delay. Lessee shall diligently pursue the substantial completion of the Redevelopment Work by the Required Completion Date. Any Force Majeure Delay in the construction of the Redevelopment Work shall extend the Required Completion Date by the length of time of such Force Majeure Delay, although Lessee shall to the extent possible commence and proceed to complete the portions, if any, of the Improvements that can be completed notwithstanding such Force Majeure Delay. Any extension of the Required Completion Date due to Force Majeure Delay shall be limited to the period of the Force Majeure Delay and no such delay shall be considered to have commenced until such time as Lessee shall have notified Director in writing of such delay. The aggregate amount of extensions to the Required Completion Date due to Force Majeure Delay shall not exceed two (2) years.

For purposes of this Article 5, "Force Majeure Delay" shall mean delays in construction due to (a) fire, earthquake, flood, tornado or other act of God; (b) civil disturbance, war, organized labor dispute or freight embargo; (c) a hidden condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Premises which was not known to Lessee as of the commencement of such construction activity; (d) an injunction or restraining order issued pursuant to a court action commenced by a plaintiff other than County or the California Coastal Commission acting in their governmental capacity, Lessee or any person or entity affiliated with Lessee; (e) Unreasonable County Activity (as defined in subsection 5.6.2 below) after the commencement of construction; or (f) other unforeseeable event beyond the control of Lessee. As a condition to clause (d) above constituting a Force Majeure Delay, Lessee shall, regardless of whether it is a named party in the action, diligently pursue the removal of any such restraining order or injunction and shall exhaust all commercially reasonable efforts to appeal such restraining order or injunction.

Lessee and Director shall discuss and attempt to agree on the length of time of any entitled Force Majeure Delay pursuant to this subsection 5.6.1. If they are unable to agree within thirty (30) days after the event or occurrence giving rise to Lessee's claim to an entitlement to a Force Majeure Delay under this subsection 5.6.1, the matter shall be arbitrated as set forth in Article 16.

Notwithstanding anything to the contrary contained in this Lease, no extension, relaxation or modification of the requirement to substantially complete the Redevelopment Work by the Required Completion Date shall relieve Lessee of its obligation to pay County the Annual Minimum Rent, Percentage Rent and other amounts set forth in Article 4 of this Lease.

5.6.2 Unreasonable County Activity. For the purposes of this Lease, the following shall be deemed to be "Unreasonable County Activity": (i) County's failure to

provide required joinder, if any, in Lessee's proposals for the Improvements described in the Final Plans and Specifications before any governmental agency; or (ii) County's failure to take such other actions in its proprietary capacity reasonably requested by Lessee, at no cost or expense to County, which are necessary for Lessee to proceed with the permit/approval process or County's having taken such actions without Lessee's consent which adversely affected Lessee's rights and obligations hereunder, which were unreasonable and which actually delayed the construction; or (iii) County's failure to comply with the time periods imposed upon County under this Article 5, except in the case where a failure of County to notify Lessee of its approval or disapproval of a matter constitutes County's deemed approval of such matter, or constitutes County's deemed disapproval of such matter and County's disapproval of such matter is authorized under the circumstances. Nothing contained in this subsection 5.6.2 or this Lease shall be construed as obliging County to support proposals, issue permits, or otherwise act in a manner inconsistent with County's actions under its regulatory powers. It shall not be Unreasonable County Activity if County fails to accelerate the County's customary regulatory permit/approval process. An extension for Unreasonable County Activity under subsection 5.6.1 above shall be available only if all of the following procedures have been followed:

(a) Within a reasonable time under the circumstances, Lessee must notify Director in writing of the specific conduct comprising the alleged Unreasonable County Activity, and the next opportunity, if any, for County to rectify such alleged conduct. If Lessee fails to notify Director in writing as specified in the immediately preceding sentence within five (5) days following Lessee's discovery of the alleged Unreasonable County Activity, then notwithstanding any contrary provision of this subsection 5.6.2, in no event shall Lessee be entitled to an extension for any period of the delay occurring prior to the date of Lessee's notice described in this paragraph (a).

