*"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 ($4^{th}$) 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 ($4^{th}$) 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 (10th) 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

of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics' liens or other claims against the County's interest in the Premises or County.

5.10.1 Posting Notices. County shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which County may deem necessary for the protection of County's interest in the Premises from mechanics' liens or other claims. Lessee shall give County at least ten (10) business days prior written notice of the commencement of any work to be done on the Premises under this Article 5, in order to enable County timely to post such notices.

5.10.2 Prompt Payment. Lessee shall make, or cause to be made, prompt payment of all monies due and owing to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Premises and the Improvements thereon. Lessee shall have the right to contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Lessee.

5.10.3 Liens; Indemnity. Subject to Lessee's rights to contest the same prior to payment, Lessee shall keep the Premises and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Lessee and/or any parties claiming through Lessee. Lessee agrees to and shall indemnify, defend and hold County harmless from and against any claim, liability, loss, damages, costs, expenses, attorneys' fees incurred in defending and all other expenses on account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under it.

In the event any lien is recorded, Lessee shall, within five (5) business days after demand, furnish any one of the following, as determined by Lessee: (i) the bond described in California Civil Code Section 3143, or successor statute, which results in the removal of such lien from the Premises, (ii) a set aside letter from Lessee's construction lender, in form and substance reasonably satisfactory to County, setting aside sufficient funds from Lessee's construction loan for the satisfaction of such lien, or (iii) a title insurance policy or endorsement insuring County against any loss or liability arising out of such lien, together with any other evidence requested by County to evidence that such claim will be paid, removed or discharged as a claim against the Premises and/or County.

5.11 Subsequent Renovations to Improvements Other Than Anchorage Facilities. In addition to the Redevelopment Work to be performed by Lessee pursuant to Section 5.1, during the remaining Term of the Lease Lessee shall be required to complete three (3) separate renovations of the Improvements (other than the Anchorage Facilities, which shall be renovated pursuant to Section 5.14 below) in accordance with the terms and provisions of this Section 5.11 (each, a "Subsequent Renovation"). The construction of the first Subsequent Renovation (the "First Subsequent Renovation") shall be commenced by Lessee not earlier than January 1, 2023 and completed by Lessee not later than December 31, 2024. The construction of the second Subsequent Renovation (the "Second Subsequent Renovation") shall be commenced by Lessee not earlier than January 1, 2037 and completed by Lessee not later than December 31, 2038. The construction of the third Subsequent Renovation (the "Third Subsequent Renovation") shall be

commenced by Lessee not earlier than January 1, 2051 and completed by Lessee not later than December 31, 2052.

Each Subsequent Renovation shall consist of such renovation and construction work as necessary in the reasonable judgment of Director to position the Improvements (other than the Anchorage Facilities) to a condition and appearance at least equal to comparable projects containing retail, restaurant and hotel facilities. Prior to the commencement of construction of a Subsequent Renovation, Lessee shall submit to Director a renovation plan for such Subsequent Renovation (a "Subsequent Renovation Plan"), which renovation plan shall (a) describe the proposed renovation work in detail reasonably acceptable to Director, (b) include a design, governmental approval and construction schedule for the work, (c) include a budget for all work costs, and (d) address such other matters as Director reasonably requests. The Subsequent Renovation Plan shall be submitted by Lessee to Director not later than such date (taking into consideration the approval periods described in this Section 5.11 and Section 5.3 above, the estimated time required to obtain all necessary governmental approvals and permits, and the estimated time required to complete the work) as will permit the completion by Lessee of the applicable Subsequent Renovation by the dates required under this Section 5.11. Director shall have sixty (60) days within which to reasonably approve or disapprove the Subsequent Renovation Plan, or to approve the Subsequent Renovation Plan subject to conditions imposed by Director in its reasonable judgment. Failure of Director to notify Lessee in writing of its approval or disapproval of the Subsequent Renovation Plan shall be deemed Director's disapproval of the Subsequent Renovation Plan. If Director disapproves (or is deemed to have disapproved) the Subsequent Renovation Plan, then within thirty (30) days after written request from Lessee Director shall notify Lessee in writing of the reasons for such disapproval.

Upon Director's approval of the Subsequent Renovation Plan, Lessee shall proceed to satisfy all conditions in this Article 5 to the commencement of the Subsequent Renovation and to commence and complete the Subsequent Renovation in accordance with the Subsequent Renovation Plan and the terms and conditions of this Article 5. Director's approval of the actual plans and specifications for the Subsequent Renovations shall proceed in accordance with the protocol for plan submission and approval set forth in Section 5.3 of this Lease, except that the schematic plan submittal requirements set forth in subsection 5.3.1 shall not be applicable to the extent that the Subsequent Renovation Plan approved by Director satisfies the requirements of such subsection 5.3.1. Lessee's failure to comply with the schedule approved by Director as part of a Subsequent Renovation Plan and/or to meet the construction completion deadlines pertaining to the Subsequent Renovation set forth in this Section 5.11 (subject to any Force Majeure Delay) shall, if not cured within the cure period set forth in subsection 13.1.2, constitute an Event of Default. Any dispute as to whether Director has failed to exercise reasonable judgment in the approval or disapproval of the Subsequent Renovation Plan shall be submitted to arbitration pursuant to Article 16 of this Lease. If the arbitrator determines that Director failed to exercise reasonable judgment in the approval or disapproval of the Subsequent Renovation Plan and as a result thereof Lessee is delayed in the completion of the Subsequent Renovation by the required completion date set forth in the first paragraph of this Section 5.11, then the required date for the completion of such Subsequent Renovation shall be extended by the duration of the delay caused by Director's failure to reasonably approve the Subsequent Renovation Plan, provided that the required date for the completion of the Subsequent Renovation shall not be

extended beyond the date reasonably required for the completion by Lessee of the Subsequent Renovation.

5.12 Subsequent Renovations Fund. Commencing with the month following the month during which the fifth (5th) anniversary of the earlier of the Re-Opening Date or the Required Completion Date occurs, and continuing until the completion of the Third Subsequent Renovation, Lessee shall establish and maintain a reserve fund (the "Subsequent Renovations Fund") in accordance with the provisions of this Section 5.12 for the purpose of funding a portion of the cost of each Subsequent Renovation. The Subsequent Renovations Fund shall be held in an account established with a reputable financial institution (including Lessee's Encumbrance Holder) acceptable to Director into which deposits shall be made by Lessee (and/or into which Lessee's Encumbrance Holder shall provide funds) pursuant to this Section 5.12. The amounts to be added to the Subsequent Renovations Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder, provided that the Encumbrance Holder acknowledges that such amounts are subject to the requirements and shall be made available for the purposes of this Section 5.12. On or before the fifteenth (15th) day of each month during the period during which the Subsequent Renovations Fund is required to be maintained by Lessee hereunder, Lessee shall make a monthly deposit to the Subsequent Renovations Fund in an amount equal to one-half percent (0.5%) of total Gross Receipts for the previous month from Hotel operations and retail and restaurant operations (as such terms are defined in Section 5.13 below). All interest and earnings on the Subsequent Renovations Fund shall be added to the Subsequent Renovations Fund, but shall not be treated as a credit against, or otherwise reduce, the Subsequent Renovations Fund deposits required to be made by Lessee pursuant to this Section 5.12. Disbursements shall be made from the Subsequent Renovations Fund only for costs for the design and construction of the Subsequent Renovations which have been approved by Director. If approved in the discretion of the Director, the Subsequent Renovation Plan may provide for Subsequent Renovations that will cost less than the then used balance of the Subsequent Renovations Fund, and in such case the remaining portion of the Subsequent Renovations Fund shall be carried forward for future renovations. Prior to the disbursement of any amounts from the Subsequent Renovations Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Subsequent Renovations Fund. Director shall have no obligation to approve the disbursement of amounts from the Subsequent Renovations Fund unless and until Director has approved Lessee's Subsequent Renovation Plan for such Subsequent Renovation and Lessee has furnished to Director evidence reasonably satisfactory to Director that Lessee has sufficient financial resources to pay for all costs of such Subsequent Renovation. The Subsequent Renovations Fund may not be used for renovations to the Anchorage Facilities. All remaining amounts in the Subsequent Renovation Funds shall be used for the costs of the Third Subsequent Renovation and Lessee shall not be required to make further contributions to the Subsequent Renovations Fund after the completion of the Third Subsequent Renovation.

In lieu of the periodic Subsequent Renovations Fund contributions described in this Section 5.12, Director shall have the authority, in the exercise of the Director's discretion, to consider the delivery by Lessee of substitute security acceptable to Director (e.g., a letter of credit or bonding mechanism) to secure the performance by Lessee of the Subsequent Renovations. Such substitute security shall be in not less than the same amounts and delivered

not later than the same times, as amounts that would have otherwise been required to be delivered into the Subsequent Renovations Fund.

5.13 Capital Improvement Fund. Commencing with the month during which the Re-Opening Date occurs, and continuing during the remaining Term of the Lease, Lessee shall establish and maintain a reserve fund (the "Capital Improvement Fund") in accordance with the provisions of this Section 5.13 for the cost of Permitted Capital Expenditures (as defined below) for the Premises. Lessee and County agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide funds for the costs of additions, replacements, renovations or significant upgrades of or to the Improvements on the Premises, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly increase the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Redevelopment Work ("Permitted Capital Expenditures"). Notwithstanding any contrary provision herein, the Capital Improvement Fund shall not be used to fund any portion of the cost of the Redevelopment Work or the Subsequent Renovations, nor shall the Capital Improvement Fund be used for any Anchorage Facilities. In addition, Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the buildings or their major systems in an ordinarily efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Lessee. By way of example, set forth on Exhibit G attached to this Lease are categories of Permitted Capital Expenditures that qualify as proper costs to be funded from the Capital Improvement Fund. All specific purposes and costs for which Lessee desires to utilize amounts from the Capital Improvement Fund shall be subject to Director's approval, which approval shall not be unreasonably withheld.

The Capital Improvement Fund shall be held in an account established with a reputable financial institution (including Lessee's Encumbrance Holder) acceptable to Director into which deposits shall be made by Lessee (and/or into which Lessee's Encumbrance Holder shall provide funds) pursuant to this Section 5.13. The amounts to be added to the Capital Improvement Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder, provided that the Encumbrance Holder acknowledges that such amounts are subject to the requirements and shall be made available for the purposes of this Section 5.13.

Commencing on the fifteenth (15th) day of the month during which the Re-Opening Date occurs and continuing on or before the fifteenth (15th) day of each month thereafter during the remaining Term, Lessee shall make a monthly deposit to the Capital Improvement Fund in the following amounts of Gross Receipts for the previous month:

(a) during the first (1st) year after the Re-Opening Date, one-fourth percent (0.25%) of Gross Receipts from Hotel operations;

(b) during the second (2nd) year after the Re-Opening Date, one-half percent (0.50%) of Gross Receipts from Hotel operations and three-eighths percent (0.375%) of Gross Receipts from retail and restaurant operations;

(c) during the third (3rd) year after the Re-Opening Date, three-fourths percent (0.75%) of Gross Receipts from Hotel operations and three-fourths percent (0.75%) of Gross Receipts from retail and restaurant operations;

(d) during the fourth (4th) year after the Re-Opening Date, one percent (1%) of Gross Receipts from Hotel operations and one and one-eighth percent (1.125%) of Gross Receipts from retail and restaurant operations; and

(e) during the fifth (5th) and each subsequent year after the Re-Opening Date, one percent (1%) of Gross Receipts from Hotel operations and one and one-half percent (1.5%) of Gross Receipts from retail and restaurant operations.

For purposes hereof, Gross Receipts from "Hotel operations" shall mean all Gross Receipts derived from any operations within or otherwise related to the Hotel on the Premises, including all categories of Gross Receipts described in subsection 4.2.2 of this Lease (including, without limitation, any restaurant or retail facilities located in the Hotel). For purposes hereof, Gross Receipts from "retail and restaurant operations" shall mean all Gross Receipts described in clauses (i), (j), (q) and (s1) of subsection 4.2.2 of this Lease, excluding Gross Receipts included in Gross Receipts from Hotel operations pursuant to the immediately preceding sentence. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Lessee pursuant to this Section 5.13.

Disbursements shall be made from the Capital Improvement Fund only for costs which have been approved by Director and which satisfy the requirements of this Section 5.13. For the purpose of obtaining Director's prior approval of any Capital Improvement Fund disbursements, Lessee shall submit to Director on an annual calendar year basis a capital expenditure plan for the upcoming year which details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Lessee requests Director's approval, which approval shall not be unreasonably withheld. Any anticipated expenditure set forth in such capital expenditure plan which is approved by Director as an acceptable Capital Improvement Fund disbursement shall be considered pre-approved by Director (but only up to the amount of such expenditure set forth in the annual capital expenditure plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to Director for Director's approval revisions to the then current capital expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted capital expenditure plan. Prior to the disbursement of any amounts from the Capital Improvement Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Capital Improvement Fund.

As of the date that is seven (7) years prior to the expiration of the Term of the Lease, all (or substantially all) of the amounts required to have been deposited in the Capital Improvement Fund prior to such date shall have been expended for Permitted Capital Expenditures. Capital

Improvement Fund deposits made after such date shall continue to be used for Permitted Capital Expenditure purposes under this Section 5.13; provided, however, if County elects to require Lessee to remove the Improvements at the end of the Term and requires Lessee to provide security to secure its obligation to perform such removal obligations in accordance with subsection 2.4.2 of this Lease, then Lessee shall have the right to contribute the deposits thereafter required to be made by Lessee under this Section 5.13 towards Lessee's obligations to fund the security requirements in subsection 2.4.2, but only if and to the extent that there are sufficient funds made available in the Capital Improvement Fund for any needed Permitted Capital Expenditures, as determined by Director in Director's reasonable discretion.

5.14 Anchorage Facilities Replacement. During the period from the thirtieth (30th) anniversary of the Effective Date through the fortieth (40th) anniversary of the Effective Date, County shall have the right to have the condition of the Anchorage Facilities inspected from time to time by an independent, nationally recognized, marine engineering consultant selected by County. For purposes of this Section 5.14 only, the Anchorage Facilities shall include any landside lockers, restrooms and shower facilities to which the users of the anchorage improvements are provided access. County and Lessee shall equally share the fees and expenses incurred for the marine engineering consultant engaged by the County under this Section 5.14. If in the opinion of such engineering consultant the Anchorage Facilities, or any portions thereof, (a) are unsafe, unsightly or at the end of their useful lives; (b) are of a lesser overall quality than the quality of the replacement Anchorage Facilities installed as a part of the Redevelopment Work pursuant Section 5.1 above, or (c) are of a lesser overall quality than a majority of the other anchorage facilities operated in Marina del Rey at the time of the inspection, then at the County's request Lessee shall, at Lessee's cost, replace such Anchorage Facilities with new Anchorage Facilities. For purposes of this Section 5.14, the Anchorage Facilities shall be inspected and evaluated by the engineering consultant on a section by section basis, and if a particular section, or a material portion of a particular section, of the Anchorage Facilities does not satisfy the test set forth above, then Lessee shall be required to replace all of the component parts of such section. Notwithstanding that the inspection of the Anchorage Facilities shall be performed on a section by section basis, if multiple sections of the Anchorage Facilities do not meet the test set forth above in this Section 5.14, then Lessee shall be required to perform the replacement of all of such deficient Anchorage Facilities at the same time unless Lessee and Director otherwise agree upon a mutually acceptable phasing schedule for such replacement. In all events, all of the Anchorage Facilities shall be replaced at one point or another during the period between the thirtieth (30th) and fortieth (40th) anniversaries of the Effective Date.

The replacement Anchorage Facilities under this Section 5.14 shall comply with the Anchorage Facilities Quality Standard (as defined below) and shall be performed in accordance with all terms and provisions of this Article 5 applicable to Alterations. The consultant's determination as to the date that the Anchorage Facilities, or portions thereof, require replacement pursuant to this Section 5.14 shall be based solely on the actual condition of such Anchorage Facilities, and no consideration shall be given to the duration of the remaining Term of the Lease in making such determination. If the consultant determines that Anchorage Facilities replacement work is required, then concurrent with such determination, the consultant shall include as a part of such determination its opinion as to the period of time reasonably necessary to perform the design, permitting and construction of such work. Lessee shall commence any required work (i.e., commence any design and permitting work) within sixty (60)

days following receipt of the consultant's determination and thereafter complete the installation and construction of the work within the period prescribed in the consultant's determination. Notwithstanding any contrary provision of this Section 5.14, with respect to any landside lockers, restrooms and shower facilities included in the Anchorage Facilities, Lessee shall have the right to choose to renovate such facilities in a manner that meets the Anchorage Facilities Quality Standard in lieu of the complete replacement thereof. The "Anchorage Facilities Quality Standard" shall mean anchorage facilities that are first-class and state of the art as of the date of the replacement construction, and that in all events comply with (i) the then most recent edition of the Minimum Standards, (ii) the then most recent edition of Layout and Design Guidelines for Small Craft Facilities by the California Department of Boating and Waterways (or similar successor publication), and (iii) design memoranda as provided by the Harbor Engineer of the Los Angeles County Department of Beaches and Harbors.

5.15 FF&E Fund. Commencing with the month during which the Re-Opening Date occurs, and continuing during the remaining Term of the Lease, Lessee shall establish and maintain a reserve fund (the "FF&E Fund") in accordance with the provisions of this Section 5.15 to fund the cost of the purchase and installment of replacements, additions or upgrades of or to the furniture, fixtures and equipment used in the Hotel throughout the Term. The FF&E Fund shall not be used for (a) maintenance or repair purposes, (b) the cost of the Redevelopment Work or the initial furniture, fixtures and equipment to be installed in the Premises in connection with the Redevelopment Work, (c) the cost of the Subsequent Renovations, or (d) the cost of Permitted Capital Expenditures to be funded by the Capital Improvement Fund. All specific purposes and costs for which Lessee desires to utilize amounts from the FF&E Fund shall be subject to Director's approval, which approval shall not be unreasonably withheld.

The FF&E Fund shall be held in an account established with a reputable financial institution (including Lessee's Encumbrance Holder) acceptable to Director into which deposits shall be made by Lessee (and/or into which Lessee's Encumbrance Holder shall provide funds) pursuant to this Section 5.15. The amounts to be added to the FF&E Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder, provided that the Encumbrance Holder acknowledges that such amounts are subject to the requirements and shall be made available for the purposes of this Section 5.15.

Commencing on the fifteenth (15th) day of the month during which the Re-Opening Date occurs and continuing on or before the fifteenth (15th) day of each month thereafter during the remaining Term, Lessee shall make a monthly deposit to the FF&E Fund in the following amounts of Gross Receipts for the previous month:

(a) during the first (1st) year after the Re-Opening Date, three-fourths percent (0.75%) of Gross Receipts from Hotel operations;

(b) during the second (2nd) year after the Re-Opening Date, one and one-half percent (1.50%) of Gross Receipts from Hotel operations;

(c) during the third (3rd) year after the Re-Opening Date, two and one-fourth percent (2.25%) of Gross Receipts from Hotel operations; and

(d) during the fourth (4th) and each subsequent year after the Re-Opening Date, three percent (3%) of Gross Receipts from Hotel operations.

All interest and earnings on the FF&E Fund shall be added to the FF&E Fund, but shall not be treated as a credit against the FF&E Fund deposits required to be made by Lessee pursuant to this Section 5.14.

Disbursements shall be made from the FF&E Fund only for costs which have been approved by Director and which satisfy the requirements of this Section 5.15. For the purpose of obtaining Director's prior approval of any FF&E Fund disbursements, Lessee shall submit to Director on an annual calendar year basis a furniture, fixtures and equipment expenditure plan for the upcoming year which details the amount and purpose of anticipated FF&E Fund expenditures for which Lessee requests Director's approval, which approval shall not be unreasonably withheld. Any anticipated expenditure set forth in such furniture, fixtures and equipment expenditure plan which is approved by Director as an acceptable FF&E Fund disbursement shall be considered pre-approved by Director (but only up to the amount of such expenditure set forth in the annual furniture, fixtures and equipment expenditure plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to Director for Director's approval revisions to the then current furniture, fixtures and equipment expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted furniture, fixtures and equipment expenditure plan. Prior to the disbursement of any amounts from the FF&E Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the FF&E Fund.

As of the date that is seven (7) years prior to the expiration of the Term of the Lease, all (or substantially all) of the amounts required to have been deposited in the FF&E Fund prior to such date shall have been expended for the purposes described in this Section 5.15. FF&E Fund deposits made after such date shall continue to be used for FF&E Fund purposes under this Section 5.15; provided, however, if County elects to require Lessee to remove the Improvements at the end of the Term and requires Lessee to provide security to secure its obligation to perform such removal obligations in accordance with subsection 2.4.2 of this Lease, then Lessee shall have the right to contribute the deposits thereafter required to be made by Lessee under this Section 5.15 towards Lessee's obligations to fund the security requirements in subsection 2.4.2, but only if and to the extent that there are sufficient funds made available in the FF&E Fund for any needed expenditures under this Section 5.15, as determined by Director in Director's reasonable discretion. If County does not require the removal of the Improvements, and at the end of the Term there are amounts remaining in the FF&E Fund that in Director's reasonable judgment were not required for the purposes of this Section 5.15, then Lessee shall be entitled to the return of such funds.

## 6. CONDEMNATION.

### 6.1 Definitions.

6.1.1 Condemnation. "Condemnation" means (1) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or

otherwise, and (2) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.2 Date of Taking. "Date of Taking" means the date the Condemnor has the right to possession of the Premises being condemned.

6.1.3 Award. "Award" means all compensation, sums or anything of value awarded, paid or received from a total or partial Condemnation.

6.1.4 Condemnor. "Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of eminent domain.

6.2 Parties' Rights and Obligations to be Governed by Lease. If, during the Term of this Lease, there is any taking of all or any part of the Premises, any Improvements on the Premises or any interest in this Lease by Condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this Article 6.

6.3 Total Taking. If the Premises are totally taken by Condemnation, this Lease shall terminate on the Date of Taking.

6.4 Effect of Partial Taking. If a portion of the Premises or the Improvements thereon are taken by Condemnation, this Lease shall remain in effect, except that Lessee may elect to terminate this Lease if the remaining portion of the Premises are rendered unsuitable (as defined herein) for Lessee's continued use for the purposes contemplated by this Lease. The remaining portion of the Premises shall be deemed unsuitable for Lessee's continued use if, following a reasonable amount of reconstruction (to the extent that funds therefor are available from the anticipated Award), Lessee's business on the Premises could not be operated at an economically feasible level. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the nature and extent of the taking and the probable amount of compensation have been determined. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this Lease's continuing in full force and effect, except that Annual Minimum Rent shall be abated pursuant to Section 6.5, below.

In the event that Lessee does not elect to terminate this Lease as provided above, then Lessee, whether or not the Awards or payments, if any, on account of such taking shall be sufficient for the purpose, shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Premises as nearly as possible to its value, condition and character immediately prior to such taking, taking into account, however, any necessary reduction in size or other change resulting from the taking; provided, however, that in case of a taking for temporary use, Lessee shall not be required to effect restoration until such taking is terminated.

6.5 Effect of Partial Taking on Rent. If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect as to the portion of the Premises not so taken (a "Partial Taking"), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the

fair market value of the portion of the Premises not so taken to the fair market value of the entire Premises immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Annual Minimum Rent Adjustment Date, as described in subsection 4.2.1.4 above, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Minimum Rent and Percentage Rent paid by Lessee to County prior to the date of the Partial Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Premises which remains after the taking bears to the fair market value of the entire Premises immediately prior to the taking. If the parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be settled through arbitration in the manner set forth in Article 16 hereof. Any determinations of fair market value made pursuant to this Section 6.5 in connection with any arbitration proceeding shall be predicated upon the "income approach" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "Income Approach"). All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

6.6 Waiver of Code of Civil Procedure Section 1265.130. Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a Partial Taking of the Premises.

6.7 Payment of Award. Awards and other payments on account of a taking, less costs, fees and expenses incurred in the collection thereof ("Net Awards and Payments"), shall be applied as follows:

6.7.1 Partial Taking Without Termination. Net Awards and Payments received on account of a Taking other than a total Taking or a Partial Taking which results in termination hereof or a taking for temporary use shall be held by County and shall be paid out to Lessee or Lessee's designee(s), in progress payments, to pay the cost of restoration of the Premises. The balance, if any, shall be divided between County and Lessee pro rata, as nearly as practicable, based upon (1) the then value of County's interest in the Premises (including its interest hereunder) and (2) the then value of Lessee's interest in the remainder of the Term of this Lease including bonus value (for such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4). Any determinations of fair market value made pursuant to this Section 6.5 shall be predicated upon the Income Approach. Notwithstanding the foregoing, if County is the condemning authority and the taking pertains only to Lessee's interest, then Lessee shall be entitled to the entire amount of the Net Awards and Payments.

In case of a taking other than a total taking or a taking for temporary use, Lessee shall furnish to County evidence satisfactory to County of the total cost of the restoration required by Section 6.4.

6.7.2 Taking For Temporary Use. Net Awards and Payments received on account of a taking for temporary use shall be paid to Lessee; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any

damage to or destruction of the Improvements, such portion shall be held and applied as provided in the first sentence of Section 6.7.1, above.

6.7.3 Total Taking and Partial Taking with Termination. Net Awards and Payments received on account of a total taking or a Partial Taking which results in the termination of this Lease shall be allocated in the following order:

First: There shall be paid to County an amount equal to the greater of (a) the sum of (1) the present value of all Annual Minimum Rent, Percentage Rent and other sums which would become due through the expiration of the Term if it were not for the taking less, in the event of a Partial Taking, an amount equal to the present value of the fair rental value of the portion of the Premises (with the Improvements thereon) not subject to the Partial Taking, from the date of the Partial Taking through the expiration of the Term and (2) the present value of the portion of the Premises (with the Improvements thereon) subject to the taking from and after the expiration of the Term or (b) in the event of a Partial Taking, the present value of the fair market rental value of the portion of the Premises (with the Improvements thereon) subject to the Partial Taking, from and after the expiration of the Term.

Second: There shall be paid to any Encumbrance Holder an amount equal to the sum of any unpaid principal amount of any Encumbrance secured by the Premises plus costs, expenses, and other sums due pursuant the loan documents, if any, and any interest accrued thereon, all as of the date on which such payment is made; and then

Third: There shall be paid to Lessee an amount equal to the value of Lessee's interest in the remainder of the Term of this Lease, including the value of the ownership interest in and use of the Improvements constructed on the Premises, determined as of the date of such taking, less payments made under paragraph Second above. For such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4.

Fourth: The balance shall be paid to County.

If County is the condemning authority in connection with a total taking or a partial taking that results in the termination of the Lease, and the taking pertains to only Lessee's interest, then Lessee shall be entitled to the entire amount of any Net Awards and Payments.

6.7.4 Disputes. Any dispute under Article 6 concerning the fair market value of the Premises or any portion thereof, computation of present value or the determination of the amount of Annual Minimum Rent or Percentage Rent or other sums which would have become due over the Term of this Lease which are not resolved by the parties, shall be submitted to arbitration pursuant to Article 16 of this Lease. Such valuations, computations and determinations of value shall be made utilizing the Income Approach.

7. SECURITY DEPOSIT.

7.1 Amount and Use. Lessee shall deliver to and maintain with County a security deposit (the "Security Deposit") in an amount equal to the sum of two (2) times the Monthly Minimum Rent in effect from time to time during the Term (i.e., adjusted to reflect any change in the Monthly Minimum Rent during the Term of this Lease). The Security Deposit shall secure Lessee's obligations pursuant to this Lease, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Lessee within any applicable notice and cure period, and (b) any other Events of Default of Lessee under this Lease. The Security Deposit shall be applied at the discretion of County. Lessee shall have the right to maintain the Security Deposit in form of cash or in lieu or replacement of the cash Security Deposit requirement described above, in the form of a certificate of deposit, letter of credit or other approved investment instrument acceptable to County with respect to form, content and issuer. As long as no Event of Default by Lessee exists under the Lease, Lessee shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to County in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Lessee shall not be entitled to interest). Provided that no Event of Default then exists under the Lease, at the end of each Lease Year Lessee shall be entitled to a credit for all unexpended interest accruing to Lessee's benefit with respect to the Security Deposit during such Lease Year pursuant to the immediately preceding sentence. Notwithstanding any contrary provision hereof, County shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Lessee under the Lease.

7.2 Replacement. In the event that some or all of the Security Deposit is drawn against by County and applied against any delinquent rent not paid by Lessee within any applicable notice or cure period, or against other Events of Default of Lessee hereunder, Lessee shall, within ten (10) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with County, or cause the issuer of any letter of credit to reinstate the letter of credit to its full face amount, so that at all times that this Lease is in effect (other than between the date of the application of funds by County and the expiration of said ten (10) day period), the full amount of the Security Deposit shall be available to County. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in subsection 13.1.3, shall constitute an Event of Default hereunder.

7.3 Renewal. Any letter of credit procured by Lessee and delivered to County shall provide for notice to County by the issuer thereof no less than sixty (60) days prior to the expiration of the term of such letter of credit in the event that the issuer thereof is not irrevocably committed to renew the term of such letter of credit. In the event that, thirty (30) days prior to the expiration of such letter of credit, Lessee has not provided County with satisfactory evidence of its renewal or replacement, or has not provided County with adequate replacement security, County may draw down upon the letter of credit and hold the funds as security for Lessee's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Lessee within any applicable notice and cure period and/or any other Event of Default of Lessee under this Lease.

8. INDEMNITY.

Except to the extent caused by the gross negligence or willful misconduct of any such indemnitee, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County and its respective Boards, officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of County or any of its Board, officers, agents, employees or volunteers, to the extent that such arises from or is caused by (a) the operation, maintenance, use, or occupation of the Premises (other than the Promenade and the Seawall) by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, or (c) the failure of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or regulation. The obligation of Lessee to so relieve, indemnify, protect, and save harmless County and each of its respective Boards, officers, agents, consultants, counsel, employees and volunteers, shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease. Notwithstanding anything in this Lease to the contrary, Lessee and County acknowledge that their respective liability, if any, arising out of the operation, maintenance, use and/or occupation of the Promenade shall be governed by Applicable Law.

9. INSURANCE.

9.1 Lessee's Insurance. Without limiting Lessee's indemnification of County, during the Term of this Lease Lessee shall provide and maintain the following insurance issued by companies authorized to transact business in the State of California by the Insurance Commissioner and having a "general policyholders rating" of at least A-VII (or such higher rating as may be required by an Encumbrance Holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency.

9.1.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) and endorsed to name County as an additional insured, with limits of not less than the following:

| | |
|---|---|
| General Aggregate: | $20,000,000 |
| Products/Completed Operations Aggregate: | $20,000,000 |
| Personal and Advertising Injury: | $10,000,000 |
| Each Occurrence: | $10,000,000 |

Lessee may satisfy the above coverage limits with a combination of primary coverage ("Primary Coverage") and excess liability coverage ("Umbrella Coverage") (as long as (a) Lessee's Primary Coverage is at least One Million Dollars ($1,000,000) per occurrence, One Million Dollars ($1,000,000) annual aggregate, and (b) the combination of such Primary Coverage and Umbrella Coverage provides County with the same protection as if Lessee had carried primary coverage for the entire limits and coverages required under this Section 9.1.1.

9.1.2 Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than One Million Dollars ($1,000,000) of Primary Coverage and One Million Dollars ($1,000,000) of Umbrella Coverage, for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto." During any period of operation of valet parking facilities, Lessee also shall provide Garagekeeper's Legal Liability coverage, (written on ISO form CA 99 37 or its equivalent) with limits of not less than Three Million Dollars ($3,000,000) for this location.

9.1.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California and for which Lessee is responsible, and including Employers' Liability coverage with limits of not less than the following:

| | |
|---|---|
| Each Accident: | $1,000,000 |
| Disease - policy limit: | $1,000,000 |
| Disease - each employee: | $1,000,000 |

9.1.4 Commercial Property insurance covering damage to the Premises, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake, and including Ordinance or Law Coverage, written for the full replacement value of the Improvements, with a deductible no greater than $250,000 or 5% of the property value, which ever is less, and also including business interruption, including loss of rent equal to eighteen (18) months of rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the Premises and Improvements. Notwithstanding the foregoing, during any period during which no Improvements exist on the Premises or all of the existing Improvements are being demolished in connection with the construction of Redevelopment Work, the obligation to provide insurance under this subsection 9.1.4 shall not be applicable so long as the insurance coverage described in subsection 9.1.5 below is carried.

9.1.5 For construction projects, including any Alterations or restoration, on the Premises, Lessee or Lessee's contractor or subcontractors will provide the following

insurance (County reserves the right to determine the coverage and coverage limit required on a project by project basis.):

9.1.5.1 Builder's Risk Course of Construction to insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30). This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, testing, preservation of property, excavation costs, landscaping, shrubs and plants and full collapse coverage during construction (without restricting collapse coverage to specified perils. This insurance shall be written on a completed-value basis and cover the entire value of the construction project, including County furnished materials and equipment, against loss or damage until completion and acceptance by Lessee.

9.1.5.2 General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as reasonably required by the County for the Alterations. The products/completed operations coverage shall continue to be maintained for the following periods: (a) in the case of the Redevelopment Work, three (3) years after the date the Redevelopment Work is completed and accepted by the Lessee, or (b) in the case of Alterations after the completion of the Redevelopment Work, such period after the date such Alterations are completed and accepted by Lessee as reasonably determined by County, but not to exceed three (3) years after such completion and acceptance.

9.1.5.3 Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability as reasonably required by the County for the Alterations. Such insurance shall include coverage for all "owned," "hired" and "non-owned" automobiles, or coverage for "any auto."

9.1.5.4 Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.). This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project. The limits of the coverage required under this subsection 9.1.5.4 shall be (a) Three Million Dollars ($3,000,000) with respect to the prime architect for the Redevelopment Work (or such lesser amount as required by Director for the prime architect in connection with any subsequent Alterations), and (b) One Million Dollars ($1,000,000) with respect to each other contractor, subcontractor, architect, engineer, surveyor or other licensed professional rendering services in connection with the design or construction of the Redevelopment Work or subsequent Alterations, provided that Director shall have the discretion to reduce the coverage limits under this clause (b) if appropriate in the judgment of Director based on the nature and scope of the services being provided.

9.1.5.5 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants, and if such insurance is available. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos in compliance with governmental mandate or order. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's of subcontractor's Automobile Liability Insurance. Contractor shall maintain limits as reasonably required by the County for the Alterations.

9.1.6 If the use of the Premises or Improvements involves any manufacture, distribution or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with a liability limit of not less than Five Million Dollars ($5,000,000) per occurrence and an annual aggregate of Ten Million Dollars ($10,000,000), which limits may be covered by a combination of Primary Coverage and Umbrella Coverage. If written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of the Lease.

9.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Sections 9.1.4 and 9.1.5.1 shall name the County as an additional insured and any Encumbrance Holder as loss payee. Subject to Section 12.8, upon the occurrence of any loss, the proceeds of property and builder's risk insurance shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that if the insurance proceeds received with respect to a loss are less than $500,000 (as adjusted to reflect any increase in the ENR Index during the period from the Effective Date through the date of the loss), the Encumbrance Holder shall have the right to hold and disburse such proceeds to pay the renovation and repair of Improvements in accordance with the terms of the loan agreement or deed of trust with Lessee's Encumbrance Holder. In the event of a loss, Lessee shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Article 11 hereof. Subject to Section 12.8, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

9.3 General Insurance Requirements. Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to County, shall be filed with Director no later than the Effective Date, provided that the evidence of the insurance coverage required under Section 9.1.5 shall be required to be delivered by Lessee prior to the commencement of any Alterations. All certificates of insurance shall (a) specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions exceeding $25,000 or such other commercially reasonable amount as approved by the Director; and (d) evidence all other requirements under this Article 9. The policy or policies of insurance shall provide that such insurance coverage will

not be canceled or reduced without at least thirty (30) days prior written notice to Director or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with Director.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Lessee may submit in a form reasonably acceptable to County a certificate of insurance.

Any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to County such that such coverage provides the same protection as required under this Article 9 as if the insurance had been procured on an individual property basis.

9.4 Additional Required Provisions. Lessee's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

(c) that County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers, shall be named as additional insureds under any liability insurance policy or policies;

(d) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;

(e) in any property insurance policy, a waiver of all right of subrogation against County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers with respect to losses payable under such policies;

(f) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(g) to the extent of the indemnification obligations of Lessee in favor of any additional insureds, the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to such additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(h) that losses, if any, shall be adjusted with and payable to Lessee, County and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;

(i) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;

(j) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(k) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.5 Failure to Procure Insurance. If Lessee fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from County, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by County shall be repaid by Lessee, with interest thereon at the Applicable Rate, to County within five (5) business days after Lessee's receipt of written demand therefor.

9.6 Adjustment to Amount of Liability Coverage. The amounts of liability insurance required under Section 9.1.1, 9.1.2 and 9.1.3 shall be subject to renegotiation as of each fifth (5th) anniversary of the Effective Date (each, an "Insurance Renegotiation Date"). If County and Lessee cannot agree upon the amount of insurance by the sixtieth (60th) day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with Article 16. In no event shall the amounts of liability insurance be decreased as a result of such renegotiation or arbitration. Following such renegotiation or arbitration, the parties shall execute an amendment to this Lease setting forth the renegotiated insurance provisions or the arbitration judgment, as appropriate.

9.7 Notification of Incidents, Claims or Suits. Lessee shall notify County of any accident or incident on or about the Premises which involves injury or property damage over Fifty Thousand Dollars ($50,000.00) in the aggregate and pursuant to which a claim against Lessee and/or County is made or threatened. Such notification shall be made in writing within 72 hours after Lessee first becomes aware of the claim or threatened claim.

## 10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Lessee's Maintenance and Repair Obligations. Lessee shall maintain the Premises, including paved or unpaved ground surfaces and Improvements thereon (including the Promenade, but excluding the Excluded Conditions and excluding the Seawall), in conformance with the Minimum Standards regarding the use and occupancy of commercial and anchorage projects in Marina del Rey (such as the Premises) as revised from time to time by County in a manner consistent with commercially reasonable maintenance standards applicable to other comparable commercial and anchorage projects in Marina del Rey (the "Maintenance Standard"). Any dispute as to whether revisions to the Maintenance Standard adopted by the County from time to time pursuant to the immediately preceding sentence is commercially reasonable shall be submitted to arbitration pursuant to Article 16 of this Lease. . Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Premises (including the Promenade) and all

equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Premises in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10. Lessee's obligations shall include the obligation to keep all dock facilities in good repair and condition in accordance with the Minimum Standards.

Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, the Maintenance Standard and the terms and provisions of this Article 10. Lessee shall maintain all Improvements on the Premises (other than the Excluded Conditions and the Seawall) in a safe, clean, wholesome and sanitary condition, in the commercially reasonable judgment of Director, and in compliance with all Applicable Laws. Lessee shall, at its own cost and expense, install, maintain and replace landscaping between the streets abutting the Premises and the building footprints on the Premises as is necessary in the commercially reasonable judgment of the Director to maintain the appearance of the Premises in a manner consistent with the Maintenance Standard. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Premises free and clear of rubbish and litter. County in its proprietary capacity shall have the right to enter upon and inspect the Premises at any reasonable time for cleanliness, safety and compliance with this Section 10.1, as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the Premises. The exclusion of the Excluded Conditions and the Seawall from Lessee's maintenance obligations under this Section 10.1 shall not relieve Lessee from the obligation to repair and restore any damage to the Excluded Conditions and/or the Seawall caused by Lessee, its agents, employees, subtenants or contractors, or by Improvements constructed by or on behalf of Lessee, and Lessee hereby agrees to perform such repair or restoration work at Lessee's sole cost and expense.

Lessee shall at all times during the Term keep all Anchorage Facilities in good repair and condition in accordance with the requirements of the Minimum Standards. During the Term Lessee shall also complete float repair and replacement on an as-needed basis. Any requirement for repair of the Anchorage Facilities due to a deficiency notice issued by the Department shall be accomplished with new materials and parts rather than patching or other like method. Such required replacement of deficiency-cited items with wholly new parts and materials shall, however, be limited to the specific item in disrepair and shall not connote a requirement, for maintenance purposes, that areas or items surrounding the deficient item be replaced with new materials and/or parts.

10.2 Maintenance Deficiencies. If County provides written notice to Lessee of a deficiency or other breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Section 10.1 above, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.2), then in

addition to, and not in lieu of, any rights or remedies that County may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars ($100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured; provided, however, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in County's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Lessee), then as long as during the specified cure period Lessee commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in County's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible.

For purposes of determining the number of items of deficiency set forth in a deficiency notice received from the County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.2 by separating the work into unreasonably particularized items (e.g., the requirement to paint the exterior of a building shall not be split into individual deficiency items for the painting of each individual door, window or other component of such building). If a cited deficiency is not health or safety related and does not otherwise constitute an emergency, and if in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by County, then Lessee shall have the right to contest such deficiency notice by written notice to Director within five (5) business days after the date the deficiency notice is received by Lessee. If Lessee files any such contest with Director, then Director shall have the right, in the exercise of Director's discretion, to consider such contest. If Lessee's contest is made on a reasonable and good faith basis, then the cure period for the deficiency notice shall be tolled during the period between the date Director receives written notice of such contest and continuing until Director notifies Lessee in writing that either Director denies Lessee's contest or that Director has determined not to consider such contest, and the daily penalty set forth above in this Section 10.2 shall not be applicable during the period that the cure period is tolled. The One Hundred Dollars ($100) per diem amount set forth in this Section 10.2 shall be adjusted every three (3) years during the remaining Lease Term on each third (3rd) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Lessee fails to pay any amounts payable by Lessee under this Section 10.2 within ten (10) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.3 Option to Terminate for Uninsured Casualty. In the event of any damage to or destruction of the Premises, or any Improvements located thereon (other than the Excluded Conditions and the Seawall, except to the extent damage thereto is caused by the Lessee, its agents, employees, subtenants or contractors, or by Improvements constructed by or on behalf of Lessee), Lessee shall, except as otherwise expressly provided in this Section 10.3, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore such Improvements to their condition existing prior to the damage or destruction. Except as otherwise expressly provided in this Section 10.3, such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds. Repair and restoration of any damage or destruction shall

take place in accordance with the provisions of Article 5. Notwithstanding the foregoing, Lessee shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements on the Premises where all or substantially all of the Improvements on the Premises (other than the Excluded Conditions and the Seawall) are substantially damaged or destroyed and such damage or destruction resulted from a cause not required to be insured against by this Lease (an "Uninsured Loss"), and where all of the following occur:

10.3.1 No more than one hundred (100) days following the Uninsured Loss, Lessee shall notify County of its election to terminate this Lease; to be effective, this notice must include both a copy of Lessee's notification to the Encumbrance Holder, if any, of Lessee's intention to exercise this option to terminate and Lessee's certification under penalty of perjury that Lessee has delivered or mailed such notification to the Encumbrance Holder in accordance with this subsection 10.3.1. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease.

10.3.2 No more than sixty (60) days following the giving of the notice required by subsection 10.3.1 or such longer time as may be reasonable under the circumstances, Lessee shall, at Lessee's expense: remove all debris and other rubble from the Premises; secure the Premises against trespassers; and, at County's election, remove all remaining Improvements on the Premises.

10.3.3 No more than sixty (60) days following the loss, Lessee delivers to County a quitclaim deed to the Premises in recordable form, in form and content satisfactory to County and/or with such other documentation as may be reasonably requested by County or any title company on behalf of County, terminating Lessee's interest in the Premises and reconveying such interest to County free and clear of any and all Encumbrances and Subleases.

10.3.4 Within ten (10) days following the County's receipt of the notice referred to in subsection 10.3.1, County has not received both written notice from the Encumbrance Holder, if any, objecting to such termination and an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.4 <u>No Option to Terminate for Insured Casualty</u>. Lessee shall have no option to terminate this Lease or otherwise be relieved of its obligation to restore the Improvements on the Premises where the damage or destruction results from a cause required to be insured against by this Lease.

10.5 <u>No County Obligation to Make Repairs</u>. County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Premises; provided, however, that Director shall in its good faith discretion consider the application of funds toward the maintenance, repair and replacement of the existing seawall protecting the Premises (the "Seawall") if and to the extent such funds are made available to Director for such uses by County and its Board of Supervisors. Director shall undertake such maintenance, repair and

replacement, if any, with due diligence consistent with the funding provided. In the event the Seawall is in imminent danger of collapse or has collapsed, Director shall promptly seek funding from the Board of Supervisors for repair or replacement as may be necessary to avoid or repair such collapse. If County is obligated to maintain or repair the Seawall under the terms of a lease between the County and any other lessee in Marina del Rey, or if County in fact maintains or repairs the Seawall for the benefit of any other lessee in Marina del Rey, County shall have the same obligation(s) with respect to the Seawall protecting the Premises. Except as expressly provided in this Section 10.7, County shall have no obligation to maintain or repair the Seawall..

10.6 Repairs Not Performed by Lessee. If Lessee fails to make any repairs or replacements as required, Director may notify Lessee of said failure in writing, and should Lessee fail to cure said failure and make repairs or replacements within a reasonable time as established by Director, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, overhead, materials and equipment, shall be charged against Lessee as provided in Section 13.5.

10.7 Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of water systems, sewer facilities, roads, or other County facilities on or about the Premises. Any entry by County onto the Premises pursuant to this Section 10.7 and any entry onto the Premises to perform work on the Seawall pursuant to Section 10.5 above, shall be made in accordance with the following requirements: (i) prior to entry onto the Premises County shall cause each of its contractors to provide to Lessee evidence that such contractor has procured commercial general liability insurance coverage pertaining to such contractor's activities on the Premises, which insurance coverage shall be consistent with County's insurance requirements generally applicable to County contractors, and shall name Lessee as an additional insured; (ii) County's contractors shall comply with industry standard safety requirements; (iii) County shall repair, or cause its contractors to repair, any damage to the Premises caused by the activities of County and/or it contractors on the Premises pursuant to this Section 10.7 or Section 10.5 above; and (iv) any entry onto the Premises by County or its contractors for the purpose of performing work pertaining to the Seawall shall be confined to the Promenade and the fire access lane over the Premises, except in extraordinary circumstances to the extent that due to the scope or nature of the work and/or due to safety concerns, the work cannot reasonably be confined to such area. In any such extraordinary situation County and Lessee agree to cooperate to define a work and/or access area that is reasonably acceptable to both parties.

10.8 Notice of Damage. Lessee shall give prompt notice to County of any fire or material damage affecting the Premises from any cause whatsoever.

10.9 Waiver of Civil Code Sections. The parties' rights shall be governed by this Lease in the event of damage or destruction. The parties hereby waive the provisions of California Civil Code Section 1932 and any other provisions of law which provide for contrary or additional rights.

## 11. ASSIGNMENT AND SUBLEASE.

### 11.1 Subleases.

11.1.1 Definition. The term "Sublease" shall mean any lease, license, permit, concession or other interest in the Premises (including, without limitation, the Improvements), or a right to use the Premises or a portion thereof, which is conveyed or granted by Lessee to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease. "Sublessee" shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease which grants or conveys to the Sublessee the right to possess or use all or substantially all of the Premises is sometimes referred to in this Lease as a "Major Sublease" and the Sublessee under such agreement is sometimes referred to in this Lease as a "Major Sublessee".

11.1.2 Approval Required. At least thirty (30) days prior to the proposed effective date of any Sublease that is not a Major Sublease, or of any assignment or material amendment of such Sublease, Lessee shall submit a copy of such Sublease (or amendment or assignment thereof) to Director for approval, which approval shall not be unreasonably withheld. To the extent practical, Director shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of Director. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Lease applicable to the portion of the Premises subject to the Sublease. If Director disapproves a Sublease, Director shall notify Lessee in writing of the reason or reasons for such disapproval.

11.1.3 Major Sublease. Lessee shall enter into a Major Sublease only with a reputable owner or manager of comparable commercial and marina facilities such as exist on the Premises. In light of the inherent detailed nature of a Major Sublease, Lessee shall deliver to County a copy of any proposed Major Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Premises, not less than sixty (60) days prior to the proposed effective date of such proposed Major Sublease or other document, for County's review and approval pursuant to the procedures and requirements specified in Section 11.2.

11.2 Approval of Assignments and Major Subleases. Except as specifically hereinbefore provided in this Article 11, Lessee shall not, without the prior written consent of County, which shall be based upon factors described in Exhibit C hereto, which is incorporated herein by this reference ("Assignment Standards"), either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Lease or any interest, right, or privilege therein (including without limitation the right to manage or otherwise operate the Improvements located from time to time on the Premises), or enter into a Major Sublease affecting the Premises, or license the use of all or substantially all of the Premises. Any Change of Ownership that is not an Excluded Transfer shall constitute an assignment of Lessee's interest under this Lease. In addition, for purposes of this provision, the following matters (except for Excluded Transfers) shall require the prior written consent of County to be effective: (1) the addition, removal or replacement of one or more general partners or managing members in a Lessee which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation (except for a sole general partner, if any) or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or

remaining members, or (b) if any general partner or managing member owning more than fifty percent (50%) of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member owning fifteen percent (15%) or less of the interests in the partnership or limited liability entity; or (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock, partnership interests or limited liability company interests in an entity that owns, or is a general partner or managing member of an entity that owns, an interest in this Lease. Lessee shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the matters provided herein requiring County's consent. These same limitations and approval requirements as to Lessee's interest in the Lease shall also apply with respect to the Sublessee's interest under a Major Sublease.

11.2.1 County's Use of Discretion and Limitation on Permissible Assignees. In exercising its discretion to approve assignments as provided in this Section 11.2, County shall take into account the Assignment Standards and, if County determines that such Assignment Standards are satisfied, County shall not withhold or unreasonably delay its consent to any proposed assignment. If County withholds its consent to an assignment, County shall notify Lessee in writing of the reason or reasons for such disapproval.

11.2.2 Involuntary Transfers Prohibited. Except as otherwise specifically provided in this Lease, neither this Lease nor any of the Lessee's interest in this Lease (as opposed to ownership interests in Lessee itself) shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any process of law including proceedings under the Bankruptcy Act.

11.2.3 Procedure. Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

11.2.3.1 Prior to entering into any agreement requiring the approval of County pursuant to Sections 11.1 or 11.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information relevant to the proposed assignment, including without limitation any term sheets, letters of intent, draft Major Subleases, any other documents which set forth any proposed agreement regarding the Premises and the information set forth in subsection 11.2.3.5. County will evaluate the information provided to it and County may request additional information as may be reasonably necessary to act on the request. Under no circumstances will County formally discuss an assignment with any proposed assignee prior to reviewing the proposal with Lessee.

11.2.3.2 In completing its review of the proposal and granting or withholding its consent thereto, County will not be bound by any deadline contained in any proposed assignments, Major Subleases, escrow instructions or other agreements to which County is not a party.

11.2.3.3 Lessee acknowledges that the time needed for County to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of County's personnel. Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Lessee's interest under this Article 11.

11.2.3.4 Lessee shall be required to reimburse County for its Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately grants its approval to the proposed assignment (without duplication with any Administrative Charge payable under Section 4.6.

11.2.3.5 Lessee or the proposed assignee shall provide County with sufficient information for County to determine if the public interest will be served by approving the proposed transaction. The information that must be provided includes, but shall not be limited to, the following:

(a) Nature of the Assignee. Full disclosure is required in accordance with this Lease and County's applicant disclosure policy then in effect. Additionally, a flowchart identifying the chain of ownership of the assignee and its decision-making authority shall be provided to County. County shall be advised if the proposed assignee, or any other person or entity for whom disclosure is required pursuant to County's disclosure policy, has had any leasehold or concessionaire's interest canceled or terminated by the landlord due to the tenant or Lessee's breach or default thereunder;

(b) Financial Condition of Assignee. County shall be provided with current, certified financial statements, including balance sheets and profit and loss statements, demonstrating the proposed assignee's financial condition for the preceding five (5) years, or such shorter period that assignee has been in existence. This requirement shall also apply to any related person or entity which will be responsible for or guarantee the obligations of the proposed assignee or provide any funds or credit to such proposed assignee.

(c) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation of the Premises (unless the assignment is pursuant to a Change of Ownership that is an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee, and following such transfer there is no intended change in the financing plan for the operation and improvement of the Premises) and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Premises and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (1) equity capital; (2) sources and uses of funds; (3) terms of financing; (4) debt service coverage and ratio; and (5) loan to value ratio. The proposed assignee shall also provide County with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient

funds to complete any proposed construction or improvements on the Premises. Further, such proposed assignee shall authorize the release of financial information to County from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

(d) Business Plan. County shall be provided with the proposed assignee's business plan for the Premises (unless the assignment is pursuant to a Change of Ownership that constitutes an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee, and following such transfer there is no intended change in the business plan for the Premises), including pro forma financial projections for the Premises for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections.

(e) Assignor's Financial Statements. County shall be provided with certified financial statements, including balance sheets and profits and loss statements concerning the assignor Lessee and its operations for the three (3) most recent years prior to the proposed transaction.

(f) Cure of Defaults. County shall be provided with the proposed assignee's specific plans to cure any and all delinquencies under this Lease which may be identified by County, whether identified before or after the date of the proposed assignment.

(g) Prospectus Materials. County shall be provided with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or relating to the Premises.

(h) Other Information. County shall be provided with a clear description of the terms and conditions of the proposed assignment, including a description of the proposed use of the Premises and any proposed alterations or improvements to the Premises. Additionally, County shall be provided with any and all other information which it reasonably requests of Lessee to assist in its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Premises, contracts in excess of $25,000 affecting the Premises, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Premises. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

11.2.3.6 Nondisturbance. At the request of Lessee, County shall agree to execute a subordination, nondisturbance and attornment agreement and a ground

lessor's estoppel certificate on commercially reasonable terms in favor of any Major Sublessee.

11.2.3.7 Final Documents. Prior to granting its approval over any proposed assignment, County shall be provided with an executed Assignment and Acceptance of Assignment in form and content as approved or supplied by the County. Ten (10) copies of each must be submitted to County, of which five (5) shall be signed originals and properly acknowledged.

11.2.4 County Right to Recapture. If Lessee proposes to assign its interest in this Lease or the Premises, or proposes to enter into any Major Sublease affecting the Premises (with either such proposed transaction herein referred to as a "Proposed Transfer"), it shall provide County with written notice of such desire and the sale price ("Lessee Sale Price") at which it is willing to consummate the Proposed Transfer. Within thirty (30) days thereafter, County shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest subject to the Proposed Transfer. During said thirty (30) day period, Lessee may continue to market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided herein. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, County shall have an assignable option to purchase the interest subject to the Proposed Transfer ("County Option") at the Lessee Sale Price. Such County Option shall have a term of five (5) calendar months from the date of County's notice of its election to acquire such option. During the term of the County Option, Lessee shall make the Premises and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, County shall pay to Lessee at the expiration of the County Option period (or, at County's election, credit to Lessee against the next applicable installment(s) of Annual Minimum Rent and Percentage Rent), a sum (the "County Option Price") which represents (i) three percent (3%) of the Lessee Sale Price, plus (ii) seven percent (7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County's election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (a) fails to elect to acquire the County Option within said thirty (30) day period, or (b) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then during the nine (9) month period following the later of (a) or (b), Lessee shall be entitled to enter into an agreement to consummate the Proposed Transfer with a third party (subject to County's approval rights as otherwise set forth in this Lease) so long as (1) the actual price for the Proposed Transfer is equal to or greater than the Lessee Sale Price last offered to County and upon no more favorable material terms to the assignee, and (2) the transfer is consummated not later than twelve (12) months after the later of (a) or (b). In the event of a proposed Major Sublease or other permitted assignment of less than all of the Premises, County's election shall pertain to the portion of the Premises that is the subject of the proposed Major Sublease or assignment and, in the event that County elects to acquire such portion of Lessee's interest in the Premises, Lessee's Annual Minimum

Rent shall be proportionally reduced and Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Premises retained by Lessee. In the event that County elects to recapture all or any portion of the Premises as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably necessary to evidence the termination of this Lease, to set a termination date and to prorate rent and other charges with respect to the termination. County's rights pursuant to this subsection 11.2.4 shall not apply to Financing Events or those events identified in subsection 4.6.2 of this Lease.

11.2.5 County Credits Toward Purchase Price. In the event that County or its assignee elects to exercise the County Option, it shall receive the following credits toward the Lessee Sale Price: (1) the Net Proceeds Share which would be payable to County in the event that a third party were to purchase the interest offered at the Lessee Sale Price and (2) an amount which represents unpaid Annual Minimum Rent, Percentage Rent, and all other amounts payable under the Lease, if any (including a provisional credit in an amount reasonably acceptable to County for any amounts that may arise from an audit by County, but that have not yet been determined as of that date), with late fees and interest as provided herein, from the end of the period most recently subject to County audit through the date of the purchase of the interest by County. In the case of any unpaid rental amounts that may be found to be owing to County in connection with any uncompleted audit by County, in lieu of a provisional credit for such amounts, Lessee may provide County with a letter of credit or other security satisfactory to County to secure the payment of such unpaid amounts when finally determined by County. During the term of the County Option, Lessee shall cause to be available to County all books and records reasonably necessary in order to determine the amount of such unpaid Annual Minimum Rent, Percentage Rent, and other amounts payable under the Lease. In the event that County or its assignee exercises the County Option, but the transaction fails to close due to a failure of the parties to agree upon an appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then County shall have no obligation to pay or credit to Lessee the County Option Price.

11.3 Terms Binding Upon Successors, Assigns and Sublessees. Except as otherwise specifically provided for herein, each and all of the provisions, agreements, terms, covenants, and conditions herein contained to be performed, fulfilled, observed, and kept by Lessee hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Any approved assignment of this Lease shall release the assignor of all liability arising due to actions or omissions on or after the effective date of such assignment, provided the assignee assumes all of such liability, including without limitation the obligation of assignee to cure any defaults and delinquencies under this Lease and to pay County Percentage Rent and any other amounts attributable to the period prior to the assignment, but not discovered by County or the assignee until after the assignment; provided, further, the assignor shall not be relieved of any liability for

the payment of the Administrative Charge or the required portion of any Net Proceeds Share or Net Refinancing Proceeds which arise upon such assignment as provided herein.

11.4 Family Transfers. Notwithstanding any contrary provision of this Article 11, the County's approval shall not be required, nor shall the County's rights of recapture under subsection 11.2.4 be applicable, with respect to any transfer of ownership interests in Lessee or in constituent entities of Lessee, if such transfer is to a member of the immediate family of the transferor (or to a trust for the benefit of a member of the immediate family of the transferor) for estate planning purposes, whether such transfer is the result of gift, devise, intestate succession or operation of law.

12. ENCUMBRANCES.

12.1 Financing Events.

12.1.1 Definitions. For the purposes of this Lease, including without limitation the provisions of Sections 4.6 through 4.8 hereof: (i) a "Financing Event" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership interests or other direct or indirect ownership interests in Lessee (collectively, "Ownership Interests"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below); for purposes of Section 12.1.2 below and Sections 4.6 through 4.8 above, a "Financing Event" shall also include all of the foregoing actions involving the granting of a mortgage, deed of trust or other security interest in a Major Sublease; and (ii) an "Encumbrance" shall mean any direct or indirect grant, pledge, assignment, transfer, mortgage, hypothecation, grant of control, grant of security interest, or other encumbrance, of or in all or any portion of (A) Lessee's interest under this Lease and the estate so created (including without limitation a direct or indirect assignment of Lessee's right to receive rents from subtenants) or (B) Ownership Interests if an absolute assignment from the holder of such Ownership Interests to the holder of the Encumbrance would have required County's consent under this Lease, to a lender (upon County approval of the Encumbrance and consummation thereof, the "Encumbrance Holder") as security for a loan. The term "Encumbrance Holder" shall also be deemed to include any and all affiliates of such Encumbrance Holder which have succeeded by assignment or otherwise to any rights, interests or liabilities of the Encumbrance Holder with respect to the Encumbrance, or which have been designated by the Encumbrance Holder to exercise any rights or remedies under the Encumbrance or to take title to the leasehold estate under this Lease or to Ownership Interests, and such affiliates shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease. The term "Equity Encumbrance Holder" shall mean an Encumbrance Holder holding an Encumbrance with respect to Ownership Interests.

12.1.2 County Approval Required. Lessee may, with the prior written consent of Director, which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Director, consummate one or more Financing Event(s). Lessee shall submit to Director a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each

proposed Financing Event. The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Director. Lessee shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Director shall have sixty (60) days (thirty (30) days for the initial construction loan for the Redevelopment Work) to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days (thirty (30) days for the initial construction loan for the Redevelopment Work) after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event; provided, however, that if the preliminary loan package included draft loan documents then the foregoing sixty (60) day period shall be reduced to thirty (30) days. If not approved by Director in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Director (and, if so requested in writing by Lessee), Director shall within thirty (30) days of such request deliver to Lessee a written description of Director's objections to said proposed Financing Event). Lessee shall reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. One (1) copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with any approved Encumbrance shall be filed with Director not later than seven (7) days after the effective date thereof. The same rights and obligations set forth above in this subsection 12.1.2 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

12.2 Consent Requirements In The Event of a Foreclosure Transfer.

12.2.1 Definitions. As used herein, a "Foreclosure Transfer" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof. A "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer. An "Equity Foreclosure Transferee" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

12.2.2 Foreclosure Transfer. The consent of County shall not be required with respect to any Foreclosure Transfer.

12.2.3 Subsequent Transfer By Encumbrance Holder. For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (i) County's consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as

they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom its receives such transfer is released under subsection 12.3.1 below, and (ii) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults (as defined below). For clarification purposes, the right to a single transfer under this Section shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Section.

12.3 Effect of Foreclosure. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.3.1 Any Encumbrance Holder which is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, including any affiliate thereof (an "Institutional Lender"), shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults as defined below) accruing during its period of ownership of the leasehold. Upon a subsequent transfer of the leasehold in accordance with subsection 12.2.3 above, such Institutional Lender shall be automatically released of any further liability with respect to this Lease, other than for (i) rent payments, property tax payments, reserve account payments and other monetary obligations under specific terms of the Lease that accrue solely during such Institutional Lender's period of ownership of the leasehold, and (ii) Lessee's indemnification obligations under this Lease with respect to matters pertaining to or arising during such Institutional Lender's period of ownership of leasehold title.

12.3.2 Any other Foreclosure Transferee (i.e., other than an Institutional Lender as provided in Section 12.3.1 above) shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of Lessee under this Lease (other than Excluded Defaults), subject to possible release of liability upon a subsequent transfer pursuant to Section 11.3 above.

12.3.3 Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Premises, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (i) is an incurable non-monetary default, (ii) is a non-monetary default that can only be cured by a prior lessee, (iii) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (iv) relates to any obligation of a prior lessee to pay any Net Proceeds Share (collectively, "Excluded Defaults"), and thereafter

performs the full obligations of Lessee under this Lease. Pursuant to Section 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this Section 12.3.3 shall also inure to the benefit of the Lessee.

12.3.4 No Encumbrance Holder shall become liable for any of Lessee's obligations under this Lease unless and until such Encumbrance Holder becomes a Foreclosure Transferee with respect to Lessee's leasehold interest under the Lease.

12.3.5 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger (i) any obligation to pay an Administrative Charge nor any Net Proceeds Share, (ii) any acceleration of the Extension Fee or Extension Fee Installment Payments payable by Lessee under Section 2.2 of this Lease and Section 4.2 of the Option Agreement, or any other financial obligation of Lessee under this Lease, (iii) any recapture right on the part of County, or (iv) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall be deemed to be excluded from the definitions of "Change of Ownership" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer" referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in Section 12.2.3), so that there may be more than one "single subsequent transfer" benefited by this Section.

12.3.6 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction and renovation work described in Sections 5.1, 5.11 or 5.14 above (other than any obligations to make deposits into the Subsequent Renovations Fund) shall be tolled for a period of time, not to exceed twelve months, until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Lease or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this Section 12.3.6 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

12.3.7 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (i) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (ii) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

12.4 <u>No Subordination</u>. County's rights in the Premises and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall

not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with subsection 12.1.2, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

12.5 Modification or Termination of Lease. This Lease shall not be modified or amended without the prior written consent in its sole discretion of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee. Further, this Lease may not be surrendered or terminated (other than in accordance with the provisions of this Article 12) without the prior written consent of each such Encumbrance Holder in its sole discretion. No such modification, amendment, surrender or termination without the prior written consent of each such then existing Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

12.6 Notice and Cure Rights of Encumbrance Holders and Major Sublessees.

12.6.1 Right to Cure. Each Encumbrance Holder and Major Sublessee shall have the right, at any time during the term of its Encumbrance or Major Sublease, as applicable, and in accordance with the provisions of this Article 12, to do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

12.6.2 Notice of Default. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than exercising County's self-help remedies pursuant to Section 13.5 or imposing the daily payment set forth in Section 10.2 in the case of emergency situations), and no such exercise shall be effective, unless it first shall have given written notice of such default to each and every then existing Major Sublessee and Encumbrance Holder which has notified Director in writing of its interest in the Premises or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. An Encumbrance Holder or Major Sublessee shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed herein. If such Event or Events of Default are so cured, this Lease shall remain in full force and effect. Notwithstanding any contrary provision hereof, the Lender's cure rights set forth in this Section 12.6 shall not delay or toll the County's right to impose the daily payment for Lessee breaches set forth in Section 10.2.

12.6.3 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder or Major Sublessee in the following manner:

(a) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder or the Major Sublessee may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty five (35) days after its receipt of the aforesaid notice of default. If, after such payment to County, Lessee pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder or Major Sublessee.

(b) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder or Major Sublessee as follows:

(1) The Encumbrance Holder or Major Sublessee may cure the default within sixty (60) days after the end of Lessee's cure period as provided in Section 13.1 hereof (or, if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "initial cure period"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Encumbrance Holder or Major Sublessee commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's initial cure period shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in subsection (a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

12.7 New Lease.

12.7.1 Obligation to Enter Into New Lease. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Section 12.7 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.7 of this Lease, and (ii) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Section 12.7, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Premises. From and after the effective date of the new lease, the Encumbrance Holder (or its affiliate) shall have the same rights to a single transfer that are provided in subsection 12.2.3 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 12. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 11 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

12.7.2 Priority of New Lease. The new lease made pursuant to this Section 12.7 shall be prior to any mortgage or other lien, charge or encumbrance (except for easements or other matters to which this Lease is subject) on County's fee interest in the Premises (except for easements or other matters to which this Lease is subject), and any

future fee mortgagee or other future holder of any lien on the fee interest in the Premises is hereby given notice of the provisions hereof.

12.8 Holding of Funds. Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of (i) any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the terms of this Lease to be applied to restoration of the improvements on the Premises (provided that such funds shall be used for such restoration in accordance with the requirements of the Lease), and (ii) any funds required to be held in the Subsequent Renovations Fund, Capital Improvement Fund or FF&E Fund (provided that such funds shall be used for the purposes required by this Lease). If more than one such Encumbrance Holder desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.

12.9 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Premises following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

12.10 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Premises shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

12.11 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Premises, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

12.12 Rights of Encumbrance Holders With Respect to Reversion. As used in this Section 12.12, the "Reversion" refers to the automatic amendment of this Lease described in subsection 5.6.2 whereby the terms and conditions of this Lease are automatically amended in accordance with the Reversion Amendment described in such subsection 5.6.2, and the "Reversion Condition" refers to the condition that causes the Reversion, namely the failure of Lessee to substantially complete the Redevelopment Work on or before the Required Completion Date. Notwithstanding anything in subsection 5.6.2 of this Lease to the contrary, so long as an Encumbrance Holder exists with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee, the Reversion shall not occur unless and until (i) the County has given written notice of the occurrence of the Reversion Condition to each such Encumbrance Holder in accordance with subsection 12.6.2 (which notice shall describe the Reversion Condition that has occurred, and shall include the following statement in all capital

and bold letters: "**YOUR FAILURE TO COMMENCE A CURE OF THE DEFAULT DESCRIBE IN THIS NOTICE WITHIN 60 DAYS OF YOUR RECEIPT OF THIS NOTICE, AND TO THEREAFTER PURSUE SUCH CURE TO COMPLETION IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION 12.6.3(b) OF THE LEASE APPLICABLE TO NONMONETARY DEFAULTS, WILL RESULT IN AN AUTOMATIC AMENDMENT AND REVERSION OF THE TERMS OF THE LEASE IN ACCORDANCE WITH THE REVERSION AMENDMENT DESCRIBED IN SUBSECTION 5.6.2 OF THE LEASE**"), and (ii) no such Encumbrance Holder commences a cure of the default within 60 days of its receipt of such notice and thereafter pursues such cure to completion in accordance with the provisions of subsection 12.6.3(b) of the Lease applicable to nonmonetary defaults. Further, in the event that a Reversion occurs, such Reversion shall be subject to the "new lease" provisions of Section 12.7 of the Lease (and in such event the Reversion shall be deemed a "termination" of this Lease solely for purposes of Section 12.7 and the "new lease" to be entered into pursuant to Section 12.7 shall mean a new lease on the same terms as this Lease, not the Existing Lease).

12.13 Acceleration of Extension Fee. So long as (i) no Event of Default exists based on nonpayment of an individual Extension Fee Installment Payment payable by Lessee pursuant to Section 2.2. of this Lease and Section 4.2 of the Option Agreement (even if any other Event of Default exists that is not based on nonpayment of an individual Extension Fee Installment Payment), or (ii) if an Event of Default exists based on nonpayment of an individual Extension Fee Installment Payment, an Encumbrance Holder, Foreclosure Transferee or the single subsequent transferee of a Foreclosure Transferee pursuant to subsection 12.2.3 cures such Event of Default by paying to County all past-due individual Extension Fee Installment Payments together with any default interest and/or Late Fees that may be owing thereon; then County shall not declare the entire remaining unpaid Extension Fee immediately due and payable, or, if County has previously declared the entire remaining unpaid Extension Fee immediately due and payable, County shall rescind such acceleration and permit the reinstatement of the original payment terms of the Extension Fee (i.e., by annual Extension Fee Installment Payments).

13. DEFAULT.

13.1 Events of Default. The following are deemed to be "Events of Default" hereunder:

13.1.1 Monetary Defaults. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease (including, without limitation, Extension Fee Installment Payments or deposits to the Subsequent Renovations Fund, Capital Improvement Fund and/or FF&E Fund), within ten (10) days after written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee, if any, within such ten (10) day period.

13.1.2 Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 7 of this Lease if not cured within five (5) days after written notice of such failure.

13.1.3 Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty five (35) days after written notice of Lessee's failure to perform from Director; provided, however, that where Lessee's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty five (35) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty five (35) day period, County will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time. Notwithstanding any contrary provision of this Section 13.1.3, the proviso set forth in the immediately preceding sentence providing for an extension of the cure period beyond thirty five (35) days shall not be applicable to any failure of Lessee to comply with the Required Completion Date set forth in Section 5.6 above (as such date may be extended pursuant to such Section 5.6, and subject to Section 12.12).

13.1.4 Nonuse of Premises. The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of thirty five (35) days, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease; provided, however, the termination of operations in a portion of the Premises by a Sublessee shall not constitute an Event of Default under this Section 13.1.4 if Lessee uses its best efforts to recover possession of such portion of the Premises from such Sublessee, re-sublease such portion of the Premises to another Sublessee, and cause the subject space to be re-opened for business as soon as possible. If in Director's good faith judgment Lessee has failed to use its best efforts to recover possession of the subject space as described above, re-sublease the space and cause the space to be re-opened for business as soon as possible, then, in addition to any other rights or remedies that County may have in connection with an Event of Default, County shall have the right, but not the obligation, and Lessee hereby authorizes County, to take such actions on Lessee's behalf as Director determines in its good faith judgment to be appropriate to recover possession and cause such re-subleasing and re-opening of the subject space, including without limitation, the construction of any leasehold improvements or other Alterations necessary or appropriate in connection therewith. Lessee shall be responsible for the direct payment of all third party expenses and the reimbursement to County for all other Actual Costs incurred by County in connection with actions taken under the immediately preceding sentence. Lessee shall execute such documents and take all such other actions as requested by County in the good faith judgment of Director to effectuate the terms and provisions of this subsection 13.1.4.

Any notice required to be given by County pursuant to subsections 13.1.1 through and including 13.1.3 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

13.2 Limitation on Events of Default. Lessee shall not be considered in default as to any provision of this Lease when such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body of competent jurisdiction, or any other circumstances which are physically impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 12.6 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

13.3.1 Terminate Lease. County may terminate this Lease by giving Lessee written notice of termination. On the giving of the notice, all Lessee's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all Improvements in broom-clean condition, and County may re-enter and take possession of the Premises and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Lessee from the payment of any sum then due to County or from any claim for damages against Lessee as set forth in subsection 13.4.3, or from Lessee's obligation to remove Improvements at County's election in accordance with Article 2. County agrees to use reasonable efforts to mitigate damages, and shall permit such access to the Premises as is reasonably necessary to permit Lessee to comply with its removal obligations.

13.3.2 Keep Lease in Effect. Without terminating this Lease, so long as County does not deprive Lessee of legal possession of the Premises and allows Lessee to assign or sublet subject only to County's rights set forth herein, County may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Lessee's breach of other covenants and agreements herein. No act by or on behalf of County under this provision shall constitute a termination of this Lease unless County gives Lessee written notice of termination. It is the intention of the parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

13.3.3 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to subsection 13.3.2, thereafter County may elect to terminate this Lease and all of Lessee's rights in or to the Premises unless prior to such termination Lessee shall have cured the Event of Default or shall have satisfied the provisions of Section 13.2, hereof. County agrees to use reasonable efforts to mitigate damages.

13.4 Damages. Should County elect to terminate this Lease under the provisions of the foregoing Section, County shall be entitled to recover from Lessee as damages:

13.4.1 Unpaid Rent. The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;

13.4.2 Post-Termination Rent. The worth, at the time of the award, of the unpaid rent that would have been earned under this Lease after the date of termination of this Lease until the date Lessee surrenders possession of the Premises to County; and

13.4.3 Other Amounts. The amounts necessary to compensate County for the sums and other obligations which under the terms of this Lease become due prior to, upon or as a result of the expiration of the Term or sooner termination of this Lease, including without limitation, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground Improvements, attorney's fees, court costs, and unpaid Administrative Charges, Net Proceeds Shares and Net Refinancing Proceeds.

13.5 Others' Right to Cure Lessee's Default. County (and any Encumbrance Holder or Major Sublessee, as provided in the last sentence of this section), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices with respect to any such default, County at any time, by reason of Lessee's continuing failure, pays or expends any sum, Lessee shall immediately pay to County the lesser of the following amounts: (1) twice the amount expended by County to cure such default and (2) the amount expended by County to cure such default, plus one thousand dollars ($1,000). To the extent practicable, County shall give any Encumbrance Holders or Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon.

13.6 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days notice to any person or entity having a recorded security interest in County's fee title to the Premises whose identity and address have been disclosed in writing to Lessee. Such person or entity shall then have the right to cure such default, and County shall not be deemed in default if such person or entity cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease shall not exceed the value of County's equity interest in the Premises and its right to insurance proceeds in connection with the policies required under Article 9 hereof. During any period that County is in default of its obligation to pay a sum of money to Lessee, any amount of money that may be owed by Lessee to County (but not in excess of the undisputed amount of money owed by County to Lessee for which County is in default) shall not accrue interest or late charges during such period as County remains in default of its obligation to pay Lessee such sum of money.

14. ACCOUNTING.

14.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent (including without limitation, the calculation of Percentage Rent Credits, Excess Percentage Rent Credits and Potential County Credit), Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, Lessee and all Sublessees shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Accounting Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Premises separate and apart from those in connection with Lessee's (or sublessee's or licensee's, as appropriate) other business operations, if any. With respect to the calculation of Gross Receipts and the preparation of the reports and maintenance of records required herein, Lessee shall utilize either: (i) the accrual method of accounting, or (ii) a modified accrual method of accounting, modified in that (A) expenses are accrued on an approximate basis each month during the fiscal year with full accrual treatment for the full fiscal year financial statements, (B) Gross Receipts are reported monthly on a cash basis with full reconciliation to accrual treatment on the annual statement of Gross Receipts, and (C) depreciation is calculated on a tax basis rather than a GAAP basis.

14.2 Cash Registers. To the extent retail sales are conducted on the Premises, or other cash or credit sales of goods or services are conducted, all such sales shall be recorded by means of cash registers or computers which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

Lessee shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to the Director in advance of installation for his approval, which approval or disapproval shall not be unreasonably withheld or delayed.

Lessee's obligations set forth in this Section 14.2 include Lessee's obligation to insure that Lessee's sublessees, licensees, permittees, concessionaires and any other occupants of any portion of the Premises keep records sufficient to permit County and County's auditors to determine the proper levels of Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease.

14.3 Statement; Payment. No later than the fifteenth (15th) day of each calendar month, Lessee shall render to County a detailed statement certified by Lessee's chief financial officer showing Gross Receipts during the preceding calendar month, along with a calculation in such detail as reasonably acceptable to County of any other amounts to be calculated under Sections 4.2 through 4.8 inclusive. Lessee shall accompany same with remittance of any amount required to be paid by Lessee under such Sections 4.2 through 4.8. Without limitation of the foregoing, within thirty (30) days after the end of each Accounting Year, Lessee shall deliver to

County a Gross Receipts statement for such preceding Accounting Year, reconciled on an accrual basis in accordance with the requirements of the last sentence of Section 14.1.

14.4 Availability of Records for Inspector's Audit. Books of account and records for the then current and five (5) prior Accounting Years as hereinabove required shall be kept or made available at the Premises or at another location within Los Angeles County, and County and other governmental authorities shall have the right at any reasonable times and on reasonable prior notice to examine and audit said books and records, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts derived from occupancy of the Premises and the compliance of Lessee with the terms of this Lease and other governmental requirements. County shall have the right to conduct a review and/or audit of Lessee's records at any time (subject to the notice provisions of subsection 14.4.1 below), except that after the close of an Accounting Year and the delivery by Lessee of all statements and reports required to be delivered by Lessee under this Lease with respect to such Accounting Year, Lessee shall have the right by written notice to County to request County to commence any audit of Gross Receipts with respect to such Accounting Year within one hundred twenty (120) after receipt by County of such written notice from Lessee (a "Voluntary Lessee Audit Request"). Any Voluntary Lessee Audit Request must include the following language in bold faced type and all capital letters: "PURSUANT TO SECTION 14.4 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF WITHIN ONE HUNDRED TWENTY (120) DAYS AFTER THE DATE OF COUNTY'S RECEIPT OF THIS LETTER COUNTY DOES NOT COMMENCE AN AUDIT OF LESSEE'S GROSS RECEIPTS FOR THE ACCOUNTING YEAR(S) REQUESTED BY LESSEE HEREIN, COUNTY WILL BE DEEMED TO HAVE WAIVED ITS RIGHT TO THEREAFTER AUDIT LESSEE'S GROSS RECEIPTS WITH RESPECT TO SUCH ACCOUNTING YEAR(S)." If Lessee delivers a Voluntary Lessee Audit Request to County with respect to Gross Receipts for a particular Accounting Year (or Years) and County fails to commence an audit of Gross Receipts for such Accounting Year(s) within one hundred twenty (120) days after County's receipt of such Voluntary Lessee Audit Request (other than due to Lessee's failure to maintain (or to cause to be maintained), or to provide County and its representatives with access to (or to cause such access to be provided to), the records required to be maintained by Lessee (or its Sublessees, licensees, permittees, concessionaires or other occupants of the Premises) under this Article 14), then County will be deemed to have waived its right to thereafter audit Lessee's Gross Receipts with respect such Accounting Year(s). Notwithstanding any contrary provision of Section 14.5, Lessee shall be responsible for all Actual Costs incurred by County in connection with any audit performed in connection with a Voluntary Lessee Audit Request, regardless of whether any understatement of Gross Receipts or deficiency with respect to Percentage Rent payments is disclosed by such audit. This Section 14.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

14.4.1 Entry by County. Upon at least one (1) business day advance notice, County and its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

14.5 Cost of Audit. In the event that, for any reason, Lessee does not make available its (or its sublessee's or licensee's) original records and books of account at the Premises or at a location within Los Angeles County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in County's favor of greater than two percent (2%) of the revenue due County for the period audited, then Lessee shall pay County audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5.

14.6 Accounting Year. The term "Accounting Year" as used herein shall mean each calendar year during the Term.

14.7 Annual Financial Statements. Upon reasonable notice and request by County, Lessee shall furnish for each Accounting Year hereunder, a copy of Lessee's most recent federal income tax return, which County agrees shall be held confidential, except (i) for disclosure to County's consultants and attorneys, (ii) as may be necessary for the enforcement of County's rights and Lessee's obligations under this Lease, or (iii) as required by Applicable Law.

14.8 Accounting Obligations of Sublessees. Lessee shall cause all sublessees, licensees, concessionaires and others conducting business operations on or from the Premises to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records.

14.9 Inadequacy of Records. In the event that Lessee or its sublessees, licensees or concessionaires, as appropriate, fails to keep the records required by this Article 14 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Premises, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in Marina del Rey with comparable business operations, or any other method as reasonably determined by Director and shall utilize such methodology as Director deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

15. MISCELLANEOUS.

15.1 Quiet Enjoyment. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Premises throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

15.2 Time is of the Essence. Except as specifically otherwise provided for in this Lease, time is of the essence of this Lease and applies to all times, restrictions, conditions, and limitations contained herein.

15.3 County Costs. Lessee shall promptly reimburse County for the Actual Costs incurred by County in the review, negotiation, preparation and documentation of this Lease and the term sheets and memoranda that preceded it. The parties acknowledge that Lessee has deposited the sum of _____ dollars ($_____) toward those costs. County shall deliver to Lessee a report detailing such expenditures (along with invoice summaries or other supporting documentation) within ninety (90) days after the Effective Date.

15.4 County Disclosure and Lessee's Waiver.

15.4.1 Disclosures and Waiver.

15.4.1.1 "AS IS". Lessee acknowledges that it is currently in possession of the Premises and that Lessee or its predecessor-in-interest has continuously occupied and/or managed and operated the Parcel 56S Premises since 1967. 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 execution of this Lease by Lessee 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".

15.4.1.2 Lessee acknowledges that it may incur additional engineering and construction costs above and beyond those contemplated by either party to this Lease at the time of the execution hereof and Lessee agrees that, it will make no demands upon County for any construction, alterations, or any kind of labor that may be necessitated in connection therewith.

15.4.1.3 Lessee hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County, its officers, agents, employees or volunteers which Lessee now has or may have or asserts in the future which are based upon any defects in the physical condition of the Premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument. The waiver and release set forth in this subsection 15.4.1.3 (i) shall not apply to the Excluded Conditions, and (ii) 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.

15.4.1.4 California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM

MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

By initialing this paragraph, Lessee acknowledges that it has read, is familiar with, and waives the provisions of California Civil Code §1542 set forth above, and agrees to all of the provisions of subsection 15.4.1.3 above.

_____
Lessee's Initials

15.4.2 Right of Offset. Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by applicable law, Lessee hereby waives any and all rights, if any, to make repairs at the expense of County and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due County hereunder.

15.5 Holding Over. If Lessee holds over after the expiration of the Term for any cause, with or without the express or implied consent of County, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent rates in effect at the end of the Term shall be increased to one hundred twenty-five percent (125%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal.

Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Premises to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 15.5 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding tenant arising from such failure to surrender, and any lost profits to County resulting therefrom, provided that County notifies Lessee that Lessee's failure to timely surrender the Premises will cause County to incur such lost profits.

15.6 Waiver of Conditions or Covenants. 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, and agreements of this Lease 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 agreement of this Lease, nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any

manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. No delay, failure, or omission of County to re-enter the Premises or of either party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

15.7 Remedies Cumulative. The rights, powers, options, and remedies given County by this agreement shall be cumulative except as otherwise specifically provided for in this Lease.

15.8 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by County of right of entry or re-entry upon the Premises in the case of an Event of Default, or in case of abandonment or vacation of the Premises by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Premises and remove any and all persons and property whatsoever situated upon the Premises and place all or any portion of said property, except such property as may be forfeited to County, in storage for the account of and at the expense of Lessee.

Except to the extent arising out of or caused by the gross negligence or willful misconduct of County, Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Premises in the case of an Event of Default, including the removal of persons and property and storage of such property by County and its agents.

15.9 Place of Payment and Filing. All rentals shall be paid to and all statements and reports herein required and other items deliverable to County hereunder shall be filed with or delivered to the Department. Checks, drafts, letters of credit and money orders shall be made payable to the County of Los Angeles.

15.10 Service of Written Notice or Process. Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 15.10. If Lessee is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee shall file with Director a designation of a natural person residing in the County of Los Angeles, State of California, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State of California and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is

amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with Director, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested (or other similar evidence of delivery by overnight delivery service) and postage or other delivery charges prepaid, by registered or certified mail posted in the County of Los Angeles, California, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the expiration of the third (3rd) business day after such notice is sent from within Los Angeles County in the case of such registered or certified mail as authorized in this Section.

Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

As of the date of execution hereof, the persons authorized to receive notice on behalf of County and Lessee are as follows:

| | |
|---|---|
| COUNTY: | Director<br>Department of Beaches and Harbors<br>Los Angeles County<br>13837 Fiji Way<br>Marina del Rey, California 90292<br>Phone: 310/305-9522<br>Fax: 310/821-6345 |
| With a Copy to: | Office of County Counsel<br>Los Angeles County<br>500 West Temple Street<br>Los Angeles, California 90012<br>Attn: County Counsel<br>Phone: 213/974-1801<br>Fax: 213/617-7182 |
| LESSEE: | Gold Coast Village, LLC |

9255 Sunset Blvd., Suite 320
Los Angeles, California 90069
Attn: Michael Pashaie
Phone: 310/858-6797
Fax: 310/858-6862

and

Gold Coast Village, LLC
888 S. Figueroa St. #1900
Los Angeles, California 90017
Attn: David Taban
Phone: 213/745-5191
Fax: 213/747-8225

and

Pacific Ocean Management
13575 Mindanao Way
Marina del Rey, California 90292
Attn: Mike Selden
Phone: 310/822-6866
Fax: 310/822-4266

With a Copy to: Cox, Castle & Nicholson LLP
2049 Century Park East
28th Floor
Los Angeles, California 90067
Attention: Ira J. Waldman, Esq.
Phone: 310/277-4222
Fax: 310/277-7889

Either party shall have the right to change its notice address by written notice to the other party of such change in accordance with the provisions of this Section 15.10.

15.11 Interest. In any situation where County has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable within five (5) days after Lessee's receipt of written demand, together with interest at the Applicable Rate (unless another rate is specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Lessee repays sums advanced by County on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, County shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.

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

15.13 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Lease, whether or not pursued to judgment, the prevailing party

15.13 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Lease, 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 reasonable attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

15.14 Amendments. This Lease may only be amended in writing executed by duly authorized officials of Lessee and County. Notwithstanding the foregoing, Director shall have the power to execute such amendments to this Lease as are necessary to implement any arbitration judgment issued pursuant to this Lease. No amendment, other than one implemented through an arbitration judgment, shall be binding upon an Encumbrance Holder as to which County has been notified in writing, unless the consent of such Encumbrance Holder is obtained with respect to such amendment.

15.15 Time For Director Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Director is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Lessee, Director either (a) approves such request in writing, or (b) notifies Lessee that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Director (the "Extended Time") and approves such request in writing prior to such Extended Time. If Director does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved. If Director disapproves a matter that requires its approval under this Lease, then Director shall notify Lessee in writing of the reason or reasons for such disapproval.

15.16 Time For County Action. Notwithstanding anything to the contrary contained in this Lease, wherever Director determines that a County action required hereunder necessitates approval from or a vote of one or more of County's boards or commissions or County's Board of Supervisors, the time period for County performance of such action shall be extended as is reasonably necessary in order to secure such approval or vote, and County shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

15.17 Estoppel Certificates. Each party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other party, a certificate stating: (i) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (ii) that, to the best knowledge of such party, the other party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); and (iii) if requested, the amount of the Security Deposit, Annual Minimum Rent, Percentage Rent and other material economic terms and conditions of this Lease. Prospective purchasers, Major Sublessees and lenders may rely on such statements.

15.18 Indemnity Obligations. Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so

specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

15.19 Controlled Prices. Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Lessee that any of said prices are not fair and reasonable, Lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its Sublessees, assignees, concessionaires, permittees or licensees, as directed. Lessee may appeal the determination of Director to the Board, whose decision shall be final and conclusive. Pending such appeal, the prices fixed by Director shall be the maximum charged by Lessee.

15.20 Waterfront Promenade. As part of the Redevelopment Work Lessee shall develop a continuous pedestrian walkway with landscaping, lighting, seating, fencing and other improvements (the "Promenade") in accordance with the Development Plan. County hereby reserves a public easement for access over and use of the Promenade for fire lane uses, pedestrian purposes and such other related uses (including, if approved by County bicycling, rollerblading and the like) as may be established by the County from time to time, all in accordance with such rules and regulations as are promulgated from time to time by the County regulating such public use. Lessee shall be responsible for the maintenance and repair of the Promenade in accordance with commercially reasonable maintenance and repair standards for the Promenade established by the County from time to time on a nondiscriminatory basis. The exact legal description of the Premises encumbered by the public easement reserved herein shall be established based upon the final as-built drawings for the Promenade to be delivered by Lessee upon the completion thereof in accordance with the terms and provisions of Article 5 of this Lease. At the request of either party such legal description shall be recorded in the Official Records of the County as a supplement to this Lease.

15.21 Dockmaster. During the Term of the Lease, Lessee shall maintain a dockmaster program reasonably acceptable to the Director for the day to day management and operation of the commercial dock facilities at the Premises. The level of services to be provided by the dockmaster shall be commensurate with the size and scope of the proposed slip operations.

15.22 Seaworthy Vessels. On or before January 1, April 1, July 1 and October 1 of each year during the Term, Lessee shall deliver to Director a report which contains the following information with respect to every vessel (including floating homes as defined in Title 19 of the Los Angeles County Code) moored within the Premises: (i) the name, address and telephone number of the registered owner (and slip tenant, if other than the registered owner) for each vessel; (ii) the state registration or federal document number, and name (if any), of the vessel; (iii) whether the vessel is a power vessel, sailing vessel or floating home; and (iv) the slip number and length of the vessel, and whether the vessel is presently authorized by Lessee for

liveaboard tenancy. In addition, Lessee shall require, and shall certify annually to Director, that as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels from and after the immediately preceding certification (or in the case of the initial certification, from and after the Effective Date) have been required to pass seaworthiness inspection by the Harbor Patrol within sixty (60) days of such slip rental. Henceforth, all of Lessee's slip leases shall provide that any newly tenanted vessel which is unable to pass such inspection within the required period, or such reasonable extension thereof as may be granted in the Director's sole discretion, shall be ineligible for continued slip tenancy on the leasehold premises and shall be removed therefrom. The requirements of the two preceding sentences shall not be applicable to any vessel which is specifically exempted from seaworthiness requirements by Title 19 of the Los Angeles County Code.

15.23 Transient Slip. Lessee shall make available one (1) docking slip to be reserved for short term use of small craft visiting the Premises (the "Transient Slip"). Until such time as otherwise designated by the County, the Transient Slip shall be rented on an hourly or daily basis for guest boat docking purposes. The Transient Slip shall be located at an end-tie location reasonably acceptable to County. Lessee shall make the Transient Slip available for the uses described in this Section 15.23 commencing not later than the completion by Lessee of the commercial dock work being performed as part of the Redevelopment Work. Throughout the Term Lessee shall be responsible for ensuring that the Transient Slip, and any pathway of travel to and from the Transient Slip, are in compliance with all Applicable Laws (including without limitation, ADA) for the uses described in this Section 15.23. The operation of the Transient Slip shall be subject to such security procedures and insurance requirements as are reasonably acceptable to Lessee and County, and that are consistent with those applicable to the operation of the commercial dock facilities on the Premises from time to time.

15.24 Water Taxi Docking Slip. During any period during the Term that a water taxi or shuttle service is operated in the Marina, Lessee shall make available one (1) docking slip for loading and unloading of passengers for water taxi or shuttle service purposes (the "Water Taxi Slip"). The Water Taxi Slip shall be located at an end-tie location reasonably acceptable to County. Upon request by County throughout the Term, Lessee shall make the Water Taxi Slip available for the uses described in this Section 15.24 after the completion by Lessee of the commercial dock work being performed as part of the Redevelopment Work. Lessee shall make access to the Water Taxi Slip available for the water taxi operator, its personnel and customers, during all hours that the service is in operation. Lessee shall be responsible throughout the Term for insuring that the Water Taxi Slip, and any pathway of travel to and from the Water Taxi Slip, are in compliance with all Applicable Laws (including without limitation, ADA) for the uses described in this Section 15.24. The operation of the Water Taxi Slip shall be subject to such security procedures and insurance requirements as are reasonably acceptable to Lessee and County, and that are consistent with those applicable to the operation of the commercial dock facilities on the Premises from time to time.

15.25 Pump-Out Station. Lessee shall make available on the Premises a pump-out station for use at a nominal fee for pump-out services.

15.26 Water Quality Management Program. During the Term of the Lease, Lessee shall comply with all water quality management requirements imposed by the Coastal Commission in

connection with the issuance of the Coastal Development Permit for the commercial dock improvements; provided, however, that lessee shall in all events comply at least with the water quality management requirements set forth in Exhibit E attached to this Lease. In addition, during the Term of the Lease, Lessee shall remove floating debris from the water surrounding the commercial dock facilities on the Premises in accordance with a program and regular schedule reasonably acceptable to the Director.

16. ARBITRATION.

Except as otherwise provided by this Article 16, disputed matters which may be arbitrated pursuant to this Lease shall be settled by binding arbitration in accordance with the then existing provisions of the California Arbitration Act, which as of the date hereof is contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280.

(a) Either party (the "Initiating Party") may initiate the arbitration process by sending written notice ("Request for Arbitration") to the other party (the "Responding Party") requesting initiation of the arbitration process and setting forth a brief description of the dispute or disputes to be resolved and the contention(s) of the Initiating Party. Within ten (10) days after service of the Request for Arbitration, the Responding Party shall file a "Response" setting forth the Responding Party's description of the dispute and the contention(s) of Responding Party. If Responding Party has any "Additional Disputes" he shall follow the format described for the Initiating Party. The Initiating Party will respond within ten (10) days after service of the Additional Disputes setting forth Initiating Party's description of the Additional Disputes and contentions regarding the Additional Disputes.

(b) Notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply to any and all arbitration proceedings conducted pursuant to this Lease:

16.1 Selection of Arbitrator. The parties shall attempt to agree upon an arbitrator who shall decide the matter. If, for any reason, the parties are unable to agree upon the arbitrator within ten (10) days of the date the Initiating Party serves a request for arbitration on the Responding Party, then at any time on or after such date either party may petition for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

16.2 Arbitrator. The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any United States District Court or Court of Appeals located within the State, who has agreed to resolve civil disputes.

16.3 Scope of Arbitration. County and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating Party provided those disputes are arbitrable disputes pursuant to this Lease, (ii) Additional Disputes presented to the arbitrator by the Responding Party, provided that any such Additional Disputes constitute arbitrable disputes pursuant to this Lease and (iii) such related

preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award. Either party may, at its sole cost and expense, request a statement of decision explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. Unless otherwise expressly agreed by the parties in writing, the award shall be made by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after the date of a denial of a petition to disqualify a potential arbitrator for cause. County and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable; however, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party either terminating the arbitration or declaring such party's intent to terminate the arbitration if the award is not issued within a specified number of days after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 16.

16.4 Immunity. The parties hereto agree that the arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Lease.

16.5 Section 1282.2. The provisions of Code of Civil Procedure § 1282.2 shall apply to the arbitration proceedings except to the extent they are inconsistent with the following:

(1) Unless the parties otherwise agree, the arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said § 1282.2 not less than ninety (90) days before the hearing, regardless of the aggregate amount in controversy.

(2) No later than sixty (60) days prior to the date set for the hearing (unless, upon a showing of good cause by either party, the arbitrator establishes a different period), in lieu of the exchange and inspection authorized by Code of Civil Procedure § 1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator:

(a) a written Statement of Position, as further defined below, setting forth in detail that party's final position regarding the matter in dispute and specific numerical proposal for resolution of monetary disputes;

(b) a list of witnesses each party intends to call at the hearing, designating which witnesses will be called as expert witnesses and a summary of each witness's testimony;

(c) a list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and,

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence (as defined below) each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

(3) No later than twenty (20) days prior to the date set for the hearing, each party may file a reply to the other party's Statement of Position ("Reply"). The Reply shall contain the following information:

(a) a written statement, to be limited to that party's rebuttal to the matters set forth in the other party's Statement of Position;

(b) a list of witnesses each party intends to call at the hearing to rebut the evidence to be presented by the other party, designating which witnesses will be called as expert witnesses;

(c) a list of the documents each intends to introduce at the hearing to rebut the evidence to be presented by the other party, together with complete and correct copies of all of such documents (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such documents);

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence, or written critiques of the other party's Written Appraisal Evidence if any, each intends to introduce at the hearing to rebut the evidence presented by the other party, together with complete and correct copies of all of such Written Appraisal Evidence (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such Written Appraisal Evidence); and

(e) Witnesses or documents to be used solely for impeachment of a witness need not be identified or produced.

(4) The arbitrator is not bound by the rules of evidence, but may not consider any evidence not presented at the hearing. The arbitrator may exclude evidence for any reason a court may exclude evidence or as provided in this Lease.

16.6 Statements of Position. The Statement of Position to be delivered by Section 16.5 shall comply with the following requirements:

(1) Where the dispute involves rent to be charged, market values, insurance levels or other monetary amounts, the Statements of Position shall numerically set forth the existing minimum rent, percentage rent, market value, insurance level and/or other monetary amounts in dispute, the party's proposed new minimum rent, percentage rent, market value, insurance level and/or other monetary amounts, and shall additionally set forth the facts supporting such party's position.

(2) If the dispute relates to Improvement Costs, the Statements of Position shall set forth the facts supporting such party's position and the amount of each cost which the party believes should be allowed or disallowed.

16.7 Written Appraisal Evidence. Neither party may, at any time during the proceedings, introduce any written report which expresses an opinion regarding Fair Market Rental Value or the fair market value of the Premises, or any portion thereof, ("Written Appraisal Evidence") unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of this Lease; correlate the appraisal method(s) applied; discuss the relevant factors and data considered; review rentals paid by lessees in Marina del Rey and other marina locations within Southern California who are authorized to conduct similar activities on comparable leaseholds; and, describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed. With respect to disputes regarding Fair Market Rental Value, such Written Appraisal Evidence shall express an opinion regarding the fair market rental value of the Premises as prescribed by Section 4.4.1. Written Appraisal Evidence in connection with disputes arising out of Article 6 of this Lease shall predicate any valuation conclusions contained therein on the Income Approach. Written Appraisal Evidence shall in all other respects be in material conformity and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute or any successor entity.

16.8 Evidence. The provisions of Code of Civil Procedure § 1282.2(a)(2)(E) shall not apply to the arbitration proceeding. The arbitrator shall have no discretion to allow a party to introduce witnesses, documents or Written Appraisal Evidence (other than impeachment testimony) unless such information was previously delivered to the other party in accordance with Section 16.5 and, in the case of Written Appraisal Evidence, substantially complies with the requirements of Section 16.7, or such evidence consists of a transcript of a deposition of an expert witness conducted pursuant to Section 16.9. Notwithstanding the foregoing, the arbitrator may allow a party to introduce evidence which, in the exercise of reasonable diligence, could not have been delivered to the other party in accordance with Section 16.5, provided such evidence is otherwise permissible hereunder.

16.9 Discovery. The provisions of Code of Civil Procedure § 1283.05 shall not apply to the arbitration proceedings except to the extent incorporated by other sections of the California Arbitration Act which apply to the arbitration proceedings. There shall be no pre-arbitration discovery except as provided in Section 16.5; provided, however, each party shall have the right, no later than seven (7) days prior to the date first set for the hearing, to conduct a deposition, not to exceed three (3) hours in duration unless the arbitrator otherwise determines that good cause exists to justify a longer period, of any person identified by the other party as an expert witness pursuant to Sections 16.5 (2)(b) or 16.5 (3)(b).

16.10 Awards of Arbitrators.

16.10.1 Monetary Issues. With respect to monetary disputes (including without limitation disputes regarding Percentage Rent, Fair Market Rental Value and the amount of coverage under the policies of insurance required pursuant to Article 9 of this Lease),

the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position. The arbitrator shall instead select whichever of the two Statements of Position is the closest to the monetary or numerical amount that the arbitrator determines to be the appropriate determination of the rent, expense, claim, cost, delay, coverage or other matter in dispute and shall render an award consistent with such Statement of Position. For purposes of this Section 16.10, each dispute regarding Annual Minimum Rent, each category of Percentage Rent and the amount of required insurance coverage shall be considered separate disputes (a "Separate Dispute"). While the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position concerning a Separate Dispute, the arbitrator shall have the right, if the arbitrator so chooses, to choose one party's Statement of Position on one or more of the Separate Disputes, while selecting the other party's Statement of Position on the remaining Separate Disputes. For example, if the parties are unable to agree on the Annual Minimum Rent and three Percentage Rent categories to be renegotiated pursuant to Section 4.4 and the amount of liability insurance coverage to be renegotiated pursuant to Section 9.3, then there shall be five Separate Disputes and the arbitrator shall be permitted to select the County's Statement of Position with respect to none, some or all of such five Separate Disputes and select the Lessee's Statement of Position, on the balance, if any, of such five Separate Disputes. Upon the arbitrator's selection of a Statement of Position, pursuant to this Article 16, the Statement of Position so chosen and the award rendered by the arbitrator thereon shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.10.2 Nonmonetary Issues. With respect to nonmonetary issues and disputes, the arbitrator shall determine the most appropriate resolution of the issue or dispute, taking into account the Statements of Position submitted by the parties, and shall render an award accordingly. Such award shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.11 Powers of Arbitrator. In rendering the award, the arbitrator shall have the power to consult or examine experts or authorities not disclosed by a party pursuant to Section 16.5(2) hereof, provided that each party is afforded the right to cross-examine such expert or rebut such authority.

16.12 Costs of Arbitration. Lessee and County shall equally share the expenses and fees of the arbitrator, together with other expenses of arbitration incurred or approved by the arbitrator. Failure of either party to pay its share of expenses and fees constitutes a material breach of such party's obligations hereunder.

16.13 Amendment to Implement Judgment. Within seven (7) days after the issuance of any award by the arbitrator becomes final, the County will draft a proposed amendment to the Lease setting forth the relevant terms of such award. Within seven (7) days after delivery of a copy of the amendment to Lessee, Lessee will sign the amendment (with any revisions to the proposed amendment necessary to accurately reflect the arbitration award) and return the executed copy to the County, which shall thereafter be executed by County as soon as reasonably practicable.

16.14 Impact of Gross Error Allegations. Where either party has charged the arbitrator with Gross Error:

16.14.1 The award shall not be implemented if the party alleging Gross Error obtains a judgment of a court of competent jurisdiction stating that the arbitrator was guilty of Gross Error and vacating the arbitration award ("Disqualification Judgment"). In the event of a Disqualification Judgment, the arbitration process shall begin over immediately in accordance with this Section 16.14, which arbitration shall be conducted (with a different arbitrator) as expeditiously as reasonably possible.

16.14.2 The party alleging Gross Error shall have the burden of proof.

16.14.3 For the purposes of this Section 16.14, the term "Gross Error" shall mean that the arbitration award is subject to vacation pursuant to California Code of Civil Procedure § 1286.2 or any successor provision.

16.15 Notice.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

| _____ | _____ |
|---|---|
| Initials of Lessee | Initials of County |

17. DEFINITION OF TERMS; INTERPRETATION.

17.1 Meanings of Words Not Specifically Defined. Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

17.2 Tense; Gender; Number; Person. Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the

feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

17.3 Business Days. For the purposes of this Lease, "business day" shall mean a business day as set forth in Section 9 of the California Civil Code, and shall include "Optional Bank Holidays" as defined in Section 7.1 of the California Civil Code.

17.4 Parties Represented by Consultants, Counsel. Both County and Lessee have entered this Lease following advice from independent financial consultants and legal counsel of their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsperson shall not apply to this Lease.

17.5 Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

17.6 Reasonableness Standard. Except where a different standard is specifically provided otherwise herein, whenever the consent of County or Lessee is required under this Lease, such consent shall not be unreasonably withheld and whenever this Lease grants County or Lessee the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, County and Lessee shall act reasonably and in good faith. These provisions shall only apply to County acting in its proprietary capacity.

17.7 Compliance with Code. County and Lessee agree and acknowledge that this Lease satisfies the requirements of Section 25536 of the California Government Code as a result of various provisions contained herein.

17.8 Memorandum of Lease. The parties hereto shall execute and acknowledge a Memorandum of Lease Extension, in recordable form and otherwise satisfactory to the parties hereto, for recording as soon as is practicable on or following the Effective Date.

IN WITNESS WHEREOF, County and Lessee have entered into this Lease as of the Effective Date.

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

GOLD COAST VILLAGE, LLC, a Delaware limited liability company

By: _____
Its: _____

By: _____
Its: _____

ATTEST:

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

By: _____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

# EXHIBIT A

## LEGAL DESCRIPTION OF PREMISES

[To be added]

Subject to the public easement reserved by Lessor in Section 15.20 of this Lease.

LEGAL DESCRIPTION

Marina Del Rey
Lease Parcel No. 55

Parcels 862 and 863, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county.

Reserving and excepting therefrom unto the County of Los Angeles easements for sanitary sewer, fire access and harbor utility purposes over those portions thereof designated on said map to be reserved by said county for such purposes.

DESCRIPTION APPROVED
AUG 3 1 1961
JOHN A. LAMBIE
County Engineer
BY ..... DEPUTY

LEGAL DESCRIPTION

Marina Del Rey
Lease Parcel No. 56S

Parcels 872 to 881 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, filed in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county, and that portion of Parcel 905, in said county, as shown on said map, within the following described boundaries:

Beginning at the southwesterly corner of said Parcel 880; thence westerly along the westerly prolongation of the southerly line of said last mentioned parcel to a line parallel with and 15 feet westerly, measured at right angles, from the westerly line of said last mentioned parcel; thence northerly along said parallel line to the westerly prolongation of the northerly line of said Parcel 872; thence easterly along said last mentioned westerly prolongation to the northwesterly corner of said last mentioned parcel; thence southerly in a direct line to the point of beginning.

Together with a right of way for ingress and egress to be used in common with others over the westerly 12 feet of Parcels 865 to 871 inclusive, as shown on said map.

Also together with a right of way for ingress and egress to be used in common with others over the northerly 20 feet of the southerly 110 feet of the easterly 133 feet of said Parcel 871.

Also together with rights of way for ingress and egress to be used in common with others over the northerly 10 feet of the easterly 133 feet of said Parcel 868, and the southerly 10 feet of the easterly 133 feet of said Parcel 867.

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

DESCRIPTION APPROVED
February 6, 1969
JOHN A. LAMBIE
County Engineer

By _____ Deputy

LEGAL DESCRIPTION

Marina Del Rey
Lease Parcel No. W

Parcels 859, 861 and 864 to 871 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county.

Excepting from said Parcel 859 that portion thereof which lies northerly of the following described line:

Beginning at the most easterly corner of said Parcel 859; thence North 45°20'27" West along a line parallel with the southwesterly line of Parcel 861, as shown on said map, to the southeasterly line of the northwesterly 30 feet of said Parcel 859; thence South 60°00'00" West along said southeasterly line to the southwesterly line of said Parcel 859.

Reserving and excepting therefrom unto the County of Los Angeles easements for sanitary sewer, storm drain, fire access and harbor utility purposes in and across those portions thereof designated on said map to be reserved by said county for such purposes.

DESCRIPTION APPROVED
AUG 24 1962
JOHN A. LAMBIE
County Engineer
BY [illegible] DEPUTY

LEGAL DESCRIPTION

Marina Del Rey
Lease Parcel No. W-1

Parcels 868 to 871 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county.

Excepting therefrom the northerly 14 feet thereof.

Also excepting therefrom the westerly 12 feet thereof.

Also reserving and excepting therefrom unto the County of Los Angeles, easements for fire access and harbor utilities purposes in and across that portion thereof designated on said map to be reserved by said county for such purposes.

DESCRIPTION APPROVED
NOV 2 7 1963
JOHN A. LAMBIE
County Engineer
BY Edgar Nakutaki DEPUTY

# EXHIBIT B

# DEVELOPMENT PLAN

# EXHIBIT A

## FISHERMAN'S VILLAGE
## SUMMARY OF TERMS FOR LEASE OPTION AND LEASE EXTENSION OPTION
## PARCELS 55/56S/W – MARINA DEL REY

## DEVELOPMENT PLAN

(attached)

**TERM SHEET EXHIBIT A – PARCELS 55, 56 AND W**
October 27, 2005

| *Term Sheet Template Item* | *Lessee Proposal Fisherman's Village – Parcels 55, 56 and W* |
|---|---|
| **1) SCOPE OF WORK** | |
| **A reasonably detailed, written narrative description of the work to be done, including each of the following:**<br>▫ **All new construction and renovation**<br>▫ **Timing for the start of the work**<br>▫ **Timing for the completion of the work**<br>**The narrative shall include all applicable components of the project, grouped as set forth below.** | |
| **a) Apartments, Office and Commercial (Note: for renovation-only apartment projects, use "Apartment Renovation Template" instead of this section)** | |
| • **Demolition (of existing improvements prior to commencing work)** | Developer will demolish all current improvements totaling 32,600 square feet except for the existing lighthouse. All current dock facilities will be demolished and replaced with new docks. |
| • **New building construction** | Developer will build a new restaurant and retail center with a 132 room boutique hotel totaling 126,250 square feet, all of which will be new construction except for the existing lighthouse. All docks will be rebuilt. Developer will provide approximately 900 parking spaces including subterranean, surface and structured parking. |
| • **Remodeled building exteriors** | The lighthouse exterior will be renovated to like new condition and in a design that blends with the new construction. |
| • **Remodeled building interiors** | The lighthouse interior is private and non accessible to the public and will be renovated to service and access levels only. |

| *Term Sheet Template Item* | *Lessee Proposal Fisherman's Village – Parcels 55, 56 and W* |
|---|---|
| • **Remodeled interior building common areas** | Not applicable, since all new construction (except for the lighthouse). |
| • **Remodeled exterior building common areas** | The new Fisherman's Village will have an entrance promenade and a waterfront promenade intersecting at a circular public amphitheater for use by visitors to the center. The promenades and the amphitheater will make extensive use of decorative pavers. The renovated lighthouse will form a decorative center of gravity and a meeting place. There will be a circular waterside deck extending over the sea wall to enhance the view and the charm of the project. |
| • **Landscaping** | There will be extensive landscaping throughout the project with a highly decorative water fountain forming part of the entrance promenade. |
| **b) Marina** | |
| • **Replacement of docks and slips, including design and materials** | All current docks will be removed and no less than 30 new commercial docks and one 120 foot long side tie berth will replace them. The new docks will include a landing for a water taxi, transient boat dock, and pump-out station. |
| • **Retention of existing slip count, including slip count before and after by slip size** | The new dock facility will exceed the slip count capacity of the current docks. The docks will be of similar size as the current docks, which are the maximum length allowed on Parcel 56. |
| • **Retention of marine commercial facilities, including area count before and after for each category** | The new marine commercial facilities will equal or exceed the old facilities in every category now located on the property. |

| *Term Sheet Template Item* | *Lessee Proposal Fisherman's Village – Parcels 55, 56 and W* |
|---|---|
| **c) Promenade** | |
| • **Walkway design and materials** | The project will incorporate a waterside promenade which will comply with County standards. |
| • **Fencing design and materials** | The fencing design and standards along the waterside and the promenade will comply with County standards. |
| • **Lighting design and materials** | The lighting design and materials used will comply with County standards. |
| **d) Signage** | |
| • **New signage program** | New signage will comply with County standards. |

| *Term Sheet Template Item* | *Lessee Proposal Fisherman's Village – Parcels 55, 56 and W* |
|---|---|
| **2) PLANS & DRAWINGS** | |
| **Preliminary plans for all work to be done** | |
| **a) Site Plan** | |
| • **Reduced color site plans (8.5x11 or 11x17), showing work described above, including all structures, hardscape, promenade, landscaping and slips** | See Exhibit A-1, "Fisherman's Village – Site Plan"<br><br>Also see Exhibt A-5, "Fisherman's Village – Parking Plan" |
| **b) Building Elevation** | |
| • **A reduced color elevation (8.5x11 or 11x17) drawing that shows all new and/or renovated building elevations** | See Exhibit A-2, "Fisherman's Village – West Elevation"<br><br>Also see Exhibit A-3, "Fisherman's Village – Rendering"<br><br>Also see Exhibit A-4, "Fisherman's Village – Hotel Elevation" |
| **c) Landscaping Plan** | |
| • **If not already included in the above materials** | See Exhibit A-1, "Fisherman's Village – Site Plan" |
| **d) Dock Construction Plan** | |
| • **Dock construction plan, including physical layout of docks and slips** | See Exhibit A-1, "Fisherman's Village – Site Plan"<br><br>Also see Exhibit A-6, "Fisherman's Village – Waterside Improvements" |

| ***Term Sheet Template Item*** | *Lessee Proposal*<br>*Fisherman's Village – Parcels 55, 56 and W* |
|---|---|
| **3) BUDGET** | |
| **a) Budget worksheet** | |
| • **Estimated cost for all of the work agreed upon** | Total new development cost as follows:<br><br>Marina $9.5 million<br>Retail/Restaurants $21.4 million<br>Hotel $9.3 million<br>----------<br>Total $40.2 million |

**Exhibit A-1**
**Fisherman's Village – Site Plan**

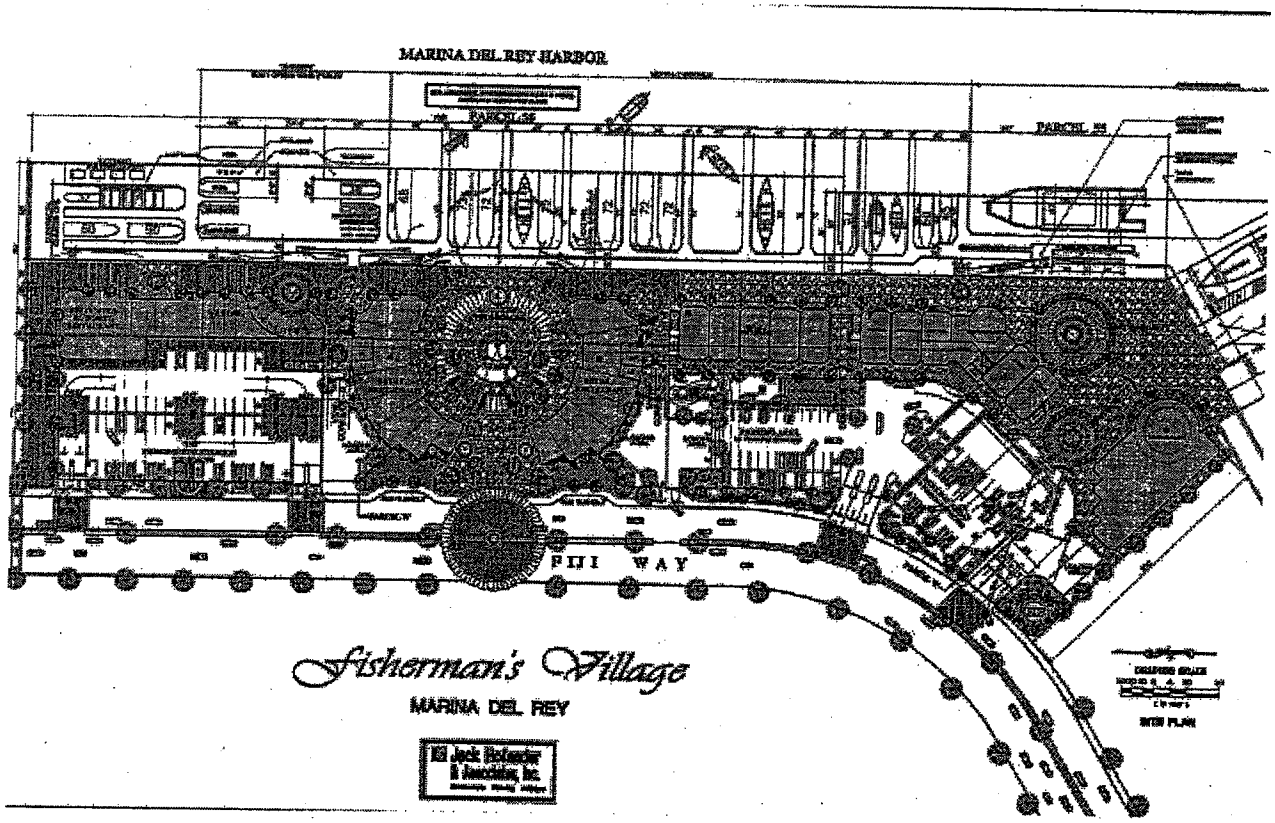

**Exhibit A-2**
**Fisherman's Village – West Elevation**

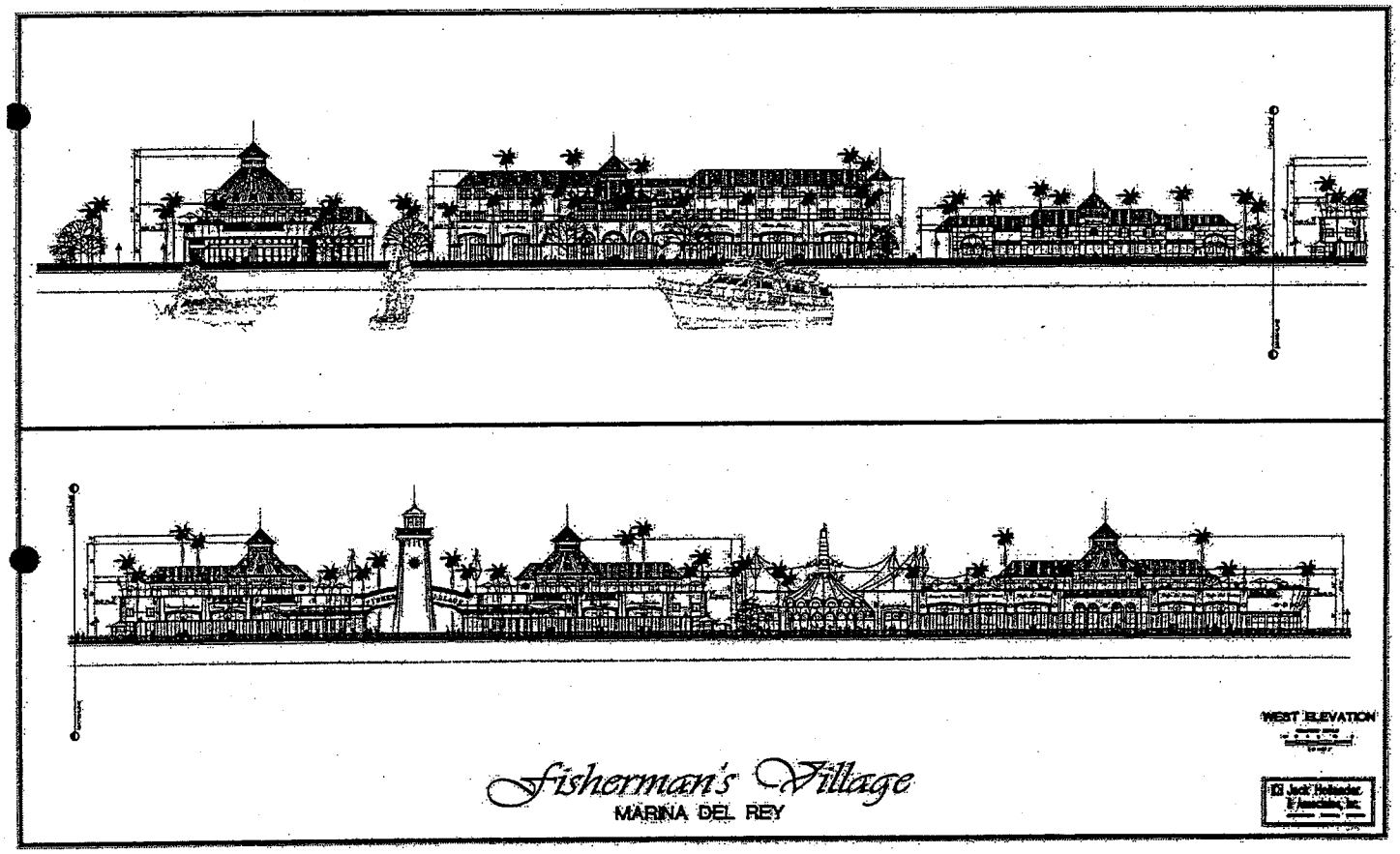

**Exhibit A-3**
**Fisherman's Village – Rendering**

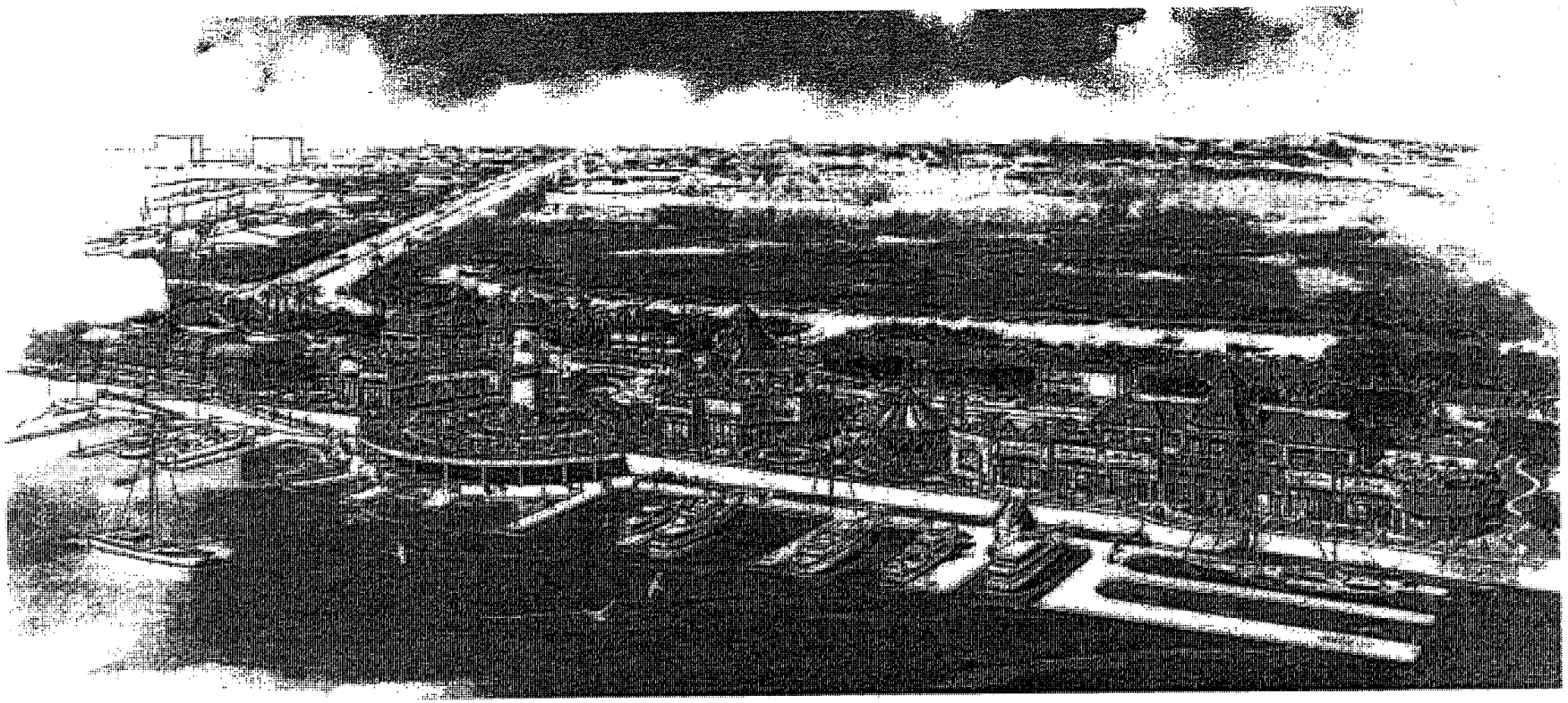

**Exhibit A-4**
**Fisherman's Village – Hotel Elevation**

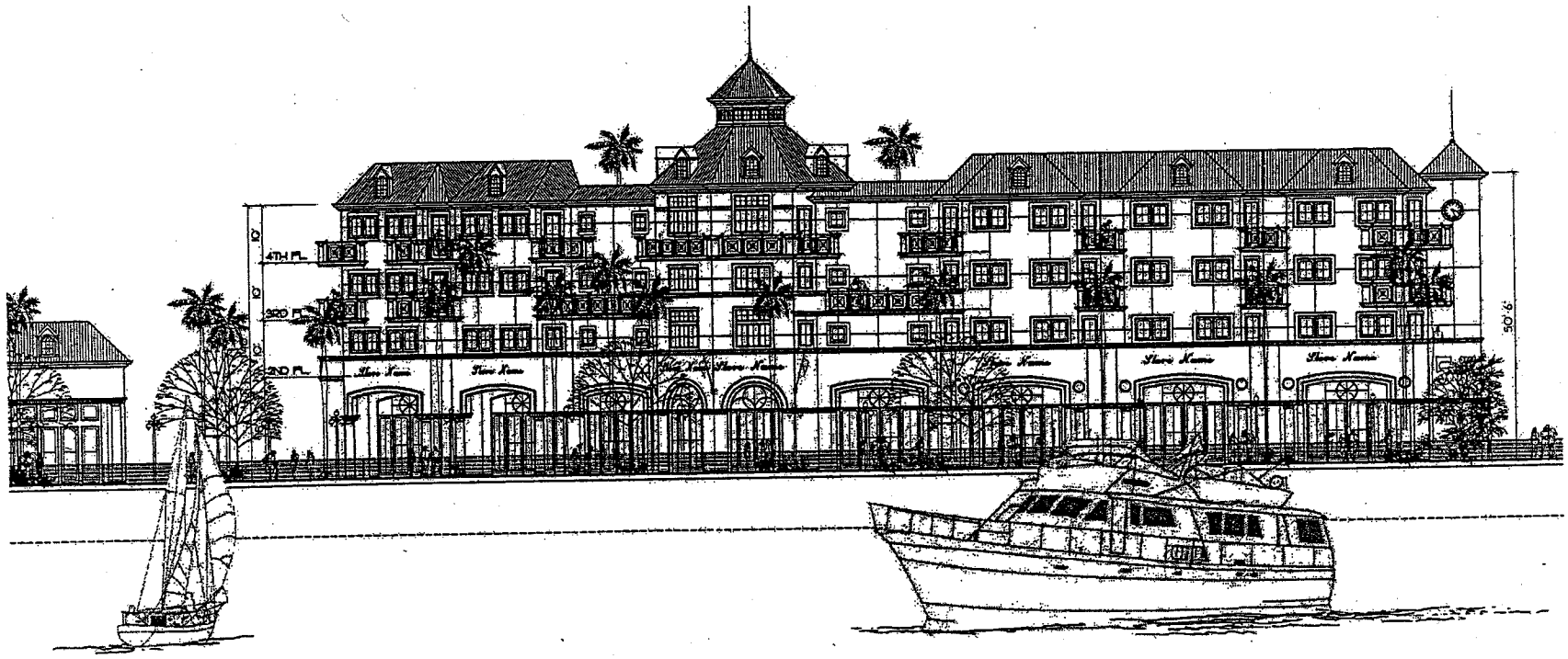

**Exhibit A-5**
**Fisherman's Village – Parking Plan**

| Parking Required | Parking Provided |
|---|---|
| Parking required for onsite uses:<br>847 spaces (County Code) | Parking provided for onsite uses:<br>639 spaces (Lessee will obtain parking permit to allow shared parking) |
| Replacement parking for Parcel 52:<br>245 spaces (Marina del Rey LCP) | Parking provided for Parcel 52:<br>245 spaces<br><br>Total parking provided:<br>884 spaces |

| |
|---|
| **Exhibit A-6**<br>**Fisherman's Village – Waterside Improvements** |
| (attached) |

CASH & ASSOCIATES
Engineering and Architecture

Elliott H. Boone
Randy H. Mason
Waldo B. Simbol
Kerry M. Simpson

**Project: Fisherman's Village Redevelopment**
**Location: Marina del Rey, California**
**Applicant: Gold Coast Village, LLC**
**October 21, 2002**

**Preparer: Cash & Associates**

## PROJECT DESCRIPTIONS
## WATERSIDE IMPROVEMENTS
## DEMOLITION, DESIGN AND CONSTRUCTION PROCESSES

### Existing Boat Slip Removal Plan

Existing boat tenants will be relocated to other vacant slips within Marina del Rey areas. To the extent possible, the Gold Coast Village, LLC will assist existing tenants to secure other mooring arrangements at local marinas.

Fingers will first be disconnected from the mainwalks. This will be a manual operation. Small motorized construction boats will be used by crew members to access the various areas to be demolished, and tow the floating dock sections to a centralized staging location within the project boundary.

Bolts, nuts and other fasteners will be removed in order to disconnect the fingers from the mainwalks. Fasteners that can not be removed by conventional means, will be sawn-off as necessary. Care will be taken to prevent debris from falling into the bay and floating "debris catchers" will be deployed when falling debris is unavoidable.. Debris that may fall into the water will be promptly retrieved and disposed.

The fingers will then be floated to a common location along the seawall and then lifted out of the water by a landside crane. Dock elements will be cut into the largest possible elements capable of fitting into standard 40 cubic yard "drop bin" containers. Once full, these containers would be transported via truck to an approved landfill disposal site.

Soundings of the bay bottom will be taken after the demolition effort to assure that anticipated bottom contours have been maintained. Any foreign debris encountered will



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Mail: P.O. Box 2715, Huntington Beach, CA 92647-0715 • Web Site: www.cashassociates.com • A California Corporation

be removed to assure unobstructed navigability.

Based on the approach noted, the following number of truck trips are anticipated for transportation to an approved disposal site:

Total Project: 20 to 30 disposal trips. This number should be doubled to account for incoming trips.

Once a substantial quantity of fingers and mainwalks have been removed, extraction of concrete guide piles will commence. Piles will be pulled-out of the bay bottom utilizing clamping devices suspended by a floating crane. Once pulled, piles will be cut into smaller lengths capable of fitting into drop bins.

Although it is expected that all piles will be fully extracted utilizing this approach, there is always the possibility that a small quantity of piles may break at a depth making full extraction difficult or impossible. Under this scenario, piles would be cut off below the mud line at a depth technically feasible and acceptable to LA County Beaches and Harbors.

**Equipment and Crews Necessary for the Demolition Effort**

A Demolition Crew of 4 to 6 will be employed to remove the dock elements, move and stage the floating elements. Additionally, a crane operator & tender will be required to lift the elements out of the water.

The Demolition Crew will use up to 3 small motorized boats, and small mechanical/electrical tools such as drills, circular saws, saws-alls, impact and manual wrenches, etc.

Depending on the demolition and hauling rate, a second crew may be required during peak periods of work.

Demolition of piles: Equipment will include a crew of approximately 5 men, utilizing a barge that could range in size from 40ft by 40ft to approximately 30ft x 100ft, with mounted 50ton crane and a cargo barge of similar size for depositing the extracted piles. Sizes of these barges will vary depending on the contractor selected to provide the work.

Since this marina is at the mouth of the Main Channel, the importance of floating equipment occupying water space of the Main Channel is understood, but required for limited periods of time, in order to both demolish and install dock elements. For the most part, barges will not occupy the Main Channel for more that the initial few days of the mobilization effort, prior to starting the major work effort, and during work for dock

demolition. Once the demolition work begins, the crane barge will work itself into the envelope of the existing marina. Once inside, the crane and cargo barges will occupy spaces within the envelope of the existing marina and not extend into access channels, except for the extraction of existing piles on the outside perimeter of the marina.. This perimeter work should only be for short periods of time. Any Main Channel work must be coordinated with both the County of Los Angeles Beaches & Harbors department, as well as the Coast Guard.

It is expected that piles can be removed at a rate of 6 to 10 piles per day. Navigational aids, bouys and lights will be installed, as per US Coast Guard requirements, to assure safe access within all channels during the construction process. At this extraction rate, it would be expected that a barge may take no more than one week of intermittent access into the Main Channel for this effort.

**Mitigation Measures to Limit Turbidity During Pile Removal**

Demolition of floating boat slips will not contribute to turbidity in the bay. Removal of piles may contribute to turbidity in the bay. Acceptable State of California procedures to limit turbidity in the bay, caused by pile removal, include the use of floating siltation curtains. These curtains are employed around the work area and reduce and/or prevent the turbulence from crossing the curtains into the navigation channels or other marina areas. Such curtains will be employed if deemed necessary.

**Design, Construction Technique and Manpower for Dock & Waterfront Improvements**

**Phasing:** The dock installation for complete replacement of the marina in a single phase will take approximately 4.0 to 5.0 months to both demo and install the new dock system. If the project is divided into 2 Phases, each phase would require 2.5 to 3.5 months per phase to complete.

**Dock System:** A proprietary or custom-built dock system has not yet been selected for this project. Both quality concrete and wood and/or composite dock systems are being considered at this time. Based on the geometry of the dock curvature around the main Promenade, truly curved dock systems are normally restricted to glu-laminated wood dock systems, in order to create the necessary curvature. If a series of straight sections of dock, angled together, is desired, then concrete dock systems would be feasible for this system, as well. All fingers in the dock system will be designed to resist twist due to wind and wave action imposed by the vessels, as well as live and dead loads on the system.

Double-wide slips are proposed for this facility. Many of these slips accommodate large boats (ie; 50ft or longer). Fingers supporting these boats will be design to support the imposed loads. Additional piles and large internal

framing is anticipated. Double-wide slips for this commercial facility allows for the maximum flexibility for use and leasing purposes.

**Dock Slip Count and Lineal Footage:** Based on the marina layout proposed, the following boat count is provided: 41 vessels ranging in size from 32 foot to 72 foot long, with the average size boat in the 60 foot class. This boat mix design is similar to the existing boat mix, with the addition of two large vessel docks. These two large vessels (in the 110 to 130 foot class) are provided at the north end of the marina, along with a transient dock approximately 60 ft long, as well as a 35ft water taxi slip and temporary slip space for 10 to 15 dinghy craft in the center of the marina, that allow existing Marina del Rey boating tenants to navigate to Fisherman's Village to utilize the proposed restaurants.

**Utility systems** will be designed using current Plumbing, Fire and Electric codes. A fire protection system composed of fire cabinets, wet standpipes, FDC's and landside hydrants will be designed and installed. The water system will be designed to accommodate the boater's use of hose bibbs and the other commercial uses of water in the marina. No less than 30amp, 120v power will be provided to the various slips. Larger vessels will be supplied with 50amp, 120v/240v power receptacles, with the large cruise vessel slips requiring a variety of power which may include 100amp receptacles. One transient dock will be provided for temporary mooring as well as for sewage pumpout . A peristaltic pump system for this sewage pumpout facility is being considered. The dock system will also be design to accommodate the sewage pumpout system already made part of the cruise vessels. A connection will be provided in the dock that allows the direct pumping of sewage from these large vessels, into the County sewage system on land.

**Access Systems:** The docks will be accessed by both standard and ADA-compliant gangway systems. Gangways will be aluminum, truss-style systems. These gangways will be supported by platforms (concrete piles and deck) that extend over the seawall. All piles required for these platforms will be installed beyond the 10 foot easement space established by the County. At the current time, Federal Guidelines (Sept. 3, 2002) are being used for the planning of these ADA access systems. It is assumed that these new guidelines will become County policy by the time of this marina's design and installation.

**Circular Promenade Platforms:** Several circular platforms are proposed as part of the landside development plan. By the nature of these elements, these platforms will extend over the existing seawall, as well as occupy space within the 10 foot easement in front of the existing wall. Our team will work closely with County Public Works personnel to develop a design for these platforms that is both architecturally appealing, as well as allowing for disassembly for potential maintenance of the seawall. It is anticipated that concrete piles will support a concrete girder system, with drop-in concrete panels providing the foundation of the walking surface. These drop-in panels would be designed

with lifting lugs that would allow removal, in case that seawall maintenance was required.

**Dock Manufacture and Installation:** All dock floatation elements will be pre-manufactured offsite by a select list of fabricators having 5 years or more experience in the construction of floating docks. Elements will be trucked to a staging yard within Marina del Rey Harbor, where access to the water's edge is available. This could occur on the development parcel, at the nearby launch ramp, or at boat yards.

A crane will lift the dock modules from flatbed trucks and set them in the water. Several dock sections would be temporarily connected together in raft fashion, and then towed to the construction site via work boats. This operation is a 4 to 5 man crew effort.

Docks will then be assembled in-place in the basin. Temporary alignment piles would be surveyed and then driven to properly locate the dock system in place. Once sufficient elements of the dock system is assembled and located, a barge with crane and diesel hammer will be utilized to install the guide piles. Piles will be staged on a cargo barge located alongside the crane barge. Guide piles will be driven through openings in the dock system once the dock system has been positioned in place. Jetting of piles will not be allowed, unless specifically approved by local, state and federal governing agencies.

**Noise, Vibration and Exhaust:** Piles will be installed using conventional construction techniques. The installation of piles will create noise, vibration and diesel hammers will produce exhaust during the installation process. Noise, vibration and exhaust created by the pile driving effort can not be mitigated, except to the extent that the pile installation operation will be conducted during standard daily hours of construction; ie, 8:00am to 4:00pm. If approved by the various local, state and federal agencies, jetting of piles could be deployed for pile installation, which would greatly mitigate the noise, vibration and exhaust issues noted above, associated with pile installation. Pile jetting normally disturbs bay bottom sediments and emulsifies during the jetting process. This is not a desirable condition for harbor waters, as well, and is also a concern. This issue will be further discussed with LA County agency officials.

**Pile & Installation:** All piles will be prestressed concrete. Design of these piles will be based on recommendations of a soils consultant, based on the soils report to be provided, and will include loading based on established marina guidelines and practice.

It is expected that pile installation rates of up to 6 to 10 piles per day will be achieved. At these rates, the following time frames are expected for the pile driving effort: 1 to 2 weeks for the overall effort. If the project is installed in 2 overall phases, each phase would require 1 to 1.5 weeks of pile driving effort.

**Completed Dock Installation:** Once piles and docks are installed, utility systems would be routed and connected to utility stations at each slip. Accessories will then be installed such as dock boxes, cleats, rub strip, etc. At this time standard and ADA gangway access systems will be installed.

**Boat Slip Anchorage:** Boat slip anchorage will be via prestressed concrete guidepiles. Piles will be designed to resist all appropriate wind, wave and impact loads imposed on the dock system. State of California Department of Boating and Waterways Guidelines, latest edition, as well as Marina del Rey Design Standards, will be used in the design of all slip anchorage systems. Boats will be moored to slip fingers via cast metal mooring cleats.

At a minimum, all slip fingers 40 foot or longer will have at least one guidepile at the finger end. Piles will also be located strategically in headwalks, mainwalks and along endties as deemed necessary for safe berthing of vessels, and the resistance of lateral loads.

**Navigation in Adjacent Channels**

As previously noted, usage of the various channels during construction will be intermittent. Crane barge operations will occupy channel space for the removal or installation of piles, in any given area, for a couple of days and then move on to the next location. During periods of work involving perimeter pile removal and pile installation, crane barges may occupy up to 50 feet of space within the Main Channel. Permits for this utilization of the channel space will be obtained from both LA County of Beaches & Harbors and the US Coast Guard. Navigational aids meeting US Coast Guard specifications, will be installed to assure safe access for all boaters. All adjacent marinas, operated by others, will be kept in full operation during the entire construction period of this new marinas.

If there are any questions regarding this Dock System Description, please do not hesitate to contact me @ (714) 895-2072.

R. H. Mason

Randy H. Mason
Cash & Associates
Principal

Exhibit B

## Los Angeles Planning and Zoning Code Required Parking

| Parking Analysis Based on Table 4 - IPD Inc. Calculations | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Area of Restaurant | Area of Retail | Hotel Rooms | Ferry Terminal Site & Office | Use | Code Req. Parking | Spaces |
| Bldg. 1 | 6,224 | | | | El Torrito | Parking per County | 94.00 |
| | | | | | | | |
| | 3,130 | | | | Dining | 1,800 /15 x .33 = | 39.60 |
| | | | | | Kitchen | 1,330/200 x .33 = | 2.19 |
| | | | | | | | |
| Bldg. 2 | | 3,350 | | | Retail | 3,350 / 250 = | 13.40 |
| | | | | | | | |
| Bldg. 3 | 1,700 | | | | Foodcourt | 1,700 / 200 = | 8.50 |
| | | | | | | | |
| Bldg. 4 | | 8,700 | | | Retail | 8,700 / 250 = | 34.80 |
| | | | | | | | |
| | 5,500 | | | | Dining | 3,500 /15 x .33 = | 77.00 |
| | | | | | Kitchen | 2,000/200 x .33 = | 3.30 |
| | | | | | | | |
| Bldg. 5 | | 8,700 | | | Retail | 8,700 / 250 = | 34.80 |
| | | | | 4,000 | Offices | 4,000/400= | 10.00 |
| | | | | | | | |
| Bldg. 6 | 3,500 | | | | Dining | 2,000 /15 x .33 = | 44.00 |
| | | | | | Kitchen | 1,500/200 x .33 = | 2.48 |
| | | | | | | | |
| | | 3,500 | | | Retail | 3,500 / 250 = | 14.00 |
| | | | | | | | |
| Bldg. 7 | 2,146 | | | | Dining | 1,146 / 15 x .33 = | 25.21 |
| | | | | | Kitchen | 1,000 / 200 x .33 = | 1.65 |
| | | | | | | | |
| | | 3,500 | | | Retail | 3,500 / 250 = | 14.00 |
| | | | | | | | |
| Bldg. 8 | | 1,400 | | | Retail | 1,400 / 250 = | 5.60 |
| | | | | | | | |
| | 1,400 | | | | Dining | 800 / 15 x .33 = | 17.59 |
| | | | | | Kitchen | 600 / 200 x .33 = | 0.99 |
| | | | | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Bldg 6, 7&8** | | | 132 Rm. Hotel | | | 132 / 2 = | 66.00 |
| | | | | | | | |
| **Bldg. 9** | 9,000 | | | | Dining | 5,000 / 15 /.33 = | 109.90 |
| | | | | | Kitchen | 4,000 / 200 x .33 = | 7.42 |
| | | | | | | | |
| **Outdoor Dining** | | | | | Dining | 4,500/15X.33= | 100.00 |
| | | | | | | | |
| **Shanghai Red** | | | | | | Per County | 94.00 |
| | | | | | | | |
| **Total** | **32,600** | **29,150** | | **4,000** | | | **820.43** |

## Proposed Building Areas - by use

| | | |
|---|---|---|
| A. Retail | : | 29,150 sq.ft. |
| B. Restaurants | : | 26,376 sq.ft. |
| C. Ferry Terminal site & Office | : | 4,000 sq.ft. |
| D. El Torito | : | 6,224 sq.ft. |
| **Sub Total** | : | **65,750 sq.ft.** |

**Total Building Area**
65,750 (Retail, Rest, etc.)+ 60,500(Hotel) : **126,250 sq.ft.**

## Parking Required

| | | |
|---|---|---|
| Parking Required Based on Table-A | : | 820.43 Spaces |
| Parking Req'd only for Boaters who are tenants of Fisherman's Village | : | 245 Spaces |
| **Total Parking Required** | : | **1065.43 Spaces** |

## Parking Provided

**Total Grade Parking, Subteranean & Parking Structure Provided=** : **846 Spaces**

Note: The Developer will submit a detailed shared -parking study with the project zoning application substantiating the number of on-site parking spaces proposed. Said study will demonstrate that , while the proposed development does not provide the amount of parking spaces required by the County Zoning Code, it will provide sufficient on-site parking to meet anticipated parking demands for the site's uses.

## EXHIBIT C

## ASSIGNMENT STANDARDS

These standards are to apply to proposed transactions requiring County's consent pursuant to Section 11.2 of the Lease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing of the parcel by an encumbrance holder approved by County, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by an approved lender, or (c) the first transfer by that encumbrance holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

1. The proposed lessee and Major Sublessee (if applicable) must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County for the most recent fiscal). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth or similar security satisfactory to the County may be substituted for the net worth requirement. If the proposed transferee's net worth is materially less than the transferor's, County may disapprove the assignment or require additional security such as that described in the previous sentence.

2. The proposed lessee (or Major Sublessee, if applicable) must have significant experience in the construction (if contemplated), operation and management of the type(s) of Improvements existing on or to be constructed on the Premises, or provide evidence of contractual arrangements for these services with providers of such services satisfactory to the County. Changes in the providers of such services and changes to the contractual arrangements must be approved by the County. All approvals of the County will not be unreasonably withheld or delayed.

3. The individual or individuals who will acquire Lessee's interest in this Lease or the Premises, or own the entity which will so acquire Lessee's interest, irrespective of the tier at which individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (1) discriminatory employment practices which violate any federal, state or local law; or (2) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of the County.

4. The price to be paid in connection with the transaction shall not result in a financing obligation which jeopardizes the Lessee's (or Major Sublessee's) ability to meet its rental obligations under the Lease or the Major Sublease. Market debt service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.

5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the assignee must agree that) the County will have reasonable approval rights regarding any future direct or

indirect transfers of interests in the entity or the Lease as required under the Lease; provided however, that a transfer of ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to County approval.

6. The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Premises or any Improvements thereon.

7. The proposed transferee does not have interests which, when aggregated with all other interests granted by County to such transferee, would violate any policy formally adopted by County restricting the economic concentration of interests granted in the Marina del Rey area, which is uniformly applicable to all Marina del Rey lessees.

8. The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the County Department of Beaches and Harbors and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Marina del Rey.

# EXHIBIT D

## CONDITIONS TO COASTAL DEVELOPMENT PERMIT

# EXHIBIT E

## MINIMUM WATER QUALITY MANAGEMENT PROGRAM REQUIREMENTS

# EXHIBIT F

## EXISTING LEASE RENTAL RATES FOR COMMERCIAL DOCK FACILITIES

## EXHIBIT G

## PERMITTED CAPITAL EXPENDITURES

The purpose of the Capital Improvement Fund is be to provide funds for the cost of additions, replacements, renovations or upgrades of or to the Improvements on the Premises, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly increase the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Redevelopment Work. Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the buildings or their major systems in an ordinarily efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life. The Capital Improvement Fund shall not be used to fund any portion of the cost of the Redevelopment Work or the Subsequent Renovations, nor shall the Capital Improvement Fund be used for any Anchorage Facilities. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Lessee.

Subject to the foregoing, set forth below is a list of examples of elements, systems or categories of Improvements for which Permitted Capital Expenditures may be made. The Capital Improvement Fund shall not be used for the repair or replacement of an individual or a selected group of individual items, unless such repair or replacement is part of a larger plan (which may be a phased plan) of repair or replacement of all, or substantially all, similar items.

1. Painting of the building exterior*
2. Walkways and driveway replacement* (if asphalt, a minimum of resurfacing, not slurry seal)
3. Windows replacement*
4. Roof replacement* (may be on a building by building basis)
5. Elevators (replacement or addition)
6. HVAC replacement
7. Light fixtures replacement* (interior and exterior)
8. Irrigation system* (replacement or major addition)

* To qualify, these expenditures need to incorporate replacement or renovation of at least 70% of the items or facilities in question

Los Angeles County
Beaches & Harbors
Caring for Your Coast

*To enrich lives through effective and caring service*

**Stan Wisniewski**
Director

**Kerry Gottlieb**
Chief Deputy

December 8, 2005

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan W.

SUBJECT: **AGENDA ITEM 6a - ONGOING ACTIVITIES REPORT**

## BOARD OF SUPERVISORS ACTIONS ON ITEMS RELATING TO MARINA DEL REY

At its November 29, 2005 meeting, the Board of Supervisors approved and instructed the Chair to sign the amendment to agreement with the Marina del Rey Convention and Visitors Bureau (MdR CVB) to extend the term of the agreement for five years, effective January 1, 2006, cancelable upon 365-days' written notice. The amendment leaves all other terms of the current agreement intact, except that the County's funding to the MdR CVB may increase by up to $10,000 annually for each of the additional five years of operation under the agreement, for a potential cumulative additional annual County contribution of $50,000 in 2010.

This item was previously considered and recommended by your Commission.

## DESIGN CONTROL BOARD MINUTES

The draft minutes from the November 17, 2005 Design Control Board meeting are attached.

## LOCAL COASTAL PROGRAM PERIODIC REVIEW - UPDATE

As previously reported, consideration by the Coastal Commission of the Marina del Rey Local Coastal Program periodic review staff report has been delayed due to the impact of Hurricane Katrina on the lead staff person's family and other projects that have competed for her attention. We do not yet have definitive information regarding the date the matter will be scheduled for consideration by the Coastal Commission, but will advise your Commission once we receive word from the Coastal Commission of its proposed schedule.

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

## PARCEL 20 (CAPRI APARTMENTS) REQUEST FOR IN-LIEU FEE - UPDATE

On November 30, 2005, the Regional Planning Commission (RPC) reopened its continued hearing on the request by the lessee of Parcel 20 (Capri Apartments) to provide an in-lieu fee in substitution for required on-site affordable residential units. At the hearing, the lessee moved to withdraw its request, and the RPC accepted the withdrawal motion. The Coastal Development Permit (CDP) for the parcel requires that 10 units be set aside for senior (62 years of age and over) low income tenants, and the lessee indicated its intent to immediately comply with the provisions of its CDP relating to such affordable units.

SW:tm
Attachment

# DRAFT

**MINUTES**
**OF**
**MARINA DEL REY**
**DESIGN CONTROL BOARD**

**November 17, 2005**

**Department of Beaches and Harbors**
**Burton Chace County Park**
**Community Building – 13650 Mindanao Way**
**Marina del Rey, CA 90292**

| | |
|---|---|
| Members Present: | Susan Cloke, First District, Chair<br>David Abelar, Second District<br>Tony Wong, Fifth District |
| Members Absent: | Katherine Spitz, Third District, Vice-Chair<br>Peter Phinney, Fourth District |
| Department Staff Present: | Stan Wisniewski, Director<br>Roger Moliere, Deputy Director<br>Paul Wong, Chief<br>Julie Carpenter, Planner<br>LaTrina Perry, Secretary |
| County Staff Present: | Tom Faughnan, Principal Deputy County Counsel<br>Russ Fricano, Regional Planning Department |
| Guests Testifying: | Hans Etter, MdR resident<br>Thomas W. Henry, Pacifica Hotel Investors<br>Victoria Pakshong, Place Landscape<br>Greg Dallal, Caruso Affiliated<br>Pat Younis, Westchester/LAX/MdR Chamber of Commerce<br>Tim Riley, Marina del Rey Lessees Association<br>Dorothy Franklin, resident<br>Robert Colavolpe, F&A Architects<br>Rick Horner, resident<br>Isabel Sciommeri, Marina Harbor<br>Chris Polster, AKC Services<br>Laurie Pescoe, Café del Rey<br>Jan Gonet, Donet Designs |

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1. **Call to Order, Action on Absences and Pledge of Allegiance**
**Ms. Cloke called the meeting to order at 2:15 p.m. Mr. Abelar led the Pledge of Allegiance. Mr. Wong (Abelar) moved to excuse Ms. Spitz and Mr. Phinney from today's meeting.**

2. **Approval of Minutes of July 21, 2005, September 15, 2005, and October 20, 2005**
**Minutes for July 21, 2005, September 15, 2005, and October 20, 2005 were held for approval until the December 2005 DCB Meeting.** (Some of the commissioners at today's meeting were not at the meetings that were held in July, September, or October 2005.)

3. **Design Control Board Reviews**
**Ms. Cloke suggested staff place a standard note on all Design Control Board Reviews that should read "approved per the submitted plans" or "approved per the plans on file with the Department of Beaches and Harbors".**

   A. **Parcel 27 – Jamaica Bay Inn – DCB #05-020**
   Approval of the record of the DCB's October 2005 action for conditioned approval of major hotel renovations.

   B. **Parcel 62 – Sheriff's Department – DCB #05-024**
   Approval of the record of the DCB's October 2005 action for approval of one temporary banner for a six-month period.

   C. **Parcel 20 – Capri Apartments – DCB #05-025**
   Approval of the record of the DCB's October 2005 action for conditioned approval of one temporary banner for a six-month period.

   D. **Parcel 50 – Maison d'Optique at Waterside Marina – DCB 05-026**
   Approval of the record of the DCB's October 2005 action for approval of one sign. Staff will attach a photo to this review.

**All of the Design Control Board Reviews were held until the December 2005 meeting.**

4. **Old Business**

   A. **Parcel IR – Marina Beach Residence Inn – DCB #05-023**
   Reconsideration of a new 147-suite hotel.

   - Mr. Thomas Henry described the project including the two architectural themes (contemporary and Mediterranean) being proposed in response to the Board's previous comments. The public plaza access will be primarily through the center of the property, with secondary access at both ends of the property.

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- Mr. Henry explained the project has 63 public parking spaces at grade and 149 below grade that are card-key accessed, meeting Marriott's requirement of one parking space per guest room. The pool and outdoor interface with public areas will be enhanced by dropping the hearth to the ground floor or beach level area, which will provide a two-story space at that location. Mr. Henry stated they are looking for conceptual approval so they can move forward with the entitlement process.

- Mr. Robert Colavolpe gave a more detailed explanation of the architectural themes for the Board's review.

| **Contemporary Theme** | **Mediterranean Theme** |
|---|---|
| Pedestrian path | Pedestrian path |
| Simplified materials - more uniformity in color | Allows for different colors |
| Opened entrance to the stairwell | Stairwells are more decorative |
| Elevator | Elevator |
| Taller windows | Additional larger windows |
| Added more glass | Arches are at a lower level |
| Large cantilevered porte cochere | Allows for many moldings |
| Cantilevered balconies and glass rails | Some units have fireplaces |
| Brighter & updated architectural style | |

- Mr. Colavolpe advised either architectural scheme will fit into the environment of the Marina. The landscaping will vary slightly, depending upon the scheme that is chosen. The plaza deck has been cut so that the view corridor is enhanced. The bridge that was previously going to join the two buildings has been deleted from the project.

- Ms. Victoria Pakshong explained the primary concept of the landscape plan is to have a meandering path, symbolic of a river flowing down to the ocean, that draws the public from the street level to the ocean. The streetscape itself is complementary to the adjacent property, Jamaica Bay Inn, with some variation to allow for a planting pallet more conducive to the scheme of the buildings, which will not obstruct the view corridor. The streetscape would be planted with more grasses and native plants, and the entry plaza level would be planted with low grasses.

- Mr. Henry advised the same landscape firm is being used for the Marriott Residence Inn and the Jamaica Bay Inn, which is located next door to this project to foster complementary landscape.

Board Comments

- Ms. Cloke questioned the view of the view corridor.

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- Ms. Carpenter explained with the proposed reconfigured roadway, the new intersection of Via Marina and Admiralty Way would be at the view corridor portion of this project, with a view of Marina ("Mother's") Beach from the intersection.

- Mr. Henry advised one building at Jamaica Bay Inn has been eliminated to further enhance the view corridor.

- Ms. Cloke asked the applicant to explain the elevation changes throughout the project.

- Mr. Colavolpe explained there is approximately 10 to 12 feet of elevation change from Admiralty to the beach level. Meeting rooms, the hearth room and the pool are all at the lower level. In regards to the landscape plans, the property has been terraced down from the street against the building down to the beach level, so that the terracing matches the stairwell. At the pool level, there is approximately a 10 to 12 foot drop. At the stairs, there are about four sets of risers, each one containing about 2 ½ feet worth of terrace. The tread, which was made to be very gracious, is very gradual and low rising, no more than six inches.

- Ms. Cloke asked about the ADA access along this route.

- Mr. Colavolpe explained the ADA access is provided by the elevator, which can be found on the west side (Admiralty Way side) of the project. The elevator is above grade by approximately 10 feet.

- Ms. Cloke asked if the elevator is required to be in the path of travel.

- Mr. Henry explained to provide the required public access, the elevator must be placed in the public access area.

- Ms. Cloke asked if a ramp or series of ramps could be used instead of the elevator.

- Mr. Henry advised the ramps would take up more physical space, approximately 144 feet by 4 feet, plus switchbacks, to provide ADA access.

- Ms. Cloke explained the primary importance to the DCB is focusing on the public access to the beach. She was concerned that, driving up Via Marina, the building will block the view of the harbor and the grade change and elevator are not sending out the "public access message". The public access to the beach should be obvious. The Mediterranean scheme should have a more serious interpretation. The Contemporary scheme should include more shade/shadow and over-hangs.

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- Ms. Pakshong suggested relocating the elevator to the side of the building.

- Ms. Cloke asked if the parking lot could be redesigned to have trees in depressed or raised planters.

- Mr. Henry advised he would check into raised planters. Depressed planters would be difficult because of the 45 foot height level limitations and the structure that would be needed.

- Ms. Cloke suggested making the parking lot green would enhance the image of the hotel as well as the environment of the Marina.

- Mr. Henry agreed those suggestions could be integrated.

- Ms. Cloke suggested having an area near the beach edge where the public and guests can rent beach furniture.

- Mr. Henry advised there are patios off of the guest rooms that will have outdoor furnishings. There may be an opportunity to rent beach furniture, but it has not been explored.

- Ms. Cloke suggested opportunities for kayaking and other recreational water uses that should be taken into account now.

- Mr. Wisniewski advised that many of the concerns regarding recreational water uses have been addressed in the Marina ("Mother's") Beach Strategic Plan.

- Ms. Cloke explained she needs to see the public benefits from the hotel. She was concerned that the view corridor and grade change were not handled in the best way.

- Mr. Abelar suggested the hotel design relate to the beach and attract the public and be accessible.

- Mr. Wong preferred using a ramp for the project instead of an elevator and enhancing the landscaping along the parking area. Mr. Wong asked why the fan palms were replaced with date palms. He would like to see a view corridor analysis.

- Mr. Henry reiterated the ramp concept was investigated. The reason the elevator was chosen for the ADA access was because to make the grade differential, 144 linear feet of ramp would be needed, not including the landings. The site would be encompassed by back and forth ramps. This

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would take up most of the area in structural elements, rather than in landscaping.

- Ms. Cloke advised having a ramp is not mandatory, the project should make the public feel welcome and she asked how well the hotel connects to the beach. Ms. Cloke asked for the following items to be submitted to the Board by the applicant:
  - View analysis showing the current view and the view that would be offered by the proposed project.
  - Prepare drawings for the Board that will help explain the grade change and the public access.
  - Provide the elevation of the hotel from the beach.
  - Include opportunities to make the bottom beach portion attractive to and provide services for the beach-going public.
  - Provide more green in the parking lot.
  - Revise the river theme so that plants complement the theme or use drought tolerant plants, providing cohesiveness in the plant pallet.

Public Comments

- Mr. Hans Etter liked the Mediterranean theme for the project. He suggested the developer should look into the idea of beach furniture rentals. The bridge that was taken out would have been a nice idea. Mr. Etter also complained that disabled citizens seem to always get the short end of the stick and are not considered a priority, which is not a good idea. The public must know that they are welcome, have public access, and clear signage. There should also be a concierge in the hotel at all times.

- Ms. Dorothy Franklin was concerned about the proposed olive garden at the rear of Jamaica Bay Inn because of the herons. She was also concerned that all of the proposed new development is making the Marina congested.

- Ms. Pakshong advised Ms. Franklin that the proposed olive trees are fruitless.

- Mr. Rick Horner said that he is in favor of "responsible" development. Most times the development starts out for the community and then the community ends up getting pushed out. He also complained there is not enough public parking.

**Ms. Cloke (Abelar) moved to continue DCB #05-023. The applicant must provide the Board with an existing view corridor analysis, provide an explanation of the public access including the ADA access, provide a diagram or drawing showing the grade change, provide an elevation drawing from the beach and provide a conceptual explanation of amenities for beach-goers. This item is continued for three months or less at the applicant's discretion. Motion passed unanimously.**

- Ms. Cloke added, whatever theme is chosen, the architecture must be consistent.

- Ms. Cloke advised staff that she received a letter from the Marina del Rey Lessees Association in which they provided comments regarding Marina ("Mother's") Beach Strategic Plan.

- Mr. Wisniewski advised the Department received the same letter and it has been passed on to Keith Gurnee, RRM, to consider in the planning process.

- Mr. Wisniewski introduced Mr. Russell Fricano and advised the Board that Mr. Fricano would be attending all future DCB meetings.

**B.** **Parcels 111/112 – Marina Harbor – The Villa – DCB #05-013-C**
Consideration of three permanent banner flags, one permanent leasing office sign and 16 temporary pennant style signs.

- Ms. Isabel Sciommeri advised that a third pennant flag was requested due to the way the building is angled, because you are not able to view one of the signs on Via Marina.

Public Comments

- Mr. Etter was opposed to the pennant signage and colors and complained pennant signage does not belong in the Marina and adds to the sign pollution.

**Mr. Abelar (Wong) moved to approve DCB #05-013-C as amended. The permanent leasing sign was approved. The pennants and the three flags signs were approved for 45 days. Motion passed unanimously.**

**C.** **Marina ("Mother's") Beach Strategic Plan**
Consideration of scheduling a night meeting in January 2006. No project briefing was provided.

- Ms. Carpenter explained that the purpose of the night meeting was to allow greater attendance by Marina residents and increased public input.

**The meeting was tentatively scheduled for January 26, 2006 at 6:30 p.m. pending staff contacting Mr. Phinney.**

- Ms. Pat Younis advised the majority of the community would prefer a 6:30 p.m. start time.

- Mr. Etter advised staff to be sure to publish the meeting so that the public is aware of the meeting date and time.

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- Ms. Carpenter advised the meeting agendas are routinely posted at the Lloyd Taber-Marina del Rey Library, Beaches and Harbors Administration Building, the Marina del Rey Visitor Center and Burton Chace Park. She also added the agenda is normally published in the Argonaut paper and agendas are mailed to members of the public.

- Mr. Tim Riley advised the Board the Marina del Rey Lessees Association submitted a letter to the Department and asked for the status of a response to the letter. The Association would like to have the response, hopefully before the end of December 2005, before the January 2006 meeting.

- Mr. Roger Moliere responded and advised a number of the issues in the letter submitted have already been addressed. The Department is waiting for Mr. Gurnee's input. Mr. Moliere advised Mr. Riley that the Lessees Association should receive a response by early December 2005. The Board will also be copied on the response.

**5. New Business**

**A. Parcel 50 – Marmi at Waterside Marina – DCB #05-027**
Consideration of signage.

- Ms. Cloke asked what the hours of operation are for the business.

- Mr. Dallal responded the store will be open from 10:00 a.m. to 10:00 p.m. All signage lighting is on a house timer and should go off at the same time.

- Ms. Carpenter advised the Board the latest business open in the center is the California Pizza Kitchen (CPK), with the exception of Ralphs Market, which is open 24 hours. All the lights are on a timer. Friday and Saturday night, the timer would go off later than during the week.

Public Comments

- Mr. Etter liked the proposed sign.

**Ms. Cloke (Wong) moved to approve DCB #05-027 as submitted. Motion passed unanimously.**

**The Board directed staff to contact the lessee of the Waterside Center and request that it return to the Board with a more specific response to the issue of the timed signage lighting for the center.**

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**B. Parcel 131 – Café del Rey – DCB #05-028**
Consideration of new landscaping.

- Ms. Carpenter advised the Board that Commissioner Spitz informed her (1) Horsetails are extremely invasive and requested that metal barriers be used so they do not spread and (2) African Geraniums are not invasive. Ms. Carpenter also advised the Board that the proposed plant *Salvia mexicano* is probably the *Salvia lucanta.*

- Mr. Jan Gonet gave a brief explanation of the proposed landscape submittal. He also complimented Ms. Carpenter on assistance she provided.

- Ms. Cloke asked if the applicant looked at the possibility of adding anything in the parking lot itself.

Public Comments

- Hans Etter was glad the Board addressed the issue of invasive plants and questioned who would maintain the plants. Mr. Etter liked the idea of improving the parking lot.

Board Comments

- Mr. Abelar asked if there were plans for the parking lot and asked who would maintain the landscaping.

- Ms. Laurie Pescoe responded their first goal was to get approval for the landscaping. There are several bids out to resurface the parking lot, but they are not at that phase. There are numerous trees (about 40) that exist in the parking lot on separate islands that will remain and were not addressed in this request.

- Ms. Cloke advised, for future reference, the Board looks at sustainability issues, such as stormwater routing and creating planting areas in parking lots so that stormwater can be routed into them.

- Mr. Abelar asked if the bicycle rack would be replaced.

- Ms. Pesco responded "no".

**Mr. Wong (Abelar) moved to approve DCB #05-028 as submitted. The Department recommended APPROVAL with three CONDITIONS:**

1) **Use the seedless "Swan Hill" variety of olive tree;**
2) **Use the non-invasive species of Fountain Grass; and**
3) **Use metal barriers for Horsetail.**

**Motion passed unanimously.**

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C. **Parcel 97 – The UPS Store at Marina Beach Shopping Center – DCB #05-029**
Consideration of signage.

- Ms. Cloke asked to see actual sign materials and colors. These items were not submitted with the applicant's application.
- Mr. Polster tried to provide clarification on the color of both signs.
- Ms. Carpenter advised the applicant did provide color chips for the proposed signage and that the applicant was given a copy of the DCB Guidelines.
- Ms. Cloke asked if all the signs would be placed over the left edge of all the businesses in the shopping center.
- Ms. Carpenter responded this signage submittal is the first one for this particular shopping center. The lessee has been encouraged to submit groups of signage to your Board instead of one sign at a time.
- Ms. Cloke commented it is hard for the Board to decide on signage without knowing what the entire signage program will consist of, the pattern of location for the signs, and the consistency of all signs in the center.
- Ms. Carpenter provided a copy of the DCB-approved signage criteria for the center.

Public Comments
Mr. Etter complained it should not take the Board so long to approve one sign.

**Ms. Cloke (Abelar) moved to approve DCB #05-029 as amended. The sign must use the color "UPS brown" and be centered over the store opening. The proposed blade sign was continued until the applicant returned to the Board with more information for the sign. Motion passed unanimously.**

6. **Staff Reports**

A. Temporary Permits Issued by the Department
- This report was received and filed.

B. Ongoing Activities Report
- This report was discussed and filed.
- With respect to the Redevelopment Project Status Report, Mr. Moliere suggested and advised the Board that staff will include a color crosshatch depiction showing each of the projects that are completed as well as those under construction.

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Mr. Moliere introduced Mr. Paul Wong and advised he would be attending all future DCB meetings.

7. **Comments from the Public**

- Mr. Etter asked if a traffic study has ever been completed for the Special Events in the Marina. Regarding the LCP Periodic Review, Mr. Etter would like to know where he could get a copy of the report with the California Coastal Commission items that are being opposed.

- Ms. Franklin commented that she is delighted there will be an evening DCB meeting in January 2006. She suggested that every three months a night DCB meeting should be held. She was also concerned about the development of the Esprit Marina Apartments.

- Mr. Moliere responded to Ms. Franklin's concerns, advising the Coastal Development Permit that was issued over two years ago had not changed. The Esprit Apartments will have four levels of apartments over two levels of parking. He also advised Ms. Franklin she could review copies of the plans at the Department of Regional Planning.

- Mr. Etter was concerned about signage at the Capri Apartments. He complained that the illegal signs have not been taken down as directed by the Department. He suggested the Department follow up on enforcing the removal of illegal signage. Mr. Etter advised staff to use the general public input for ideas for the redevelopment of Marina ("Mother's") Beach.

- Ms. Cloke advised staff to look into the illegal signs at the Capri Apartments.

8. **Adjournment**

Meeting adjourned at 4:58 p.m.

Respectfully Submitted,

*La Trina H. Perry, Secretary*
*Design Control Board*