(b) Within seven (7) days following receipt of the notice alleging Unreasonable County Activity, Director shall meet with Lessee or its authorized representative in order to determine whether Unreasonable County Activity has occurred and, if so, how such Unreasonable County Activity can be rectified and the appropriate length of time of any extension pursuant to this subsection. If Director determines that Unreasonable County Activity has occurred and that County can and will take rectifying action, then the extension time shall equal the amount of actual delay directly caused by the Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred, but that County cannot take rectifying action (or if the proposed rectifying action will not produce the results desired by Lessee), then Lessee and Director shall establish the length of time of any extension based on the actual delay likely to be caused by the Unreasonable County Activity.

If, within fourteen (14) days following receipt of notice alleging Unreasonable County Activity, Director and Lessee have not agreed in writing as to whether or not an extension is appropriate, or if appropriate, the length of any such extension, then the matter shall be referred to binding arbitration in accordance with Article 16 of this Lease. The arbitrator shall be instructed that, if Unreasonable County Activity has occurred, then

the standards set forth in subsection (b) above will be applied to determine the length of any extension.

5.6.3 County's Inducement; Failure to Complete. Lessee acknowledges that the principal inducement to County to enter into this Amended and Restated Lease Agreement and to extend the Term as provided herein is the timely completion of the Redevelopment Work. In the event that Lessee fails to substantially complete the Redevelopment Work on or before the Required Completion Date (as such date may be extended by any Force Majeure Delay), then in addition to any other right or remedy which County may have in connection therewith, this Lease shall be automatically amended such that the terms and provisions of this Lease revert back to the terms and provisions of the Existing Lease (including, without limitation, the Existing Expiration Date), as modified by the "Non-Exercise Amendment" described in the Option Agreement (the "Reversion Amendment").

5.7 Manner of Construction.

5.7.1 General Construction Standards. All construction, alteration, modification or repairs permitted herein shall be accomplished by Lessee with due diligence. Lessee shall take all reasonable steps to minimize any damage, disruption or inconvenience caused by such work and make adequate provisions for the safety and convenience of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to a condition which is at least equal to or better than the condition which existed before such work was commenced. Additionally, Lessee shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold County harmless from and against all damages, costs, expenses, losses or claims arising out of or in connection with the performance of such work, except to the extent that such damages, costs, expenses, losses or claims are caused by County. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control such deleterious effects associated with construction projects in well populated and developed areas of Southern California.

5.7.2 Utility Work. Any work performed by or on behalf of Lessee or any occupant of the Premises to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that minimizes interference with the provision of such services to the Premises and other persons.

5.7.3 Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

5.7.4 Compliance with Construction Documents and Laws; Issuance of Permits. All Improvements on the Premises shall be completed in substantial compliance with any construction documents approved by County and also in compliance with all applicable local, state and federal laws and regulations. Lessee shall have the sole responsibility for

obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

5.7.5 Notice to Director; Damage to County Improvements. Lessee further agrees to keep Director apprised of the progress of the work to the end that Director may, upon at least one (1) business day advance notice, timely inspect the Premises to assure proper safeguarding of any County-owned improvements existing on or around the Premises, including but not limited to seawalls, underground conduits and utility lines. If any such County-owned improvement is damaged as a result of construction activity by Lessee or its contractors, Lessee agrees to repair such damage immediately at no cost or expense to County. Lessee shall add the work necessary to repair such damage to the construction schedule for the Redevelopment Work (or other Alteration work, as applicable), and shall complete such repair work in accordance with such schedule; provided that if such damage to County-owned improvements creates a threat to public health and safety or materially adversely affects the condition, appearance or operation of any County-owned improvement or of any other property, then Lessee shall promptly commence the completion of such repair work and complete such repair work as soon as reasonably possible thereafter. In the event that Lessee fails to effectuate such repair in accordance with the foregoing requirements, County may upon written notice to Lessee enter upon the Premises to make such repairs, the Actual Cost of which shall be paid by Lessee within five (5) business days after demand by County. This subsection 5.7.5 shall not be deemed to impose upon Lessee any obligation to repair damage to County-owned improvements existing on or around the Premises if such damage was not incurred as a result of Lessee's construction activities.

5.7.6 Rights of Access. Representatives of the Department of Beaches and Harbors of the County shall, upon reasonable notice and at reasonable times during normal business hours, have the right of reasonable access to the Premises and the Improvements thereon without charges or fees, but at no cost or expense to Lessee, for the purpose of ascertaining compliance with the terms and conditions of this Lease, including but not limited to the inspection of the construction work being performed. Such access shall be reasonably calculated to minimize interference with Lessee's construction and/or operations, and County shall comply with industry safety standards in connection with any such access. Lessee shall have the right to have a representative present to accompany the representatives of the Department of Beaches and Harbors of the County in connection with such access. In the event of any emergency which is life-threatening or which involves the threat of potential substantial damage, County shall have the right to enter the Premises immediately and without notice to or accompaniment by Lessee.

5.7.7 Notice of Completion. Upon completion of the Redevelopment Work or any other Alterations, Lessee shall file or cause to be filed in the Official Records of the County of Los Angeles a Notice of Completion (the "Notice of Completion") with respect to the Improvements and Lessee shall deliver to County, at no cost to County, two (2) sets of reproducible final as-built plans and specifications of the relevant Improvements.

5.7.8 Final Completion Certificate. Promptly after completion of the Redevelopment Work, the Subsequent Renovations described in Section 5.11 or the Anchorage Facilities replacement work described in Section 5.14, upon Lessee's request, County shall execute and deliver to Lessee a final completion certificate (the "Final Completion Certificate") as to the work which is the subject thereof, which shall conclusively evidence the completion of such work by Lessee in accordance with the terms of this Lease.

5.8 Use of Plans. Contracts between Lessee and any architect, design professional or licensed contractor in connection with the construction, alteration or modification of Improvements on the Premises shall provide, in form and content reasonably satisfactory to County, for the assignment thereof to County (and Lessee's Encumbrance Holder(s) if required by Lessee's Encumbrance Holder(s)) as security to County for Lessee's performance hereunder, and County shall be furnished with a copy of any such contract, together with the further agreement of the parties thereto, that if this Lease is terminated by County due to Lessee's default, County (or if County enters into a new lease with Lessee's Encumbrance Holder pursuant to Article 12, then Lessee's Encumbrance Holder) may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract, upon the payment of any sums due to any party thereto. County's right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trade marks, trade names or logos of Lessee or any such architect, design professional or contractor. The assignment to County and Lessee's Encumbrance Holder(s) described in this Section 5.8 shall be effective until the Final Completion Certificate for the subject work is issued, and shall be subordinate to the security interest, if any, of Lessee's construction lender in the assigned contract, which subordination shall be in a form reasonably acceptable to Lessee's construction lender.

5.9 Where Director Approval Not Required. Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Article 5, Lessee shall not be required to seek or obtain the approvals of Director described in this Article 5 (including those set forth in Section 5.3) for Alterations (other than the Redevelopment Work) where all of the following conditions are satisfied: (i) the total cost of the project is less than One Hundred Thousand Dollars ($100,000), adjusted annually to reflect the increase or decrease in the ENR Index from and after the Effective Date (provided, however, that in no event shall such adjustment result in a reduction of the threshold for Director approval to less than One Hundred Thousand Dollars ($100,000); (ii) none of the proposed construction activity is structural in nature; and (iii) none of the proposed construction, additions, modifications or changes affect or are visible from the exterior of the Premises; provided, however, that whenever Lessee makes or constructs or permits any improvements in or to the Premises, Lessee shall (a) give written notice thereof (including a description of the work to be done and the permits obtained for such work), and (b) furnish a copy of "as-built" plans upon completion of such work to County.

5.10 Protection of County. Nothing in this Lease shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Premises of any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering