To enrich lives through effective and caring service

LOS ANGELES COUNTY
Department of Beaches & Harbors

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

February 7, 2008

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan Wisniewski

SUBJECT: **COMMISSION AGENDA** – February 13, 2008 Meeting

Enclosed is the Agenda for the February 13, 2008 meeting. Also enclosed are the minutes for your Commission's January 23, 2008 meeting. In addition, please find the reports related to Agenda Items 3a, 3b, 4a, 4b, 5a, and 6a.

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

SW:rf

Enclosures

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6315 • internet: http://marinadelrey.lacounty.gov

To enrich lives through effective and caring service

Los Angeles County
Department of Beaches & Harbors

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SMALL CRAFT HARBOR COMMISSION

AGENDA
February 13, 2008
9:30 a.m.

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

1. Call to Order and Pledge of Allegiance

2. Approval of Minutes: January 23, 2008 Meeting

3. **REGULAR REPORTS**

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

   b. Marina del Rey and Beach Special Events (PRESENTATION BY DUSTY CRANE, DIVISION CHIEF, COMMUNITY AND MARKETING SERVICES)

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

4. **OLD BUSINESS**

   a. Parcel 20 (Panay Way Marina) - Approval of Amendment No. 12 to Lease No. 6684 to Modify Redevelopment Work and Leasehold Area (RECOMMEND TO BOARD OF SUPERVISORS)

   b. Parcel 21 (Holiday Harbor) - Approval of Option for Amended and Restated Lease to Facilitate Redevelopment (RECOMMEND TO BOARD OF SUPERVISORS)

5. **NEW BUSINESS**

a. Parcel 47 (Santa Monica Windjammers Yacht Club) - Approval of Lease Agreement	(RECOMMEND TO BOARD OF SUPERVISORS)
b. 15 Minute Video Presentation Regarding January 2008 Coastal Commission Meeting	(PRESENTATION BY JOHN NAHHAS)

6. **STAFF REPORTS**

a. Ongoing Activities	(DISCUSS REPORT)
- Board Actions on Items Relating to Marina del Rey	
- Local Coastal Program Periodic Review – Update	
- Regional Planning Commission's Calendar	
- Discuss Foundation Allegation Regarding Parcel 12 (Esprit I)	(DISCUSS WITH REPRESENTATIVE FROM PUBLIC WORKS)
- Report on Boat Slips Coming Online and Offline	
- Report on Minimum Rent Payment for Parcels 12 & 15	

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://marinadelrey.lacounty.gov

   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.

ADA ACCOMMODATIONS: If you require reasonable accommodations or auxiliary aids and services such as material in alternate format or a sign language interpreter, please contact the ADA (Americans with Disabilities Act) Coordinator at (310) 305-9590 (Voice) or (310) 821-1734 (TDD).

SMALL CRAFT HARBOR COMMISSION
MINUTES
January 23, 2008

Commissioners Present
Harley Searcy, Chairman; Russ Lesser, Vice-Chairman; Vanessa Delgado, MPA

Commissioners Absent
Albert Landini, Ed.D; Christopher Chuang-Lin, PhD

Department of Beaches and Harbors
Stan Wisniewski, Director; Santos H. Kreimann, Deputy Director; Richard Volpert, County Consultant

County Staff
Thomas Faughnan, Principal Deputy County Counsel; Dusty Crane, Community and Marketing Division; Beverly Moore, MdR Convention and Visitors Bureau; Lt. Kusch and Deputy John Rochford from the Sheriff's Department

CALL TO ORDER, ACTION ON ABSENCES AND PLEDGE OF ALLEGIANCE

Chairman Searcy called the meeting to order at 9:40 a.m. The Commissioners, staff and members of the public stood and recited the Pledge of Allegiance.

Motion was made by Chairman Searcy and Seconded by Vice Chairman Lesser to accept the absences of Commissioners Landini and Lin. This motion was unanimously approved.

APPROVAL OF MINUTES

Chairman Searcy opened the floor to public comments.

John Nahhas submitted the following statement for inclusion in the December minutes: "The data brought to the SCHC reflects actual costs of what boaters are paying in Marina del Rey, and is at issue with the Department of Beaches and Harbors' survey."

Vice Chairman Lesser stated the December minutes should preface the comment made by John Rizzo with "In his opinion, the County is being defrauded.....", since not everyone believes the County is being defrauded.

A Motion was made by Chairman Searcy and Seconded by Commissioner Delgado to approve the December 2007 minutes as amended. This motion was unanimously approved.

REGULAR REPORTS

ITEM 3a: Marina Sheriff – Crime Statistics

Lt. Kusch reported an increase in boat burglaries, and advised boat owners to keep their boats locked. In addition, residential areas experienced burglaries, and residents were advised to keep doors and windows locked.

Deputy Rochford stated the Sheriff's Department is conducting an audit of the Sheriff's written records pertaining to liveaboard with the records of the dockmasters. Additional information will be available next month.

Vice Chairman Lesser commented there are many liveaboards without permits.

ITEM 3b: Marina del Rey and Beach Special Events

Dusty Crane commented this is the slow season, and preparation is underway for summer activities. Fisherman's Village has concerts every Saturday and Sunday.

ITEM 3c: Marina del Rey Convention and Visitors Bureau

Ms. Beverly Moore, Director of Marina del Rey Convention and Visitor's Bureau, explained the aggressive outreach to the travel media is paying big dividends. A business traveler magazine featured an article about Marina del Rey. The MdR CVB will be participating in a New York media blitz to promote Marina del Rey, and the 2008 Calendar of Events has been printed and is available for distribution.

4. Old Business

Chairman Searcy requested a report on Item 6a regarding the Local Coastal Program Periodic Review Update be taken out of turn and presented by staff.

Santos Kreimann, Deputy Director of the Department of Beaches and Harbors, made a presentation to the Small Craft Harbor Commission regarding the recommendations approved by the California Coastal Commission at its January 2008 meeting.

Chairman Searcy commented that SCHC deals with proprietary approval of projects only, and that the terms and conditions approved by the SCHC may be modified subject to the regulatory requirements.

Chairman Searcy opened the floor to public comments.

Nancy Marino stated the staff report on the Coastal Commission meeting was inaccurate. She also stated that unless there is an amendment to the LCP, all projects before the SCHC today violate the current LCP.

Chairman Searcy commented that all projects brought before the SCHC must proceed through the regulatory process and comply with any requirements that may be imposed by Regional Planning and/or the California Coastal Commission, including the need for a LCP Amendment.

Mr. Wisniewski agreed to post the formal findings adopted by the Coastal Commission on the Department web page once the information is made available.

David Delange commented that the Coastal Commission recognized that the community has not been listened to by the County and that the Board of Supervisors should take recommendations by the SCHC more seriously. He further commented on the findings made by the Coastal Commission on the reduction in boat slip size and count, protection of views, affordable housing, and ESHA.

Dan Gottlieb commented on the Coastal Commission's recommendation to protect mountain views in the marina.

Mr. John Nahhas commented on the findings by the Coastal Commission and expressed his desire to present a 15-minute video to the SCHC. He further commented on DBAW slip ratios, supply and demand of boat slips, ADA compliance, restrooms on the docks, and a community planning process.

Mr. David Barish commented that the data and methodology contained in the 2001 Williams-Kubelbeck study is faulty. In addition, the County needs to work with the community regarding development.

Mr. Wisniewski stated the 2004 Williams-Kubelbeck report is available to the public for review.

Ms. Ina Barish spoke about the significance of a 'comprehensive update' to the LCP, rather than simply preparing amendments piecemeal.

Mr. David Ewing spoke about how large buildings hinder sailing and commented about the duel roles of the County as owner of the marina and representative of the users.

ITEM 4.a: Parcel 21 (Holiday Harbor) – Approval of Option for Amended and Restated Lease to Facilitate Redevelopment

Mr. Kreimann provided a description of the proposed project.

Vice Chairman Lesser commented that approval by the SCHC lends a level of respectability to a project. He expressed concern on the extent of slip reduction of this project.

Mr. Kreimann commented the slip reduction was necessitated by a number of factors and enumerated the slips reduced by each factor.

Commissioner Delgado asked what happens to the boats in the slips lost due to redevelopment.

Mr. Wisniewski responded the Department encourages lessees to offer slips to existing tenants, however, in this case the tenants will have to find a different anchorage.

Chairman Searcy commented there should be a proactive program for prior tenants to return to an anchorage once construction is completed.

Chairman Searcy opened the floor to public comments.

Ms. Andrus commented on parking and suggested widening the double slips rather than eliminating them.

Mr. Nahhas questioned the need to make every slip ADA-compliant and suggested the number of slips lost due to creation of a pump out station and other factors is excessive.

Ms. Marino commented on Parcels 20 and 21, and stated the scoping meeting was inappropriately noticed.

Mr. Gottlieb commented on the distance of the replacement parking from Parcel 21 to Parcel OT.

Mr. Wisniewski commented there is a benefit to moving the unused parking spaces from Parcel OT to Parcel 21, as it provides greater accessibility to Mother's Beach.

Mr. Barish commented that moving parking from Parcel OT to Parcel 21 will require an LCP amendment, and opined the County looks more like a developer than the government. He further stated the lease option should be denied.

Chairman Searcy asked if an LCP amendment can be applied to a specific parcel if there isn't a development concept before them.

Mr. Faughnan responded the County can propose an LCP Amendment without having an actual project. However, the County would have to fund all related costs instead of shifting the costs to the developers, as is currently the procedure.

Mr. Sherm Gardner, representing the lessee, addressed the reduction in boat slips in the current development plan. He stated that about 56% of the proposed slips will be 35 feet and under, and that a report submitted to the County in August showed 7% or 8% vacancy in slips 35 feet and under. During 2007, there was a 16% vacancy factor in slips 35 feet and under. The trend is changing, and the lessee would like to accommodate everyone. However, the small boater has the ability to store their boat out of the water. In addition, the slips on Parcel 21 are old and need to be replaced.

Vice Chairman Lesser made a motion to continue Items 4a and 4b to the next meeting and requested drawings, as well as what LCP Amendments are required, seconded by Chairman Searcy. This motion was unanimously approved.

5. NEW BUSINESS

ITEM 5a: Parcel 10R (Neptune) and Parcel FF (Parking Lot 12) - Approval of Option to Amend Lease Agreement and Lease Option Agreement to Facilitate Redevelopment

Chairman Searcy opened the floor to public comments.

Mr. Delange spoke about the implication of the Coastal Commission proceedings for this project and affordable housing.

Mr. Volpert, outside Counsel for the County, explained the required affordable units are all onsite.

Mr. Wisniewski explained the County is underwriting the cost of affordable housing, since developers can no longer pay an in-lieu fee and County rent is reduced. Parcel FF is a parking lot on open space, which entitlement will be moved to allow the development of a wetland park and the developer will fund half of the cost and a pro-rata share of the cost to replace 103 parking spaces.

Ms. Marino commented the developer is paying an in-lieu fee for the open space, the existing LCP contemplates a public park on Parcel FF and a comprehensive EIR must be completed prior to approval of new projects.

Ms. Andrus commented on transient slips, a retirement hotel, and residential housing.

Ms. Barish commented that piecemealing through the process will have a negative impact, and the County should prepare a comprehensive LCP amendment.

Mr. Nahhas stated a need for community involvement and recreational boating.

Mr. Barish spoke about many projects requiring LCP amendments.

Mr. Gottlieb pointed out the County's redevelopment map has errors.

Chairman Searcy made a motion to approve, Seconded by Vice Chairman Lesser. The motion was unanimously approved.

ITEM 5b: Election of Officers

The election of Commission officers is required every January to elect a Chair and Vice Chair.

Chairman Searcy stated he will not continue as the Chair due to personal business, and opened the floor for nominations.

Commissioner Delgado nominated Vice Chairman Lesser for Chairman, Seconded by Chairman Searcy.

Chairman Searcy nominated Commissioner Delgado for Vice Chairman, Seconded by Vice Chairman Lessor.

Chairman Searcy opened the floor to public comments.

Mr. Nahhas commended Chairman Searcy on his community involvement and acknowledged a difference of opinion.

Ms. Marino stated all five Commissioners should be present to elect a new Chairman, and asked this item be continued until all five Commissioners are able to vote.

Chairman Searcy asked County Counsel if it is proper to proceed with a quorum.

Mr. Faughnan replied there is currently a quorum, and voting can proceed as long as there are three votes.

Chairman Searcy: **There is a motion on the floor, it has been moved and seconded for Mr. Russ Lesser to serve as the Chairman for the upcoming year. The motion was unanimously approved.**

Chairman Searcy: **There is separate motion on the floor for Commissioner Delgado to serve as Vice Chair for the upcoming year. The motion was unanimously approved.**

Mr. Wisniewski read a letter and presented a certificate to Chairman Searcy commending him on his service to the community of Marina del Rey.

Item 6a: Ongoing Activities

Chairman Searcy opened the floor to public comments.

Ms. Dorothy Franklin disputed the Department of Public Work's finding that there is no water in the garage area and that the Esprit I building is not sinking. Ms. Franklin also commented on the Coastal Commission's January 2008 meeting.

Chairman Searcy directed reports for Item 6a be received and filed.

Chairman Searcy opened the floor again to public comments.

Mr. Bill Vreszk commented on the social impact of eminent domain eviction.

Mr. John Rizzo talked about parcel OT.

Mr. Delange commented on affordable housing and the analysis he co-authored.

Mr. Nahhas spoke about discussing boat slip data with the Department of Beaches and Harbors.

Vice Chairman Lesser asked for an agenda item to view Mr. Nahhas' fifteen minute video presentation.

Mr. Donald Klein commented on a letter he sent to the CEO of Almar Marina and clarified the content had no relation to slip rates. He also asked for a review of Esprit I and II and noted some of the parcels have been vacant for a long period of time.

Ms. Andrus asked for clarification on why Doug Ring is not paying minimum rent, and commented on liveaboards who are displaced during redevelopment projects.

Vice Chairman Lessor asked for a report, based on current projects, that describes when slips will be closing and when slips will be coming back online.

Ms. Marino commented on the dysfunctional public process, the impacts of development on middle and lower income people, engineered blight, and the public process.

ADJOURNMENT

Chairman Searcy adjourned the meeting at 1:52 p.m.

Respectfully submitted by:

R. L. Frisch on behalf of the Commission Secretary

MARINA DEL REY HARBOR ORDINANCE
SEAWORTHY & LIVEABOARD COMPLIANCE REPORT
2008

		December	January
Liveaboard Permits Issued (NEW)	1	1	
(RENEW)	6	5	
Total	7	6	
Notices to Comply Issued	0	0	

	Last Meeting	Present
Total Reported Liveaboards:	405	344
Total Current Liveaboard Permits Issued:	145	112
Total expired permits:	138	93
Total Reported Liveaboards without permits:	122	139

Total reported vessels docked in Marina del Rey Harbor: **4,690**

Percentage of vessels that are registered liveaboards: **7.3%**

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. (un-seaworthy vessel) in the months of July and August.

Number Of Impounded Vessels Demolished

To date, two hundred thirty-six (236) vessels have been removed from the marina for disposal, three (3) of those in 2008. Currently, three (3) vessels are awaiting disposal.

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LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
MARINA DEL REY STATION
PART I CRIMES-JANUARY 2008

	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	1									1
Robbery: Weapon	1						2	1	1	5
Robbery: Strong-Arm									1	1
Aggravated Assault	1					1	2		1	5
Burglary: Residence	2				1		8	10	5	26
Burglary: Other Structure	3							1	2	6
Grand Theft	11	3		2			4	1	5	26
Grand Theft Auto	7	1					1	2	2	13
Arson										0
Boat Theft										0
Vehicle Burglary	7	1			1		2	2	1	14
Boat Burglary	1	3								4
Petty Theft	6	3							1	10
REPORTING DISTRICTS TOTALS	**40**	**11**	**0**	**2**	**2**	**1**	**19**	**17**	**19**	**111**

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

Source- LARCIS, **Date Prepared –FEBRUARY 4, 2008**
CRIME INFORMATION REPORT - OPTION B

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

MARINA DEL REY STATION

PART I CRIMES-JANUARY 2008

Part I Crimes	MARINA AREA (RD'S 2760-2763)	EAST END (RD'S 2764-2768)
Homicide	0	0
Rape	1	0
Robbery: Weapon	1	4
Robbery: Strong-Arm	0	1
Aggravated Assault	1	4
Burglary: Residence	2	24
Burglary: Other Structure	3	3
Grand Theft	16	10
Grand Theft Auto	8	5
Arson	0	0
Boat Theft	0	0
Vehicle Burglary	8	6
Boat Burglary	4	0
Petty Theft	9	1
Total	53	58

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

Source- LARCIS, **Date Prepared –FEBRUARY 4, 2008**
CRIME INFORMATION REPORT - OPTION B

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

MARINA DEL REY STATION

PART I CRIMES- JANUARY 2008

Community Advisory Committee	Upper Ladera 2764	Lower Ladera 2766
Homicide	0	0
Rape	0	0
Robbery: Weapon	0	2
Robbery: Strong-Arm	0	0
Aggravated Assault	0	2
Burglary: Residence	1	8
Burglary: Other Structure	0	0
Grand Theft	0	4
Grand Theft Auto	0	1
Arson	0	0
Boat Theft	0	0
Vehicle Burglary	1	2
Boat Burglary	0	0
Petty Theft	0	0
Total	**2**	**19**

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

Source- LARCIS, **Date Prepared FEBRUARY 4, 2008**
CRIME INFORMATION REPORT - OPTION B

To enrich lives through effective and caring service

Los Angeles County
Department of Beaches & Harbors

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

February 7, 2008

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan Wisniewski

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

MARINA DEL REY

FISHERMAN'S VILLAGE WEEKEND CONCERTS
Sponsored by Pacific Ocean Management, LLC
Concerts are from 1:00 p.m. - 4:00 p.m.

Saturday, February 9
Floyd & the Fly Boys (Soul Review)

Sunday, February 10
2 Azz 1 Body & Soul Band (Smooth Jazz, Saxophone & Vocals)

Saturday, February 16
Spare Time (Smooth Jazz)

Sunday, February 17
Susie Hansen Latin Jazz Band (Hot Latin Jazz)

Saturday, February 23
Chris "Hammer" Smith Band (Harmonica Blues & Jazz)

Sunday, February 24
Moondance (Big Band Swing)

For more information call: Pacific Ocean Management at (310) 822-6866.

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BEACH EVENTS

HERMOSA BEACH
56TH ANNUAL CENTENNIAL SAND & STRAND RACE
City of Hermosa Beach
Sunday, February 24, 7:00 a.m. – 1:00 a.m.

The 56th Annual Sand and Strand Run/Walk is a 55% sand and 45% strand race beginning on the north side of Hermosa Beach Pier at shoreline and finishing on the south side of the pier. All race proceeds benefit PROJECT Touch, a local non-profit group serving community youth and their families in the South Bay. Registration required. For a race application, please call (310) 379-5206 or (310) 318-0280.

For more information call: City of Hermosa Beach at (310) 318-0265.

SW:DC:cm

To enrich lives through effective and caring service

LOS ANGELES COUNTY
Department of Beaches & Harbors

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

February 7, 2008

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan Wisniewski

SUBJECT: ITEM 4a - APPROVAL OF AMENDMENT NO.12 TO LEASE NO. 6684 TO MODIFY REDEVELOPMENT WORK AND LEASEHOLD AREA – PARCEL 20 (PANAY WAY MARINA) - MARINA DEL REY

Item 4a on your agenda pertains to an amendment to the Parcel 20 lease (Panay Way Marina), relating to the use and development of a portion of Parcel 20. Attached is a copy of the Board letter that explains the details of the proposed amendment, including the need for the lessee to pursue a Local Coastal Program (LCP) Amendment to change the land use designation from Marine Commercial Water to Public Facility should the County exercise its Option to construct an Administration Building on a portion of Parcel 20 and a development permit modification to move the yacht club and marine commercial from Parcel 20 to Parcel 21. The exhibit to the Board letter includes a copy of the proposed Amendment and a Memorandum of Lease Amendment.Your Commission's endorsement of the Chief Executive Officer's recommendation to the Board of Supervisors as contained in the attached letter is requested.

SW:gb:ks
Attachment

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6315 • internet: http://marinadelrey.lacounty.gov

March 4, 2008

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:

DEPARTMENT OF BEACHES AND HARBORS: APPROVAL OF AMENDMENT NO. 12 TO LEASE NO. 6684 TO MODIFY REDEVELOPMENT WORK AND LEASEHOLD AREA ON PARCEL 20 (PANAY WAY MARINA) – MARINA DEL REY (FOURTH DISTRICT) (4 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed amendment to the Parcel 20 lease 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. Authorize the Chair to execute the attached Amendment No. 12 to Lease No. 6684 and the Memorandum of Lease Amendment with PANAY WAY MARINA, L.P., a California limited partnership, for the Parcel 20 lease in Marina del Rey, primarily relating to the use and development of a portion of Parcel 20 referred to herein as the Yacht Club Parcel.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The County is the lessor of a ground lease for Parcel 20, which was originally entered into in 1963 for a term of 60 years. On September 9, 2004, your Board executed an Amended and Restated Lease Agreement (Lease) extending the original expiration date of Lease No. 6684 for a term of 39 years with a new expiration date of December 31, 2061, and requiring the lessee, Panay Way Marina, L.P. (Lessee), to pay a $450,000 lease extension

fee and implement a redevelopment program to include construction of a new 99-unit apartment building, replacement of existing docks with new docks, and construction of a 6,885 square foot new commercial building for the existing yacht club (Pacific Mariners Yacht Club) and commercial sublessees and of a waterfront promenade. Lessee has since completed construction of the 99-unit apartment building and the waterfront promenade fronting the new apartments, as well as replaced the docks.

In 2005, Lessee and County engaged in negotiations to amend the Lease. At that time, Lessee desired to relocate the Pacific Mariners Yacht Club and commercial sublessees into the proposed redevelopment project on Parcel 21 to be developed by Lessee's affiliate. The County in turn desired to reacquire the portion of Parcel 20 originally intended for the commercial building for use as a new administration building (Administration Building) for the Department of Beaches and Harbors (Department). The parties, therefore, agreed to divide Parcel 20 into two parcels, one of which (reduced Parcel 20) would be retained by Lessee containing the newly constructed 99-unit apartment building, boat slips and the related parking and the other of which (referenced herein as the Yacht Club Parcel) would be returned to County.

Since that agreement was reached, circumstances have changed. The changed circumstances include, among others, that: a) the Department has selected a different site as its preferred alternative for its Administration Building; b) the Pacific Mariners Yacht Club is contemplating a merger with the Santa Monica Windjammers Yacht Club and a potential relocation to a larger facility in Chace Park to accommodate the merged entity; and c) the Lessee desires to retain the Yacht Club Parcel for redevelopment if the County decides not to utilize the Yacht Club Parcel for its Administration Building. However, the Department still desires to retain an option to reacquire the Yacht Club Parcel, while also protecting the tenancy of the Pacific Mariners Yacht Club, until final decisions are made both as to the location of the Department's Administration Building and as to Pacific Mariners Yacht Club's plans. The proposed Amendment No. 12 to Lease No. 6684 (Amendment) addresses the changed circumstances and competing interests as follows:

(1) The Amendment provides that the County has up to seven years to notify the Lessee that it intends to build the Department's Administration Building on the Yacht Club Parcel. Upon receipt of such notice, Lessee is required to demolish the existing yacht club facility and reconvey the Yacht Club Parcel to County. In the event of such reconveyance, the then current rent for Parcel 20 is not adjusted, except that future minimum rent is calculated based only upon the gross revenues generated from the portion of Parcel 20 retained by Lessee.

(2) The Amendment defers the demolition and redevelopment of the Yacht Club Parcel until the earliest of (i) County's notice of its intention to build the Department's Administration Building on the Yacht Club Parcel, (ii) approval of

plans by the Board and the California Coastal Commission for the construction of the Administration Building and yacht club facility at alternative sites, or (iii) seven years from the effective date of the Amendment. If the County does not exercise its right to reacquire the Yacht Club Parcel for the purpose of constructing the Administration Building on the Yacht Club Parcel, Lessee shall be required to redevelop the Yacht Club Parcel in accordance with a development plan acceptable to County and land use entitlements issued by applicable governmental authorities. Should Pacific Mariners Yacht Club determine not to merge with the Santa Monica Windjammers Yacht Club and/or not to relocate elsewhere, Lessee has the obligation to retain the yacht club at a location on either Parcel 20 or Parcel 21.

Economic Incentive if Pacific Mariners Yacht Club Relocates

Recognizing the economic benefit to Lessee if the Pacific Mariners Yacht Club relocates and Lessee is, thereby, relieved of its obligation to lease space to the yacht club, the Lessee has agreed in the Amendment to pay the County $800,000 if Pacific Mariners Yacht Club ceases for any reason to be a sublessee on either Parcel 20 or Parcel 21 within seven years from the effective date of the Amendment. If this occurs, the Department will recommend that the Board of Supervisors use the $800,000 to help fund the new expanded yacht club facility proposed for Chace Park.

The Amendment also amends certain other provisions of the Lease including: a) provision for parking and certain easements over Parcel 20 and the Yacht Club Parcel in the event the Yacht Club Parcel reverts back to the County; b) provisions pertaining to the use and development of the portion of the promenade located adjacent to the Yacht Club Parcel; and c) incorporation into the Parcel 20 Lease of updated lender protection provisions. The Amendment calls for Lessee and County to sign a Memorandum of Lease Amendment, in recordable form, following the effective date of the Amendment.

Implementation of Strategic Plan Goals

This recommendation furthers the County's Strategic Plan Goals of "Service Excellence" and "Fiscal Responsibility", as a new facility will be provided the Pacific Mariners Yacht Club, a priority use in the Marina, if it does not merge with the Santa Monica Windjammers Yacht Club or relocate elsewhere and the County has secured for its purposes at no cost a site for the Department's Administration Building if it is not able to be constructed at the preferred site.

FISCAL IMPACT/FINANCING

If the Department builds its Administration Building at the Yacht Club Parcel, the site will have been secured at no cost to the County. Additionally, if Pacific Mariners Yacht Club relocates to another location other than Parcels 20 or 21, the County will receive $800,000,

which the Department will recommend be used to fund the new expanded yacht club facility proposed for Chace Park.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Department is currently considering the southwest corner of Admiralty Way and Mindanao Way, the current site of the Visitors Center, as the preferred site for its Administration Building. This location would provide the County with a prominent location in the Marina and easier access for the public. However, it is uncertain whether the County will be able to obtain all necessary approvals for the construction of the Administration Building at this site. As a result, it is prudent for the County to retain an option for a reasonable period of time to reacquire the Yacht Club Parcel for the Department's new Administration Building. To the extent the County elects to exercise its Option to acquire the Yacht Club Parcel, , a Local Coastal Program (LCP) Amendment will be needed to change the land use designation from Marina Commercial Water to Public Facility. A development permit modification will also be needed to transfer the yacht club and marine commercial uses from Parcel 20 to Parcel 21.

Except for the provisions in the Amendment relating to the use and development of the Yacht Club Parcel, the economic incentive pertaining to the relocation of Pacific Mariners Yacht Club, and certain other provisions described above, all other terms of the Lease for Parcel 20 remain unchanged.

At its meeting of February 13, 2008, the Small Craft Harbor Commission _____ the recommendation to approve the Amendment and Memorandum of Amendment in the form attached. County Counsel has approved the documents as to form.

ENVIRONMENTAL DOCUMENTATION

The Amendment 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. Entering into the Amendment does not authorize construction or reconstruction of any improvements.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

No impact on current services is anticipated as a result of the Amendment.

CONCLUSION

Attached are three copies each of the Amendment and the Memorandum of Lease Amendment. Please have the Chair execute all copies and instruct the Executive Officer of the Board to acknowledge the Chair's signature. Return two executed copies of each document to the Department of Beaches and Harbors, along with a copy of the approved Board letter, retaining one executed copy of each document for your files.

Respectfully submitted,

William T Fujioka

SW:SK:GB:ks

Attachments (2)

c: County Counsel

Recording Requested by:

COUNTY OF LOS ANGELES

When Recorded Return to:

COUNTY OF LOS ANGELES
Office of County Counsel
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012
Attn: Thomas Faughnan, Esq.

FREE RECORDING
GOVERNMENT CODE SECTION 6103

_____SPACE ABOVE THIS LINE FOR RECORDING USE_____

MEMORANDUM OF LEASE AMENDMENT
PARCEL 20 — MARINA DEL REY

This Memorandum of Lease Amendment ("Memorandum") dated as of January ___, 2008 (the "Effective Amendment Date"), is entered by and between the COUNTY OF LOS ANGELES ("County"), as lessor, and PANAY WAY MARINA, L.P., a California limited partnership ("Lessee"), as lessee.

W I T N E S S E T H

WHEREAS, County and Lessee entered into Amended and Restated Lease No. 6684 dated September 9, 2004 (the "Lease") regarding the lease from County to Lessee of that certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 20 and which is more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises");

WHEREAS, a Memorandum of Amended and Restated Lease Agreement dated September 9, 2004 concerning the Lease was recorded in the Official Records of Los Angeles County, California on _____, 2004 as Instrument No. _____; and

WHEREAS, the portion of the Premises described on Exhibit B attached hereto and incorporated herein by this reference (the "Yacht Club Parcel") is currently improved with a commercial building described in Section 3.1 of the Lease as the "Existing Commercial Building" and other ancillary improvements;

WHEREAS, County and Lessee have entered into that certain Amendment No. 12 to Amended and Restated Lease No. 6684 dated of even date herewith (the "Amendment"), amending the Lease in certain respects, including without limitation, the documentation of the

parties' agreement with respect to certain matters pertaining to the current and future use and development of the Yacht Club Parcel and other portions of the Premises;

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, County and Lessee agree as follows:

1. Amendment. The purpose of this Memorandum is to provide notice of the Amendment. All of the terms and conditions of the Amendment are incorporated herein by reference as though set forth fully herein. In the event of any conflict between the terms hereof and the terms of the Amendment, the terms of the Amendment shall prevail. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Amendment. A true copy of the Amendment is on file in the offices of the County at Department of Beaches & Harbors, 13837 Fiji Way, Marina del Rey, California 90292.

2. Successors. Subject to the provisions of the Lease governing assignment, the rights and obligations created in the Lease, as modified by the Amendment, shall bind and inure to the benefit of the respective heirs, personal representatives, successors, grantees, and assigns of County and Lessee.

3. Counterparts. This Memorandum may be executed in counterparts, each of which shall be an original and all of which together shall constitute one fully-executed document.

SIGNATURES ON FOLLOWING PAGE

EXHIBIT A

LEGAL DESCRIPTION OF EXISTING PREMISES

Parcels 245 to 262 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.

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.

Subject to the public easement reserved by the County of Los Angeles in Section 15.19 of the Lease.

EXHIBIT B

LEGAL DESCRIPTION OF YACHT CLUB PARCEL

IN WITNESS WHEREOF, County and Lessee have entered into this Memorandum as of the date first set forth above.

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

PANAY WAY MARINA, L.P.,
a California limited partnership

By: _____
Jona Goldrich, as Trustee of the Goldrich Trust No. 1, a general partner

ATTEST:

SACHI HAMAI,
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: _____

AMENDMENT NO. 12 TO AMENDED AND RESTATED LEASE NO. 6684
PARCEL 20 – MARINA DEL REY SMALL CRAFT HARBOR

THIS AMENDMENT NO. 12 TO AMENDED AND RESTATED LEASE ("Amendment") is made and entered into this ___ day January, 2008 ("Effective Amendment Date") by and between COUNTY OF LOS ANGELES ("County") and PANAY WAY MARINA, L.P., a California limited partnership ("Lessee").

RECITALS

WHEREAS, the parties hereto or their predecessors in interest, on the 20th day of March, 1963 entered into Lease No. 6684, as amended and restated pursuant to that certain Amended and Restated Lease Agreement dated September 9, 2004 (as amended, the "Lease") under the terms of which County leased to Lessee that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, commonly known as Parcel 20, which leasehold premises (the "Premises") is more particularly described on Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, the portion of the Premises described on Exhibit "B" attached hereto (the "Yacht Club Parcel") is currently improved with a commercial building described in Section 3.1 of the Lease as the "Existing Commercial Building" and other ancillary improvements; and

WHEREAS, the Existing Commercial Building is currently occupied, in part, by Pacific Mariners Yacht Club (the "Yacht Club Sublessee") pursuant to a Sublease dated December 29, 1986 (as amended, the "Yacht Club Sublease"); and

WHEREAS, the parties desire to enter into this Amendment to document the parties' agreement with respect to certain matters pertaining to the current and future use and development of the Yacht Club Parcel and other portions of the Premises.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, and restrictions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, and each of them, agree as follows effective as of the Effective Amendment Date:

1. Capitalized Terms. All capitalized terms used in this Amendment and not otherwise defined herein shall have the same meanings given to such terms in the Lease.

2. Use and Development of Yacht Club Parcel.

2.1 Notwithstanding any contrary provision of Sections 3.1 and 5.1 of the Lease, but subject to Section 2.5 below, until a Trigger Event (as defined below) has occurred, (a) the Existing Commercial Building and other Improvements currently located on the Yacht Club Parcel shall not be demolished, (b) the Yacht Club Parcel shall not be redeveloped pursuant to Section 5.1 of the Lease, and (c) the Yacht Club Parcel

shall continue to be used by Lessee for the same yacht club and other ancillary purposes for which the Yacht Club Parcel is used as of the Effective Amendment Date. For purposes of this Amendment, "Trigger Event" means the occurrence of any of the following: (i) the occurrence of the seventh (7th) anniversary of the date of the approval by the Board of this Amendment; (ii) the plans (or amendments, replacements or other modifications thereof) are approved by the Board and the California Coastal Commission (including any required Local Coastal Plan amendments) to permit County to construct a Department administration building and yacht club facility at alternative sites; or (iii) written notice from County to Lessee that County requires possession of the Yacht Club Parcel for the development of a Department administration building thereon ("County Development Notice").

2.2 If the Trigger Event that is first to occur is either clause (i) or (ii) in Section 2.1 above, then upon the occurrence of such first Trigger Event, Lessee shall proceed with diligence to (a) perform all design work and obtain all final, non-appealable governmental permits and approvals required for the redevelopment of the Yacht Club Parcel with new improvements approved by Department and consistent with the land use entitlements for the Yacht Club Parcel as determined by County (in its governmental function, as opposed to proprietary function as lessor under this Lease), the California Coastal Commission and any other applicable governmental authority (collectively, the "Yacht Club Parcel Approvals"); and (b) upon receipt of all Yacht Club Parcel Approvals, to demolish the existing Improvements on the Yacht Club Parcel and construct new Improvements on the Yacht Club Parcel in accordance with the Yacht Club Parcel Approvals (the "Yacht Club Parcel Redevelopment Work"). Subject to Section 2.5 below, until the receipt by Lessee of the Yacht Club Parcel Approvals, Lessee shall continue to use the Yacht Club Parcel for the same yacht club and other ancillary purposes for which the Yacht Club Parcel is used as of the Effective Amendment Date. The Yacht Club Parcel Redevelopment Work shall constitute the "Redevelopment Work" under the Lease with respect to the Yacht Club Parcel and shall replace the New Commercial Building to have been constructed by Lessee on the Yacht Club Parcel under the Lease as part of the Redevelopment Work. Lessee shall be obligated to obtain the Yacht Club Parcel Approvals not later than eighteen (18) months following the date of the first Trigger Event (the "Required Yacht Club Parcel Approval Date"); provided, however, if Lessee has exercised its best diligent efforts to obtain the Yacht Club Parcel Approvals within such eighteen (18) month period, but is unable to do so, then Director shall have the right in the exercise of its reasonable discretion, to grant Lessee one or more extensions of the Required Yacht Club Parcel Approval Date, provided that in no event shall the Required Yacht Club Parcel Approval Date be extended beyond twenty-four (24) months following the date of the first Trigger Event. Lessee shall be obligated to cause the Substantial Commencement of Construction of the Yacht Club Parcel Redevelopment Work to occur not later than six (6) months after Lessee's receipt of the Yacht Club Parcel Approvals (for purposes of Section 5.7 of the Lease, the "Anticipated Commencement Date"), and shall cause the substantial completion of the Yacht Club Parcel Redevelopment Work to occur not later than twenty-four (24) months after Lessee's receipt of the Yacht Club Parcel Approvals (for purposes of Section 5.7 of the Lease, the "Anticipated Completion Date"). The terms and provisions of Section 5.7 of

the Lease shall be applicable to the construction of the Yacht Club Parcel Redevelopment Work, except that (1) the Yacht Club Parcel Redevelopment Work shall be considered as a "Phase" under such Section 5.7, (2) all references in Section 5.7 to the "New Commercial Building" shall be deemed replaced with the Yacht Club Parcel Redevelopment Work, and (3) the Anticipated Commencement Date and Anticipated Completion Date for the Yacht Club Parcel Redevelopment Work shall be as set forth in this Section 2.2. The design approval process for the Yacht Club Parcel Redevelopment Work shall proceed in accordance with the terms and provisions of Sections 5.2 through 5.4 of the Lease, and the terms and provisions of Sections 5.5, 5.6, 5.8, 5.9 and 5.12 of the Lease shall also be applicable to the Yacht Club Parcel Redevelopment Work.

2.3 If the Trigger Event that is first to occur is clause (iii) in Section 2.1 above, then effective as of the date selected by County in the County Development Notice as the "Yacht Club Parcel Termination Date", which date shall be not less than one hundred twenty (120) days nor more than one (1) year after the date of the County Development Notice, the Lease shall terminate with respect to the Yacht Club Parcel. On or prior to the Yacht Club Parcel Termination Date, Lessee shall demolish the Existing Commercial Building (if such building has not already been demolished pursuant to Section 2.5 below) and surrender possession of the Yacht Club Parcel to County in the condition required on the expiration or earlier termination of the Lease. For purposes of the immediately preceding sentence, County shall notify Lessee in the County Development Notice of whether County requires Lessee to remove all or any portion of the then remaining other Improvements located on the Yacht Club Parcel. The ownership of any Improvements that County does not require to be removed from the Yacht Club Parcel shall revert to County as of the Yacht Club Parcel Termination Date. On or prior to the Yacht Club Parcel Termination Date, Lessee shall demolish and remove all Improvements that Lessee is required to demolish hereunder, at Lessee's sole cost and expense, and surrender possession of the Yacht Club Parcel to County in the condition required under the Lease upon the expiration or earlier termination of the Lease. If Lessee fails to perform its obligations under this paragraph, then County shall have the right to perform such obligations on Lessee's behalf and charge Lessee the Actual Cost incurred by County in connection therewith. Subject to Lessee's obligations under this Section 2.3, effective on the Yacht Club Parcel Termination Date the Term of the Lease shall expire with respect to the Yacht Club Parcel and Lessee shall have no further rights or interest in the Yacht Club Parcel. There shall be no adjustment to the Annual Minimum Rent, Percentage Rent or Extension Fee payable under the Lease in the event of a termination of the Lease with respect to the Yacht Club Parcel; provided, however, for purposes of calculating the Annual Minimum Rent for periods effective on and after the first Adjustment Date that follows the Yacht Club Parcel Termination Date, all references in Article 4 of the Lease to the average total Annual Rent that was payable for periods preceding the period in which the then current Annual Rent is calculated shall mean and refer to the average total Annual Rent that was payable with respect to the remaining Premises under the Lease (excluding the Yacht Club Parcel). In the event of the termination of the Lease with respect to the Yacht Club Parcel, all references to yacht club, commercial office or other commercial uses or facilities in Sections 3.1, 3.3, 3.7 and 10.1 of the Lease shall be deemed deleted from the Lease, and Section 3.9 and Exhibit C

of the Lease also shall be deemed deleted from the Lease. If the Lease is terminated with respect to the Yacht Club Parcel pursuant to this Section 2.3, then at County's request County and Lessee shall execute an amendment to this Lease and Lessee shall execute a quitclaim deed with respect to the Yacht Club Parcel, to confirm the termination of the Lease with respect to the Yacht Club Parcel, and County and Lessee shall execute any other documents as reasonably necessary or appropriate to effectuate the termination of the Lease with respect to the Yacht Club Parcel; provided, however, that no failure to execute an amendment to this Lease or a quitclaim deed with respect to the Yacht Club Parcel shall have any effect upon the termination of the Lease with respect to the Yacht Club Parcel as set forth in this Section 2.3.

2.4 Lessee agrees to cooperate with any efforts by County to obtain all governmental approvals and entitlements for the development of a Department administration facility on the Yacht Club Parcel, and neither Lessee nor any of its affiliates shall object or take any action to interfere with the development of such facility.

2.5 If prior to the occurrence of a Trigger Event the Yacht Club Sublessee ceases to occupy space in the Existing Commercial Building, then upon written request by County, Lessee shall, at Lessee's sole cost and expense, demolish and remove the Existing Commercial Building and such other Improvements located on or under the Yacht Club Parcel as requested by County to be demolished and removed, and improve the Yacht Club Parcel as open space or as a surface parking lot, in accordance with plans and specifications approved by Department. Lessee shall complete the work described in this Section 2.5 within one hundred twenty (120) days after written request by County.

3. Yacht Club Payment. If within seven (7) years after the approval by the Board of this Amendment and the Parcel 21 Option (as defined in Section 4.2 below), a Payment Event (as defined below) occurs, then within thirty (30) days after the occurrence of the Payment Event, Lessee shall pay to County the sum of Eight Hundred Thousand Dollars ($800,000.00). For purposes hereof, a "Payment Event" shall mean (i) the Yacht Club Sublessee (or its successor or assign) relocates to a location other than the Premises or the Parcel 21 Premises (as defined in Section 4.2 below); (ii) the Yacht Club Sublessee (or its successor or assign) totally or substantially dissolves, disbands, closes for business or otherwise ceases operation at the Premises or the Parcel 21 Premises; (iii) the Yacht Club Sublessee (or its successor or assign) merges, consolidates, joins, or participates in a reorganization or reconstitution, with another entity, or forms a different entity, at a location other than the Premises or the Parcel 21 Premises; (iv) the Yacht Club Sublease terminates; or (v) the Yacht Club Sublessee (or its successor or assign) enters into an agreement to do any of the foregoing.

4. Restaurant Percentage Rent. The percentage set forth in category (j) of subsection 4.2.2 of the Lease is hereby changed from THREE AND ONE-HALF PERCENT (3.5%) to FOUR PERCENT (4%).

5. Surface Parking Area. The terms and provisions of this Section 5 shall be applicable only in the event that the Lease is terminated with respect to the Yacht Club Parcel pursuant to Section 2.3 above.

5.1 As of the Effective Amendment Date, the Premises includes a surface parking area (the "Surface Parking Area") located between the New Apartments and the Existing Commercial Building on the Yacht Club Parcel. Subject to the terms and provisions of this Section 5, the Surface Parking Area shall mean and include the entire surface parking area now or hereafter located between (a) the New Apartments, and (b) either the Existing Commercial Building or any building hereafter constructed in place of the Existing Commercial Building on the Yacht Club Parcel. If the Lease is terminated with respect to the Yacht Club Parcel, then County, in its capacity as fee owner of the Yacht Club Parcel, shall have the right to enlarge, reduce, eliminate or otherwise modify the portion of the Surface Parking Area located on the Yacht Club Parcel in connection with the development of a Department administration facility; provided, however, that prior to any termination of the right of Lessee to use the Surface Parking Area located on the Yacht Club Parcel pursuant to Section 5.2 below, no such modification of the portion of the Surface Parking Area located on the Yacht Club Parcel shall cause the remaining Premises under the Lease to be in violation of parking code requirements. The Surface Parking Area shall not include any subterranean or above-ground parking structure or covered parking hereafter constructed on the Yacht Club Parcel, nor any surface parking that is now or hereafter located to the East of the Existing Commercial Building or any building hereafter constructed on the Yacht Club Parcel in place of the Existing Commercial Building.

5.2 The Surface Parking Area is located partly on the Yacht Club Parcel and partly on the remaining portion of the Premises. The Surface Parking Area shall be used for parking purposes for the Anchorage Improvements located on the remaining portion of the Premises and the Improvements located (or to be located) on the Yacht Club Parcel. Lessee shall have the exclusive use of the portion of the Surface Parking Area located on the remaining portion of the Premises, subject to a non-exclusive appurtenant easement running in favor of the Yacht Club Parcel to use the entrances, exits and drive aisles located on the Surface Parking Area for access to and from Panay Way at the existing entrance/exit to the Surface Parking Area located immediately to the East of the New Apartments. The Lease of the remaining portion of the Premises to Lessee is expressly subject to the foregoing access easement. Lessee shall not make any modifications or alterations to the Surface Parking Area that interfere with such access. The portion of the Surface Parking Area that is located on the Yacht Club Parcel shall be used in common by both the Yacht Club Parcel and the remaining portion of the Premises. In the event that the Lease is terminated with respect to the Yacht Club Parcel, then effective as of such termination County grants Lessee, in its capacity as lessee of the remaining Premises, a non-exclusive easement for common parking purposes over the portion of the Surface Parking Area located on the Yacht Club Parcel, which common use shall be on a first-come, first-served unreserved basis, subject to the right of the County to designate for the exclusive use of the Yacht Club Parcel up to nine (9) parking stalls on the portion of the Surface Parking Area located on the Yacht Club Parcel, which exclusive parking stalls shall be located in an area or areas of the Yacht Club Parcel selected by County. Lessee's right to use the portion of the Surface Parking Area located on the Yacht Club Parcel shall also be subject to the right of County to use such area for

construction staging purposes in connection with the redevelopment of the Yacht Club Parcel, except that prior to the termination of the right of Lessee to use the Surface Parking Area located on the Yacht Club Parcel, no such construction staging use of the portion of the Surface Parking Area located on the Yacht Club Parcel shall cause the remaining portion of the Premises to be in violation of parking code requirements.

County and Lessee's affiliate, Holiday-Panay Way Marina, L.P. ("Parcel 21 Lessee"), as current lessee of Parcel No. 21 located adjacent to the Premises (the "Parcel 21 Premises"), are currently herewith entering into an Option to Amend Lease Agreement pursuant to which County has granted to the Parcel 21 Lessee an option to extend the term of the existing lease for the Parcel 21 Premises (the "Parcel 21 Option") for the purpose of facilitating the redevelopment of the Parcel 21 Premises. In connection with such redevelopment of the Parcel 21 Premises, it is contemplated that the parking facilities utilized to satisfy the parking requirements for the Anchorage Facilities located on the Premises will be relocated from the Surface Parking Area to new parking facilities to be constructed on the Parcel 21 Premises. Such redevelopment of the Parcel 21 Premises is contingent upon the satisfaction by the Parcel 21 Lessee of the conditions to the exercise of the Parcel 21 Option (including, without limitation, receipt of the necessary entitlements for the redevelopment of the Parcel 21 Premises and the acquisition of financing for such redevelopment), and the actual exercise of the Parcel 21 Option by the Parcel 21 Lessee (the "Parcel 21 Option Contingencies"). Lessee acknowledges that County has no obligation to Lessee with regard to the satisfaction of the Parcel 21 Option Contingencies. Lessee agrees to cooperate with County and the Parcel 21 Lessee in any efforts to obtain any and all governmental approvals that may be required for the relocation of the parking for the Anchorage Improvements from the Surface Parking Area to the Parcel 21 Premises. If the Parcel 21 Option Contingencies are satisfied, then the easement granted to Lessee in this Section 5.2 to use the portion of the Surface Parking Area located on the Yacht Club Parcel shall terminate upon the earlier of the substantial completion by the Parcel 21 Lessee of the replacement parking facilities to be located on the Parcel 21 Premises or the required date for such substantial completion set forth in the amended and restated lease for Parcel 21 to be executed by County and the Parcel 21 Lessee upon satisfaction of the Parcel 21 Option Contingencies.

5.3 Notwithstanding any termination of the Lease with respect to the Yacht Club Parcel, as long as Lessee retains any easement or other rights to use the portion of the Surface Parking Area located on the Yacht Club Parcel, (a) Lessee shall be responsible, at Lessee's sole cost and expense, for the repair and maintenance of the entire Surface Parking Area (including that portion located on the Yacht Club Parcel) in the condition required under Section 10.1 of the Lease, including without limitation, periodic repaving or slurry coating, and re-striping, as reasonably necessary; and (b) all of the Lessee's obligations under the Lease pertaining to insurance and indemnification shall apply to the entire Surface Parking Area as if such entire Surface Parking Area was a part of the Premises.

6. Promenade

6.1 Regardless of any termination of the Lease with respect to the Yacht Club Parcel, the Promenade described in Section 15.19 of the Lease shall be retained as part of the Premises, except as described in Section 6.2 below. Pursuant to Section 15.19 of the Lease, Lessee is required to complete certain improvements to the Promenade (referred to in Section 15.19 of the Lease as the "Promenade Work") as part of the Redevelopment Work, and to maintain and repair the Promenade during the Term of the Lease. As of the Effective Amendment Date, Lessee has completed certain portions of the Promenade Work located adjacent to the New Apartments. The remaining Promenade Work shall be performed by Lessee in accordance with the schedule set forth in Section 5.7 of the Lease.

6.2 The Existing Commercial Building located on the Yacht Club Parcel is located approximately twelve (12) feet from the bulkhead. However, upon the demolition of the Existing Commercial Building, the width of the Promenade shall be expanded by an additional approximately eight (8) feet such that the width of the Promenade in such area is twenty (20) feet. Only the existing twelve (12) foot width of the Promenade is included in the remaining portion of the Premises in the case of the termination of the Lease with respect to the Yacht Club Parcel. Upon the demolition of the Existing Commercial Building in connection with or following the termination of the Lease with respect to the Yacht Club Parcel, all of the obligations of Lessee under Section 15.19 of the Lease (including, without limitation, Lessee's obligations with respect to the Promenade Work and Lessee's obligations with respect to maintenance and repair of the Promenade) shall apply not only to the portion of the Promenade located on the remaining Premises, but also to the additional approximately eight (8) foot width of the expanded Promenade located on the Yacht Club Parcel as described above. Lessee shall perform such obligations at Lessee's sole cost and expense; provided, however, that County shall be responsible for any and all repairs required as a result of construction or other work performed by or on behalf of County on the Yacht Club Parcel following the termination of the Lease with respect to the Yacht Club Parcel (other than the required demolition by Lessee of the Existing Commercial Building and other Improvements on the Yacht Club Parcel), to the extent such repairs are necessary to restore the Promenade to the condition existing prior to any construction or other work (except with respect to the expansion of the Promenade as contemplated herein). The public easement described in Section 15.19 of the Lease shall apply to the entire width of the Promenade, as expanded.

6.3 If the Lease is terminated with respect to the Yacht Club Parcel, then Lessee is hereby granted an appurtenant easement over the portion of the Promenade to be located on the Yacht Club Parcel for the purpose of completing Lessee's construction of the Promenade Work on such portion of the Promenade and for the purpose of performing Lessee's maintenance and repair obligations under Section 15.19 of the Lease. If the Lease is terminated with respect to the Yacht Club Parcel, then all of the terms and provisions of the Lease applicable to Lessee's performance of the Promenade Work as part of the Redevelopment Work and Lessee's maintenance and

repair of the Promenade (including without limitation, Lessee's obligations with respect to insurance and indemnification) shall be equally applicable to the portion of the Promenade located on the Yacht Club Parcel as if such portion of the Promenade was located on the remaining portion of the Premises.

6.4 If the Lease is terminated with respect to the Yacht Club Parcel, then in connection with the demolition of the Existing Commercial Building on the Yacht Club Parcel and the construction of the Department administration facility, County reserves an appurtenant easement running in favor of the Yacht Club Parcel over the portion of the Promenade located adjacent to the Yacht Club Parcel for purposes of (a) construction staging, scaffolding and other construction purposes, and (b) subterranean footers, tie-backs and other subjacent and lateral support. If the Lease is terminated with respect to the Yacht Club Parcel, County also reserves an appurtenant easement running in favor of the Yacht Club Parcel over the portion of the Promenade located on the remaining Premises adjacent to the Yacht Club Parcel for purposes of pedestrian ingress and egress to and from the Yacht Club Parcel.

7. County Costs. Lessee shall promptly reimburse County for the Actual Costs incurred by County in the review, negotiation, preparation and documentation of this Amendment and the terms sheets and memoranda that preceded it. County shall deliver to Lessee a report detailing such expenditures within ninety (90) days after the Effective Amendment Date.

8. Encumbrances. Article 12 of the Lease is amended in full to read as follows:

"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 subsection 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 successors and assigns 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 any designee which has 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 permitted successors, assigns or designees shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease; provided, however, no successor, assign or designee of an Encumbrance Holder that is affiliated with Lessee or any person or entity with a direct or indirect ownership interest in Lessee shall be entitled to any of the rights or protections granted 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 Events. 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 to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days 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 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. In addition, no Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger the obligation to pay a Net Proceeds Share to County or any recapture right of County under subsection 11.2.4 of this Lease.

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 subsection 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 of this Lease.

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 subsection 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this subsection 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 Payments payable by Lessee under Section 2.2 of this Lease 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 subsection 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 work described in Sections 5.1 or 5.14 above (other than any obligations to make deposits into the Renovation 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

subsection 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 No Subordination. 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), 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 Renovations 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 Acceleration of Extension Fee. So long as (i) no Event of Default exists based on nonpayment of an individual Extension Payment payable by Lessee pursuant to Section 2.2. of this Lease (even if any other Event of Default exists that is not based on nonpayment of an individual Extension Payment), or (ii) if an Event of Default exists based on nonpayment of an individual Extension 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 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 Payments)."

9. Lessee's Notice Address. Section 15.10 of this Lease is amended to replace the notice address information of Lessee with the following:

LESSEE:	Panay Way Marina, L.P. c/o Goldrich & Kest Industries 5150 Overland Avenue Culver City, California 90230 Attention: Warren Breslow Phone: 310/204-2050 Fax: 310/204-1900
With a copy to:	Panay Way Marina, L.P. c/o Goldrich & Kest Industries 5150 Overland Avenue Culver City, California 90230 Attention: William Yerrick, General Counsel Phone: 310/280-5043 Fax: 310/280-5014

10. Anchorage Improvements. For the purpose of correcting an inadvertent error in Section 5.14 of the Lease, all references in Section 5.14 of the Lease to "Anchorage Facilities" are amended to read "Anchorage Improvements."

11. No Other Modifications. Except as herein specifically amended, all terms, conditions, and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and re-acknowledges its respective obligations under the Lease as amended hereby.

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

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment No. 12 to Amended and Restated Lease to be subscribed by the Chair of said Board and attested by its Executive Officer, and the Lessee has executed the same.

PANAY WAY MARINA, L.P.,
a California limited partnership

By: _____
Jena Goldrich, as Trustee of the Goldrich Trust No. 1, a general partner

COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

ATTEST:

SACHI HAMAI,
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

Parcels 245 to 262 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.

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.

Subject to the public easement reserved by the County of Los Angeles in Section 15.19 of the Lease.

EXHIBIT "B"

LEGAL DESCRIPTION OF YACHT CLUB PARCEL

To enrich lives through effective and caring service

Los Angeles County
Department of Beaches & Harbors

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

February 7, 2008

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan Wisniewski

SUBJECT: ITEM 4b – APPROVAL OF OPTION FOR AMENDED AND RESTATED LEASE TO FACILITATE REDEVELOPMENT – PARCEL 21 (HOLIDAY HARBOR) - MARINA DEL REY

Item 4b on your agenda pertains to an option to extend the Parcel 21 (Holiday Harbor) lease, in order to facilitate development of a new marina and a parking structure for 447 cars that also contains 29,000 square feet of commercial space. For your convenience, we have attached a copy of the Board letter that explains the details of the proposed transaction, including the need for the lessee to pursue a Local Coastal Program (LCP) amendment to relocate 94 public parking spaces from Parcel OT to Parcel 21, as well as a development permit modification to transfer the yacht club and marine commercial uses from Parcel 20 to Parcel 21. 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.

Additionally, as requested by your Commission, the lessee has submitted the attached set of plans showing the existing dock layout and the proposed new docks, as well as a drawing, Sheet 4, superimposing the proposed docks over the existing layout. Last month, our submission indicated that the new anchorage would have 87 slips, a reduction of 95 from the current 182 slips. However, the lessee has submitted a new dock plan reflecting that the new anchorage will have 103 slips, for a reduction of 79 slips. [Note that the lessee's calculation, as illustrated on the proposed plans, indicates the existing anchorage to consist of 148 slips, not 182 as we have presented, based on lessee's belief that each double slip should be counted as one slip rather than two slips.] In order to design this new configuration, the lessee has eliminated all slips considered to be large slips, including the existing ten 40-foot slips, opting instead to dedicate the entire marina to slips of 35 feet or less. The reduction of 79 slips is due to several factors, including: 1) having to meet new ADA dock standards; 2) the need to include a pump-out station on site; 3) correction of an incursion of the current

dock into the County's waters outside of the leased area; 4) elimination of outdated double wide slips; and 5) an increase in the average slip size of this marina.

While we recognize that the California Coastal Commission (CCC) at its January meeting included a recommendation as part of its periodic review of the Marina LCP to oppose any reduction in the number of slips sized under 34 feet, we are recommending approval of the option and lease extension agreement for Parcel 21 in order to conclude the proprietary phase of the development and allow the project to proceed to the regulatory phase, at which time the regulatory agencies including the CCC will evaluate the project, including the dock plan, on its merits.

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

SW:KS:SHK:PW:ks
Attachments

IMPROVEMENTS FOR HOLIDAY MARINA

PARCEL 21

MARINA DEL REY, CALIFORNIA

SHEET INDEX

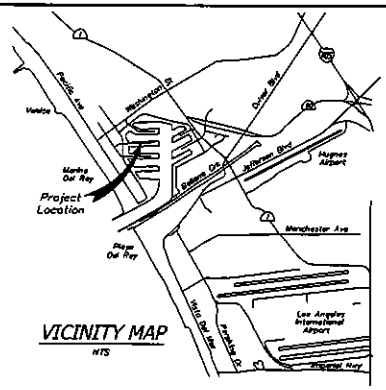
T-1	TITLE SHEET
L-1	EXISTING LAYOUT
L-2	PROPOSED LAYOUT
L-3	EXISTING VS PROPOSED LAYOUT

PROJECT DESCRIPTION:
REHABILITATION OF EXISTING MARINA.

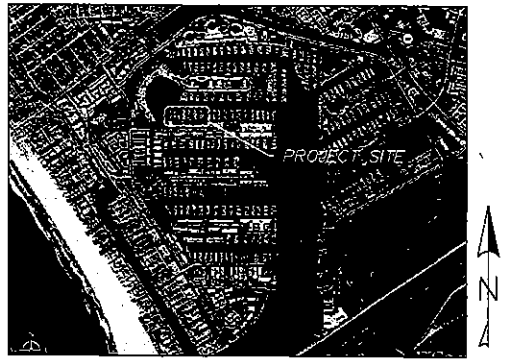
PROJECT ADDRESS:
HOLIDAY HARBOR MARINA
14025 PANAY WAY
MARINA DEL REY, CA 90292

CLIENT:
GOLDRICH & KEST
5150 OVERLAND AVE
CULVER CITY, CA 90230
TEL: (310) 280 - 5057
FAX: (310) 280 - 5014
CONTACT: FRANK HICKMAN

ENGINEER:
BLUEWATER DESIGN GROUP
2500 VIA CABRILLO MARINA, SUITE 200
SAN PEDRO, CA 90731
TEL: (310) 548 - 3132
FAX: (310) 548 - 924
CONTACT: TIM BAZLEY



VICINITY MAP
NTS



LOCATION MAP
NTS

GRAPHIC SCALE

STATUS	X

PROJECT
IMPROVEMENTS FOR HOLIDAY MARINA
PARCEL 21-MARINA DEL REY, CA

BLUEWATER Design Group
Planning and Engineering Services For Marina and Waterfront Resorts

2500 Via Cabrillo Marina, Suite 200
San Pedro, CA 90731
Tel: 310 548 3132
Fax: 310 548 1924

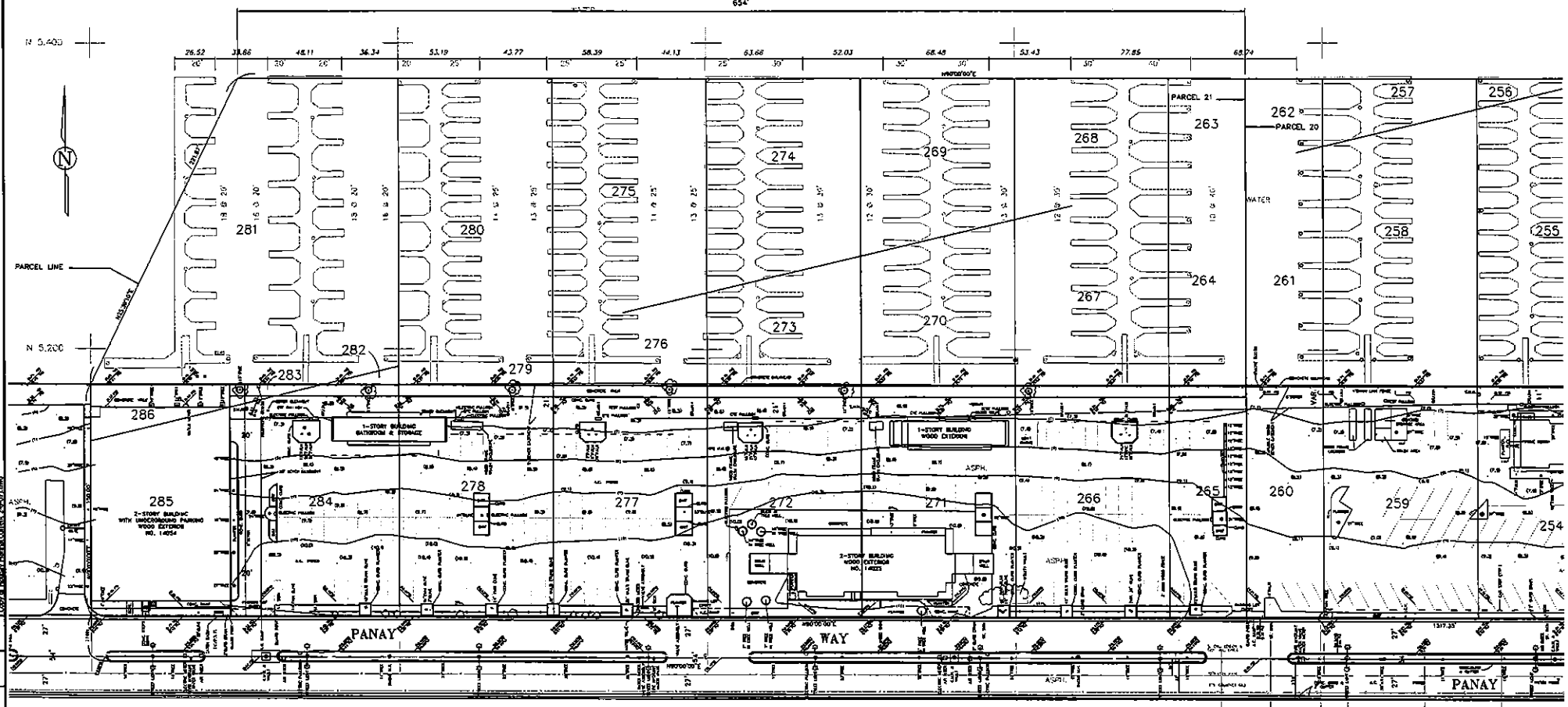
DESIGNED BY	PT
DRAWN BY	PT
CHECKED BY	TB

TITLE SHEET

SCALE	AS NOTED
DATE	02-06-08
JOB NO.	2145-A
SHEET	T-1
SHEET #	1 of 4

EXISTING DOCK LAYOUT SLIP COUNT			
Slip Length	Quantity	Linear Feet	%
20**	34	680	23.0
25	54	1,350	36.5
30	50	1,500	33.8
35	0	0	0
40	10	400	6.7
50	0	0	0
60	0	0	0
Total	148	3,930	100.0
Average		24.87	

(**): INDICATES DOUBLE BERTH SLIPS
EXISTING DOCK AREA = 30888.76 SQ.FT
654'



EXISTING DOCK LAYOUT
SCALE 1"=30'

PROJECT

IMPROVEMENTS FOR HOLIDAY MARINA
PARCEL 21-MARINA DEL REY, CA

STATUS

BLUEWATER Design Group
Planning and Engineering Services for Marina and Waterfront Resorts

2500 Via Cabrillo Marina, Suite 200
San Pedro, CA 90731
Tel: 310 548 3132
Fax: 310 548 1924

PT
PT
TB

EXISTING DOCK LAYOUT

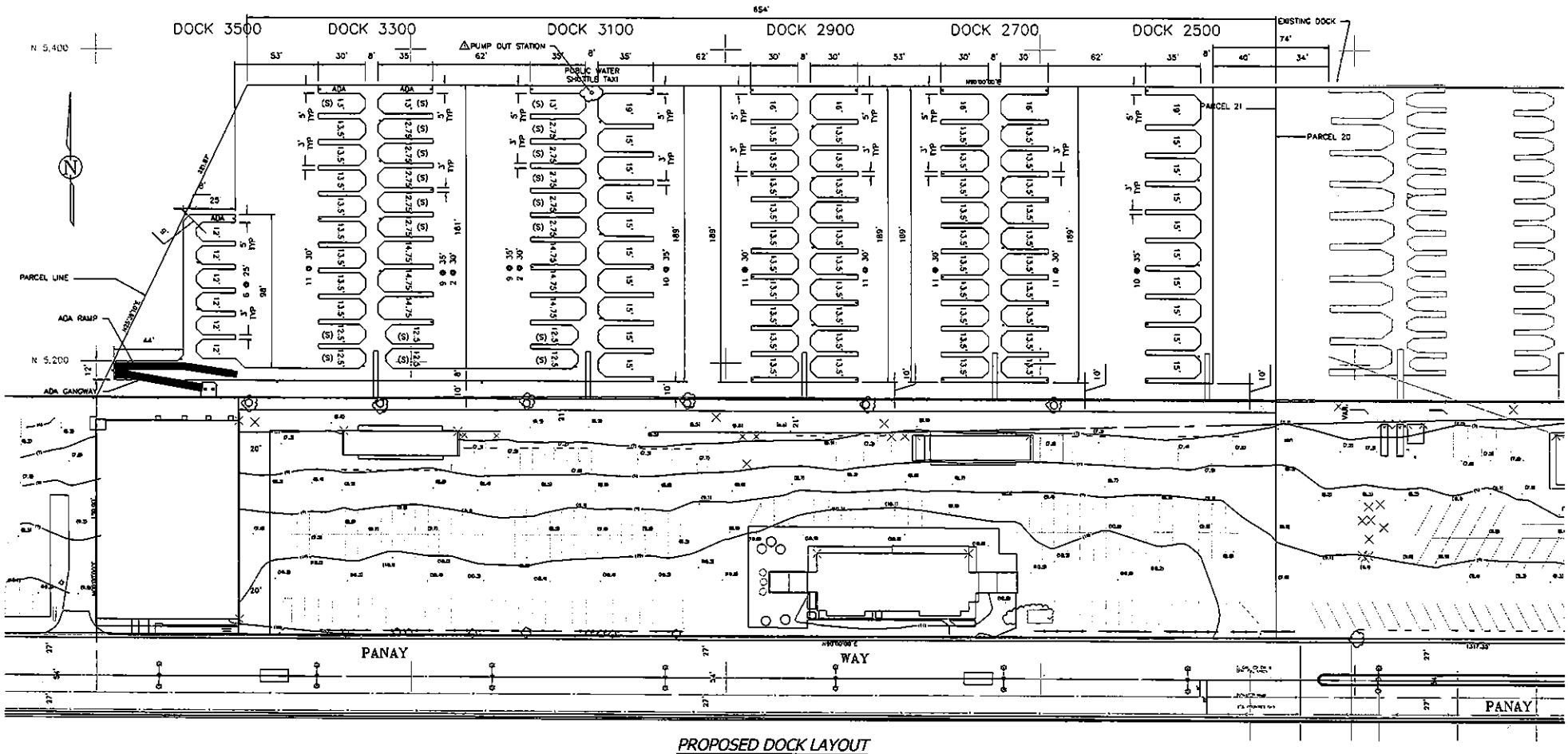
AS NOTED | 02-06-08
2145-A
L-1
2 of 4

PROPOSED DOCK LAYOUT SLIP COUNT			
Slip Length	Quantity	Linear Feet	%
25	6	150	5.83
30(S)	59	1770	57.28
35(S)	38	1330	36.89
Total	103	3250	100.00
	Average	31.5	

(S) – INDICATES SOME SLIPS ARE SAIL BOAT SLIPS

PROPOSED DOCK AREA: 2,897.00 + 4,144.00 + 4,144.00 + 12,745.74 = 23,930.74 SQ.FT.

PILE NOTE:
TOTAL NO. OF PILES = 79



PROPOSED DOCK LAYOUT

SCALE 1"=30'

PROJECT

IMPROVEMENTS FOR HOLIDAY MARINA PARCEL 21-MARINA DEL REY, CA

STATUS

BLUEWATER design group

Planning and Engineering Services for Marina and Waterfront Resorts

2500 Via Cabrillo Marina, Suite 200
San Pedro, CA 90731
Tel: 310 548 3132
Fax: 310 548 1924

DESIGNED BY PT
DRAWN BY PT
CHECKED BY TB

PROPOSED DOCK LAYOUT

SCALE AS NOTED
DATE 02-06-08
JOB NO. 2145-A
SHEET L-2
SHEET # 3 of 4

EXISTING DOCK LAYOUT SLIP COUNT			
Slip Length	Quantity	Linear Feet	%
20**	34	680	23.0
25	54	1,350	36.5
30	50	1,500	33.8
35	0	0	0
40	10	400	6.7
50	0	0	0
60	0	0	0
Total	148	3,930	100.0
Average		24.87	

(**): INDICATES DOUBLE BERTH SLIPS
EXISTING DOCK AREA = 30888.76 SQ.FT
634'

PROPOSED DOCK LAYOUT SLIP COUNT			
Slip Length	Quantity	Linear Feet	%
25	6	150	5.83
30(S)	59	1770	57.28
35(S)	38	1330	36.89
Total	103	3250	100.00
Average		31.5	

(S) - INDICATES SOME SLIPS ARE SAIL BOAT SLIPS
PROPOSED DOCK AREA: 2,897.00 + 4,144.00 + 4,144.00 + 12,745.74 = 23,930.74 SQ.FT.

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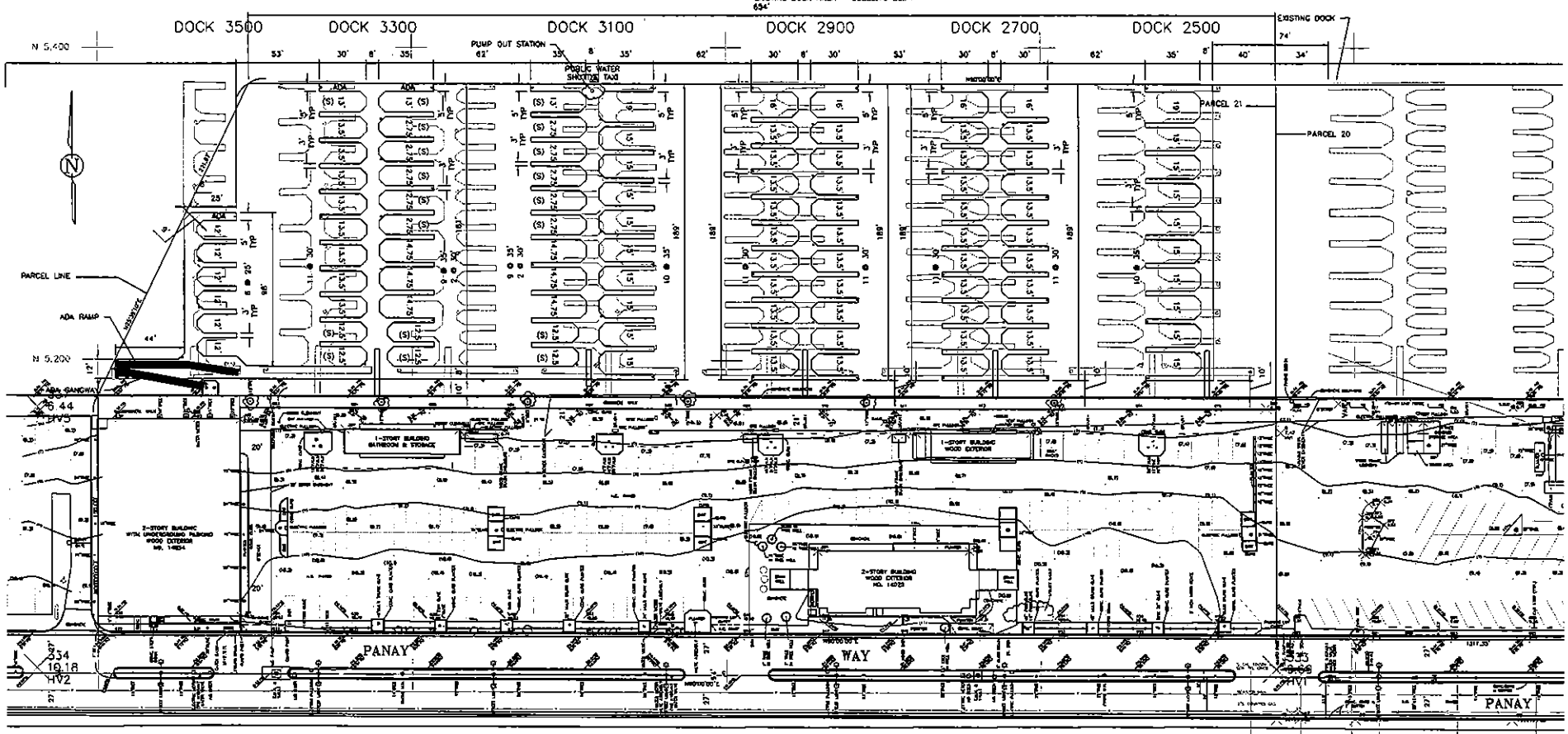

EXISTING VS PROPOSED DOCK LAYOUT

SCALE 1"=30'

PROJECT

IMPROVEMENTS FOR HOLIDAY MARINA
PARCEL 21-MARINA DEL REY, CA

STATUS X

BLUEWATER Design Group
Planning and Engineering Services For Marina and Waterfront Resorts

2500 Via Cabrillo Marina, Suite 200
San Pedro, CA 90731
Tel: 310 548 3132
Fax: 310 548 1924

DRAWN BY PT
CHKD BY PT
APPROVED BY TB

PROPOSED VS EXISTING DOCK LAYOUT

SCALE AS NOTED
DATE 02-06-08
JOB NO. 2145-A
SHEET L-3
SHEET 4 of 4

March 4, 2008

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:

DEPARTMENT OF BEACHES AND HARBORS: APPROVAL OF OPTION FOR AMENDED AND RESTATED LEASE TO FACILITATE REDEVELOPMENT – PARCEL 21 (HOLIDAY HARBOR) - MARINA DEL REY
(4th DISTRICT)
(4 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed Option to Amend Lease Agreement, 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 Chair of the Board to sign the attached Option to Amend Lease Agreement granting to the current lessee, upon fulfillment of stated conditions, the right to extend the terms of its existing ground lease on Parcel 21 by 39 years.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The Parcel 21 lessee, Goldrich & Kest Industries ("Lessee"), has an affiliate that is the Parcel OT lessee. As part of the Parcel OT development plan, a portion of the required replacement public parking is to be placed in a parking garage to be constructed on Parcel 21. Additionally, the Department of Beaches and Harbors ("Department") desires to reacquire a portion of Parcel 21 to expand a County-owned public parking lot (Parcel GR) serving the Marina Beach. Accordingly, an agreement was negotiated with Lessee for the redevelopment of the Parcel 21 property.

The proposed Option to Amend Lease Agreement ("Option") will allow Lessee to exercise its option and receive the benefits of the Amended and Restated Lease ("Restated Lease") attached as 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 redevelopment project.

Whether or not ultimately exercised, the Parcel 21 Option puts into effect modern lease provisions that have been negotiated in new and extended leases previously presented for your Board's consideration, including: a) reimbursement of County administrative/negotiating costs; b) payment of a non-refundable $100,000 option fee (which shall be credited against the extension fee if the Option is exercised); c) establishment of a sinking fund to remove leasehold improvements at lease termination; d) modernized "baseball" type arbitration; e) lease assignment and ownership disclosure requirements; f) a 6% late fee plus interest for any late payments; g) security deposit in the amount of 3 months' minimum rent; h) new insurance requirements with insurance levels renegotiated each 5th lease anniversary date; i) County approval rights over construction plans and specifications; j) CPA-certified annual gross revenue reports; k) required maintenance in conformance with Marina standards; and l) liquidated damages of $100 per day (adjusted for inflation) per cited maintenance deficiency for each deficiency that remains uncorrected after a specified cure period.

If the Option is exercised, in addition to the terms identified just above, the Restated Lease for Parcel 21 also provides for a 39-year lease extension; payment of a $100,000 lease extension fee (already paid as a non-refundable option fee); demolition of the existing landside improvements; construction of a new commercial building containing not less than 29,000 square feet and an attached parking structure of 447 parking spaces to accommodate boater parking for not only Parcel 21, but also Parcel 20 (the leasehold of another Lessee affiliate), parking for the commercial uses in the new commercial building, and 94 replacement public parking spaces from Parcel OT; complete dock replacement of the existing 182 slips with 103 new slips [Note the lessee's calculation, as illustrated on the proposed plans, indicates the existing anchorage to consist of 148 slips, not 182 slips as we have presented, based on the lessee's belief that each double slip should be counted as one slip rather than two slips]; construction and maintenance of a new waterfront promenade; reconveyance to County at a specified date of the westerly 207 feet of the current leasehold to be used for additional public parking; establishment of a Capital Improvement Fund to be funded by amounts equal to 1.0% of gross revenues derived from the leasehold for years 4 and 5 following completion of the improvements, 1.25% of gross revenues derived from the leasehold for years 6 through 10 and 1.5% of gross revenues thereafter; establishment of a Renovation Fund in the amount of 1.0% of gross revenues annually that must be fully expended to physically reposition the project to then current market requirements between 2034 and 2036, with funding ceasing thereafter; a second complete replacement of the anchorage improvements between years 30 and 35 after the effective date of the Restated Lease; County participation in leasehold sale and/or refinance; County right to recapture the leasehold if the Lessee pursues its sale; and other miscellaneous improvements to the lease (e.g., enhanced audit and record-keeping standards).

Lessee must complete the parking structure as a condition to issuance of the certificate of occupancy for the proposed development of a seniors' congregate care facility on Parcel OT. Once the Lessee and the Parcel OT optionee have obtained all necessary

project entitlements and have fulfilled the other requirements entitling them to exercise the Options for both parcels, 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 concludes the return to the County from the lease extension for Parcel 21 is equivalent to, or greater than, fair market value.

Implementation of Strategic Plan Goals

In furtherance of County Goals #1 and #4, "Service Excellence" and "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 enhancing public access to and enjoyment of the Marina through property redevelopment and modernized lease provisions.

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:

<table>
<tr>
<td>REDEVELOPMENT
Development of new improvements</td>
<td>• Redevelopment Work: Lessee shall demolish the existing improvements on the premises and construct the following new improvements within five years of receipt of entitlements:
(i) New Commercial Building: A new commercial building containing not less than 29,000 square feet of rentable space and an attached parking structure to accommodate 447 cars. The new commercial building will provide replacement space for all existing landside uses on Parcel 21 and will provide replacement space for the yacht club and office uses presently on Parcel 20. The attached parking structure shall provide parking for the uses contained in the new commercial building, boater parking for Parcels 20 and 21, and 94 public parking spaces moved from Parcel OT. The square footage to be provided for each use and the parking to be provided for each use are summarized in the table below:
<table>
<tr><th>New Commercial Building</th><th>Sq. Ft. Provided</th><th>Parking Provided</th></tr>
<tr><td>Yacht Club</td><td>5,000</td><td>106</td></tr>
<tr><td>Health Club</td><td>10,000</td><td>20</td></tr>
<tr><td>Retail</td><td>6,000</td><td>23</td></tr>
<tr><td>Office</td><td>8,000</td><td>21</td></tr>
<tr><td>Parcel 20 Boater Parking</td><td>--</td><td>112</td></tr>
<tr><td>Parcel 21 Boater Parking</td><td>--</td><td>71</td></tr>
<tr><td>Parcel OT Replacement Parking</td><td>--</td><td>94</td></tr>
<tr><td>Total</td><td>29,000</td><td>447</td></tr>
</table>
(ii) Dock Replacement: Complete replacement of existing docks containing 182 slips with 103 slips made of concrete or other material acceptable to the Department Director, with a second dock replacement between the 30th and 35th year from the effective date of the Restated Lease;
(iii) Waterfront Promenade: Construction and maintenance of a waterfront promenade to run the length of the bulkhead.</td>
</tr>
</table>

REDEVELOPMENT (continued)	• Parcel Size Adjustment: The leasehold area shall be reduced by removing the approximately westerly 207 linear feet from the landside area, excluding the Waterfront Promenade area. The parcel size adjustment shall occur up to six months following the completion of construction of the replacement parking for Parcel OT. • Total development cost not less than $13 million ($1.35 million for Dock Replacement; $11.65 million for New Commercial Building and Waterfront Promenade) in 2005 dollars. • Construction of Redevelopment Work to be completed within five years from effective date of the Restated Lease, subject to force majeure, which in no event shall exceed two years. • Capital Improvement Fund. A Capital Improvement Fund to be funded annually by Lessee will be maintained during the term of the lease according to the following schedule: Years 1-3 after completion: none; Years 4-5: 1% of gross revenue; Years 6-10: 1.25% of gross revenue; Years 11+: 1.50% of gross revenue. The Capital Improvement Fund must be fully expended for capital expenditures by ten years prior to the expiration date of the lease, which expenditures are subject to prior approval by the Department Director, not to be unreasonably withheld. • Renovation Fund. A Renovation Fund equal to 1% of gross revenue to be funded annually by Lessee and maintained during the term of the Restated Lease; must be fully expended to physically reposition the project to then current market requirements between 2034 and 2036. Thereafter, no Renovation Fund shall be required. The Renovation Fund may be maintained in the form of a letter of credit. Lessee to provide a renovation plan and budget, subject to County approval.
LEASE TERM	• Option to extend lease on Parcel 21 by 39 years from 8/31/2026 to 8/31/2065.
EXTENSION FEE Fee equal to or commensurate with value of the extension	• The amount of the extension fee shall be $100,000, payable as set forth below. • Lessee shall pay a non-refundable option fee of $100,000 prior to the granting of the Option. Such payment shall be credited against the extension fee if the Option is exercised, but shall be non-refundable in the event the Option is not exercised.
MARKET RATE RENTS Ensure fair market rents	• Minimum annual rent during construction to be reset at the beginning of construction equal to 75% of Lessee's previous three years' average total annual rent paid to County. • Minimum annual rent upon earlier of the date of receipt of the first Certificate of Occupancy (temporary) following commencement of construction ("CO Date") or Required Completion Date equal to $215,000. Thereafter, minimum rent reset every three years equal to 75% of previous three years' average total annual rent paid to County until first renegotiation. • Percentage and minimum rents are subject to renegotiation to fair market rent ten years after earlier of CO Date or Required Completion Date and every ten years thereafter.

PARTICIPATION IN SALE AND REFINANCE Secure County participation in sale and refinance of leasehold	• Sale Participation: Greater of 5% of Gross Proceeds or 20% of Net Proceeds upon assignment or other direct or indirect transfer of leasehold. • Refinance Participation: 20% of net loan proceeds not reinvested in leasehold.
COUNTY ADMIN. COSTS Ensure payment for County costs for lease extension	• Lessee agrees to reimburse County for costs associated with lease extension negotiations and option and lease preparation, including all appraisal, consultant and legal costs.
COUNTY INCOME CONTINUITY Ensure County revenue flow during development	• Minimum annual rent during construction to be reset at the beginning of construction equal to 75% of Lessee's previous three years' average total annual rent paid to County.
RIGHT TO RECAPTURE	• Provide County with a right to purchase the leasehold interest if Lessee desires to either assign or sell a controlling interest.
ARBITRATION	• Arbitration will use rent-a-judge procedure. "Baseball" type arbitration provision.
LEASE ASSIGNMENT - DISCLOSURE ISSUES	• Lease assignment and ownership disclosure requirements in accord with standard County policy.
DOCKMASTER	• Lessee to maintain a dockmaster to manage the anchorage for the term of the lease.
PROMENADE	• Lessee to construct a waterfront promenade in compliance with Marina Local Coastal Program and subject to County's reasonable approval of plans. • Promenade area to remain within the leasehold, as described in Parcel Size Adjustment above. Lessee retains responsibility for construction and maintenance of Promenade.
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.

ENTITLEMENTS: SITE COVERAGE, HEIGHT & LAND USES	• If Lessee is unable to obtain all necessary entitlement and financing approvals within the 12-month Option period, the Director may grant up to two six-month extensions if Lessee can demonstrate it has diligently pursued those approvals. • If Lessee obtains approvals within the 12-month (or 18- or 24-month) period but such approvals are subject to litigation or appeal brought by a third party, then the option exercise date will be tolled pending the resolution of such litigation or appeal; provided that the option exercise date shall in no event be later than four years after the date of the grant of Option. • Density, site coverage, open space, view corridor, building height, entitlement and land uses are subject to Lessee obtaining all County and Coastal Commission planning and entitlement approvals, including that of the Design Control Board. • Lessee may pursue County and Coastal Commission planning and entitlements approvals with respect to the provision of interim replacement parking and interim tenant space during construction.

Additional Matters

OTHER TERMS	a) Ten years prior to expiration of lease, Lessee to structure funding for removal of improvements (at County's election). b) Rental renegotiation and insurance disputes subject to rent-a-judge procedure pursuant to "baseball" type arbitration. c) Maintenance standards for improvements to conform to Marina del Rey standards as revised from time to time. d) Lease administrative items include: a) late fee of 6% plus interest at prime plus 3% for any late payments; b) security deposit equal to three months' minimum rent; c) insurance levels reset/renegotiated upon execution of the Restated Lease and every five years thereafter; d) County approval rights over all construction plans and specifications; and e) enhanced audit and record-keeping standards. e) 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.

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 a new commercial building containing not less than 29,000 square feet of rentable space and new docks. Each component is discussed in detail below.

Extension Fee

Lessee is required to pay an extension fee of $100,000. A non-refundable Option fee of $100,000 is due upon the execution of the Option, which may be credited against the extension fee if the Option is exercised.

Rent Increase Due to New Construction

The total rent derived from Parcel 21 during fiscal year 2006-2007 was approximately $296,000.00. After construction, lease-up and stabilization, annual County rent is projected to rise to approximately $336,900, an annual increase of approximately $40,900.

As an additional requirement of the Restated Lease, the Lessee will reconvey back to the County the westerly 207 feet of Parcel 21 to be integrated into the existing Parcel GR public parking lot in order to form a larger public parking lot. Lessee will also be responsible for the cost of converting the westerly 207 feet being reconveyed to a parking lot as per the County's plan.

Costs of consultants involved in the negotiation and development of the Option and Restated Lease are being reimbursed by the Lessee.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Without exercise of the Option, the term of the lease for Parcel 21, which commenced September 1, 1966, will expire August 31, 2026.

Concurrent with the exercise of the Parcel 21 Option, an option as to Parcel OT must also be exercised by Lessee's affiliate, both of which may be exercised only after the entitlements for each project are received. The Lessee has made application to the Department of Regional Planning for its discretionary land use entitlements under the applicable standards of the Marina del Rey Local Coastal Program (LCP), which application is still under review. The Parcel 21 application seeks an LCP amendment to relocate 94 public parking spaces from Parcel OT to Parcel 21 and to modify the development permit conditions to transfer the yacht club and marine commercial uses from Parcel 20 to Parcel 21. The Parcel OT application seeks an LCP amendment to transfer land use entitlements across development zones to allow for the build-out of congregate care units and to relocate 94 public parking spaces to Parcel 21. 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 is 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 February 13, 2008, the Small Craft Harbor Commission _____ the recommendation to approve the Option and the Restated Lease in the form attached. 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 parcel. The discretionary land use entitlements and the corresponding environmental documentation necessary to implement the proposed redevelopment contemplated by the Option and the Restated Lease are under review by the Department of Regional Planning.

CONTRACTING PROCESS

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 with final confirmation that the conditions and approvals for exercise contained in the Option have been satisfied. At that time, we will 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

Authorize the Executive Officer/Clerk of the Board to send two copies of the executed Option to the Department of Beaches and Harbors.

Respectfully submitted,

William T Fujioka

SW:SK:GB:ks

Attachments (2)

c: County Counsel

OPTION TO AMEND LEASE AGREEMENT
(PARCEL 21)

THIS OPTION TO AMEND LEASE AGREEMENT ("Agreement") is made and entered into as of the _____ day of January, 2008, by and between the COUNTY OF LOS ANGELES ("County") and HOLIDAY-PANAY WAY MARINA, L.P. a California limited partnership ("Lessee").

RECITALS

A. County and Lessee, or its predecessors-in-interest, entered into Lease No. 11210 dated September 27, 1966, as amended (the "Existing Lease"), pursuant to which Lessee leases from County certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 21, as more particularly described in the Existing Lease (the "Premises").

B. The term of the Existing Lease is currently scheduled to expire on August 31, 2026 (the "Existing Expiration Date").

C. Lessee has requested County, and County is willing, to grant Lessee an option to extend the term of the Existing Lease through August 31, 2065.

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, 2065 (the "Extended Expiration Date"). Such extension shall be on the terms and conditions set forth in the form of Amended and Restated Lease Agreement for Parcel 21 attached to this Agreement as Exhibit A (the "Restated Lease"). In consideration of County's grant of the Option to Lessee, and as a condition to the effectiveness of the Option, 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").

2. Option Term. The term of the Option (the "Option Term") shall commence on the date of this Agreement and expire on that date (the "Option Expiration Date") which is the earlier of (i) forty-five (45) days following the later of the Entitlement Receipt Date under this Agreement and the "Entitlement Receipt Date" under the Parcel 147 Option Agreement, as defined in Section 4.4(b) of this Agreement (the "Parcel 147 Entitlement Receipt Date"), or (ii) the date that is one (1) year following the date of this Agreement (the "Outside Expiration Date").

For purposes hereof, the "Entitlement Receipt Date" shall mean the first date upon which (a) Lessee has received all discretionary planning and zoning land use entitlements, permits and other approvals required to be obtained from governmental

authorities (including the County and the California Coastal Commission) for the construction of the Redevelopment Work (as defined below), including, without limitation, for the development on and relocation to the Premises of the Replacement Parcel 147 Parking Spaces (as defined in Section 15.20.1 of the Restated Lease) and the development on and relocation to the Premises of the Additional Parcel 20 Parking Spaces (as defined in Section 15.20.1 of the Restated Lease), and has satisfied all conditions to the issuance of a building permit for the Redevelopment Work other than the payment of any applicable building permit fee (all of the matters described in this clause (a) are collectively referred to as the "Entitlements"), (b) any appeal period to contest the issuance of the Entitlements has lapsed, and (c) there is no proceeding or litigation pending to appeal the issuance of the Entitlements, or to enjoin or restrain the performance of the Redevelopment Work (not including any proceeding or litigation brought by or on behalf of any partner, shareholder or member of, or any other person or entity affiliated with, or otherwise directly or indirectly having an ownership interest in, Lessee or the Parcel 147 Lessee (a "Lessee Affiliate")), or if such a proceeding or litigation is pending, then the date such proceeding or litigation has been dismissed or a decision or judgment rendered thereon, which decision or judgment is not subject to further appeal.

For purposes of this Agreement, the "Redevelopment Work" shall mean the demolition of the existing Improvements (as defined in the Restated Lease) currently located on the Premises and the construction of new Improvements in accordance with the Redevelopment Plan attached to the Restated Lease as Exhibit B, including without limitation: (i) a new commercial building containing not less than 29,000 square feet of rentable area of space to be initially allocated approximately as follows: 5,000 rentable square feet of yacht club space, 10,000 rentable square feet of health club space, 2,916 rentable square feet of retail space and 11,432 rentable square feet of marine commercial office space; (ii) an attached parking structure with 447 parking spaces or such other number of parking spaces as required under Section 15.20 of the Restated Lease (the "Parking Structure"); (iii) complete replacement of the existing 182 boat slips and related Improvements with approximately 87 new boat slips (with an average slip length of 36 lineal feet) and related Improvements, provided that County shall have the right to approve Lessee's proposed configuration and specifications for such slips; and (iv) the Promenade Work described in Section 15.19 of the Restated Lease.

Notwithstanding any contrary provision hereof, if by that date which is forty five (45) days prior to the Outside Expiration Date (the "Extension Request Date") (1) Lessee and the Parcel 147 Lessee have been unable to cause one or both of the Entitlement Receipt Date or the Parcel 147 Entitlement Receipt Date to occur and one or both of the Entitlement Receipt Date or the Parcel 147 Entitlement Receipt Date is (are) not reasonably expected to occur by the Outside Expiration Date, (2) in the reasonable judgment of the Director of the Department of Beaches and Harbors of the County ("Director"), Lessee and the Parcel 147 Lessee have proceeded with diligent efforts to cause the Entitlement Receipt Date and the Parcel 147 Entitlement Receipt Date to occur by the Outside Expiration Date, and (3) on or before the Extension Request Date Lessee submits a written request in writing to Director requesting an extension of the Outside Expiration Date to afford Lessee and the Parcel 147 Lessee (as applicable) with

additional time to cause the Entitlement Receipt Date and the Parcel 147 Entitlement Receipt Date to occur (as applicable), then Director may grant, in its discretion, one or more extensions of the Outside Expiration Date, provided that (A) any extension of the Outside Expiration Date shall be limited to that period of time which, in the reasonable judgment of Director, is reasonably necessary to permit the Entitlement Receipt Date and the Parcel 147 Entitlement Receipt Date to occur, and (B) Director shall not extend the Outside Expiration Date by more than six (6) months at a time, and in no event shall Director extend the Outside Expiration Date beyond that date which is two (2) years following the date of this Agreement. The Outside Expiration Date shall not be extended under this paragraph if Lessee is in breach or default of this Agreement or the Parcel 147 Lessee is in breach or default of the Parcel 147 Option Agreement. Lessee shall not be required to pay to County a fee for any extension of the Outside Expiration Date pursuant to this paragraph.

In addition, if as of forty-five (45) days prior to the Outside Expiration Date (as such date may have been extended pursuant to the immediately preceding paragraph), the Entitlement Receipt Date or the Parcel 147 Entitlement Receipt Date has not occurred because (a) the Redevelopment Work or the Development Work under the Parcel 147 Option Agreement (the "Parcel 147 Development Work") is the subject of a pending proceeding or litigation to appeal the issuance of the Entitlements for such particular work or to enjoin or restrain the performance of the Redevelopment Work or the Parcel 147 Development Work (other than any proceeding or litigation brought by or on behalf of a Lessee Affiliate), or (b) a moratorium, temporary restraining order, injunction or other court order prohibits the issuance of the Entitlements for the Redevelopment Work or the Parcel 147 Development Work, and such moratorium, temporary restraining order, injunction or other court order also pertains to all other similar projects in Marina del Rey on land leased from the County, then as long as Lessee and/or the Parcel 147 Lessee (as applicable) continue to diligently prosecute or pursue the defense or removal of such proceeding, litigation, moratorium or court order, the Outside 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 issuance or validity of the Entitlements for the Redevelopment Work and the Parcel 147 Development Work (as applicable), with no further right of appeal; provided, however, in no event shall the Outside Expiration Date be extended beyond the fourth (4th) anniversary of the date of this Agreement. The Outside Expiration Date shall not be extended under this paragraph if Lessee is in breach or default of this Agreement or the Parcel 147 Lessee is in breach or default of the Parcel 147 Option Agreement. Lessee shall not be required to pay to County a fee for any extension of the Outside Expiration Date pursuant to this paragraph.

3. Exercise of Option. The Option shall be exercisable by Lessee only by Lessee's 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 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 (County hereby agrees to cooperate with Lessee to permit the completion of such blank or bracketed terms); (iii) as of the date of Lessee's delivery of the notice described in clause (i) above Lessee shall not be in material breach or default of any

material term or provision of the Existing Lease, after notice from County and the expiration of any applicable cure period thereunder; (iv) the Entitlement Receipt Date shall have occurred and there shall be no action or proceeding pending or, to Lessee's or County's actual knowledge, threatened, to contest the Entitlements issued as a condition to the occurrence of the Entitlement Receipt Date or to enjoin or restrain the performance of the Redevelopment Work; (v) Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by the Director in Director's reasonably judgment, 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 4.3 of this Agreement; (vii) Lessee shall have satisfied the conditions to the exercise of the Option set forth in Section 4.4; and (viii) all conditions to the exercise of the Parcel 147 Option shall have been satisfied and the Parcel 147 Lessee shall have concurrently exercised the Parcel 147 Option. Upon Lessee's proper and timely exercise of the Option, County shall execute and deliver the Restated Lease and the Parcel 147 Lease not later than forty-five (45) days following the date of Lessee's exercise of the Option.

4. Entitlements and Plan Preparation During Option Term.

4.1 Obtaining Entitlements. During the Option Term, Lessee shall use diligent efforts to obtain as soon as reasonable possible all Entitlements necessary to perform the Redevelopment Work and, unless otherwise directed by Director, the Off-Site Parking Improvements described in Section 4.5(a) below. 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.

4.2 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 appropriate governmental approvals, consents, permits or variances which may be required in connection with the construction of the Redevelopment Work and, unless otherwise directed by Director, the construction of the Off-Site Parking Improvements described in Section 4.5(a) below. 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 (including without limitation, but only if approved by Director, co-application by County to eliminate or reduce the Parcel 147 replacement public parking spaces described in Section 4.4(b) hereof); 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 as to the Redevelopment Work (but not as to the Off-Site Parking Improvements). 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 Sections 25536 and 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 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.

4.3 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 Sections 5.2 through 5.4 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, those portions of the plans, specifications and other materials described in Sections 5.2 through 5.4 of the Restated Lease which are required to be submitted to governmental authorities (including the County and the California Coastal Commission) in connection with Lessee's applications for and/or receipt of all Entitlements for the Redevelopment Work. Lessee shall accompany such plans, specifications and other materials with the construction cost estimates described in such Sections 5.2 through 5.4, as applicable. The standards and time periods for Director's review and approval of the materials submitted by Lessee pursuant to this Section 4.3 shall be in accordance with the terms and provisions of Sections 5.2 through 5.4 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 Option Expiration Date (as the same may be extended pursuant to the terms hereof).

4.4 Parking.

(a) Relocation of Parcel 20 Anchorage Parking. Certain property located adjacent to the Premises and commonly known as Parcel 20 is currently leased by County to Lessee's affiliate, Panay Way Marina, L.P. (with its successors and assigns, the "Parcel 20 Lessee"). If Lessee exercises the Option, the Parking Structure to be constructed on the Premises by Lessee as a part of the Redevelopment Work is contemplated to include 112 parking spaces to facilitate the relocation to the Parking Structure of the parking facilities for the Parcel 20 anchorage improvements. Section 15.20.2 of the Restated Lease provides for the reservation of an easement in favor of Parcel 20 for the use of such spaces. Lessee, the Parcel 20 Lessee and County shall cooperate to seek any and all governmental approvals (if any) required for the relocation of the parking facilities for the Parcel 20 anchorage improvements from Parcel 20 to the Parking Structure upon the completion of the construction thereof. A condition to the exercise by Lessee of the Option shall be the receipt of any such required governmental approvals.

(b) Parcel 147 Replacement Parking. Concurrent or substantially concurrent herewith, County has entered into a Lease Option Agreement (the "Parcel 147 Option Agreement") with Lessee's affiliate, MDR Oceana, LLC (with its successors and assigns, the "Parcel 147 Lessee") pursuant to which County has granted the Parcel 147 Lessee an option (the "Parcel 147 Option") to enter into a lease with County (the "Parcel 147 Lease") for certain property commonly known as Parcel 147. The exercise by the Parcel 147 Lessee of the Parcel 147 Option is conditioned upon Lessee's agreement to provide the 94 replacement public parking spaces required to satisfy the off-site replacement public parking requirement arising from the development of Parcel 147. If the California Coastal Commission approves the elimination (or reduction in the number) of the replacement public parking spaces required for the Parcel 147 development, then unless County and Lessee otherwise agree, the number of parking spaces required to constructed in the Parking Structure shall be reduced by the number of such replacement public parking spaces that are eliminated. If the requirement for replacement public parking spaces is eliminated or reduced pursuant to this Section 4.4(b), then prior to execution of the Restated Lease, Section 15.20.3 of the Restated Lease shall be deleted or modified (as applicable) to reflect such elimination or reduction. If the requirement for replacement public parking spaces arising from the development of Parcel 147 is eliminated, then (i) the exercise of the Parcel 147 Option shall not be a condition precedent to the exercise of the Option under this Agreement, and (ii) all references in this Agreement to matters pertaining to the exercise of the Parcel 147 Option or to the Entitlements or Development Work for Parcel 147, shall be of no further force or application, and thereafter, for the avoidance of doubt, no obligation of, or exercise of any right or remedy by, Lessee hereunder shall be conditioned upon, or affected by, any act or omission of the Parcel 147 Lessee with respect to Parcel 147.

4.5 Lessee Cooperation With Regard to Other Projects.

(a) The Restated Lease provides for the termination of the Restated Lease with respect to a portion of the Premises described in Section 2.2 of the Restated Lease as the "Partial Termination Premises" as of the "Partial Termination Date" (as defined in Section 2.2 of the Restated Lease). One of the potential uses being considered by County for the Partial Termination Premises is for additional off-site replacement public parking facilities. It is contemplated that such additional off-site parking might be developed, at least in part, to satisfy requirements that may arise in connection with the development of other projects in Marina del Rey, including without limitation, those contemplated for Parcels 10/FF, 33/NR and IR. If requested by Director, concurrent with Lessee's pursuit of the Entitlements for the construction of the Redevelopment Work, Lessee shall also, jointly with County, pursue the governmental approvals and entitlements required for the performance of the Parking Lot Work described in Section 2.2 of the Restated Lease. In all events, Lessee agrees to use its commercially reasonable efforts (at no cost to Lessee) to cooperate with any efforts of County to obtain governmental approvals and entitlements for County's use of the Partial Termination Premises and neither Lessee nor any of its affiliates shall object or take any action to interfere with County's efforts to obtain governmental approvals and entitlements for the use of the Partial Termination Premises for replacement public parking or other parking purposes designated by County. Lessee's obligations under this Section 4.5(a) shall expressly survive the exercise of the

Option by Lessee and shall be deemed to be incorporated into the Restated Lease as a covenant that is binding on Lessee thereunder.

(b) County is considering the development of a new Department headquarters facility on certain portions of Parcel 20 on which an existing commercial building and related improvements are currently located. If County determines to proceed with the development of such headquarters facility, then Lessee agrees to use commercially reasonable efforts (at no cost to Lessee) to cooperate with County's efforts to obtain governmental approvals and entitlements for the construction of such headquarters facility, and neither Lessee nor any of its affiliates shall object or take any action to interfere with the development of such headquarters facility. The Lessee's obligations under this Section 4.5(b) shall expressly survive the exercise of the Option by Lessee and shall be deemed to be incorporated into the Restated Lease as a covenant that is binding on Lessee thereunder.

5. 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 (i) the Option shall be automatically terminated, and (ii) 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 amend the Existing Lease as follows:

(a) amend and restate Sections 11 through 15 of the Existing Lease in accordance with all of the terms and provisions of Sections 4.1 through 4.5 of the Restated Lease, except that:

(i) Subsection 4.2.1 of the Restated Lease shall be modified to read as follows:

"Lessee shall pay to County the minimum rent described in this subsection 4.2.1 (subject to adjustment pursuant to Sections 4.3 and 4.4 below) during each 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"), except that any amounts payable for less than a full calendar year or month shall be prorated based on the number of days in such partial year or month as compared to the total number of days in the full calendar year or month during which such period occurs. For the three (3) year period commencing with the Effective Date, the 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. From and after the third anniversary of the Effective Date, the Annual Minimum Rent shall be as set forth in Sections 4.3 and 4.4 below."

(ii) Section 4.3 of the Restated Lease shall be modified to read as follows:

"As of the third (3rd) anniversary of the Effective Date (the "First Adjustment Date") and as of each third (3rd) anniversary of the First Adjustment Date thereafter (each an "Adjustment Date" and collectively the "Adjustment Dates"), the Annual Minimum Rent shall be adjusted. Until the Renegotiation Date provided in Section 4.4 hereof, the Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy five percent (75%) of the average of the scheduled total annual rent due (including Monthly Minimum Rent and Percentage Rent) from Lessee to County under Section 4.2 of this Lease during the thirty-six (36) month period immediately preceding the Adjustment Date."

(iii)The first paragraph of Section 4.4 of the Restated Lease shall be modified to read as follows:

"Effective on each tenth (10th) anniversary of the Effective Date (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."

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

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

(d) amend and restate Sections 8 and 10 of the Existing Lease in accordance with Sections 5.2 through 5.12 of the Restated Lease, except that (i) all references to the Redevelopment Work shall mean and refer to future Improvements or alterations that Lessee desires to make to the Premises, and (ii) all references to any schedule for the commencement or completion of the Redevelopment Work shall be deleted;

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

(f) 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;

(g) amend Section 26 of the Existing Lease to adjust the amount and scope of commercial 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 subsections 9.1.1, 9.1.2 and 9.1.3 of the Restated Lease, and to add to Section 26 of the Existing Lease the provisions of Section 9.6 of the Restated Lease;

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

(i) add to the Existing Lease the provisions of Section 10.2 of the Restated Lease; and

(j) 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 (a) through (i) 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.

6. County Costs. Regardless of whether Lessee exercises the Option, Lessee shall promptly reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by County 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 Ninety Thousand Dollars ($90,000.00) 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.

7. Miscellaneous.

7.1 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.

7.2 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.

7.3 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.

7.4 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.

7.5 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.

7.6 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.

7.7 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.

7.8 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.

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

7.10 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.

7.11 Successors and Assigns. Subject to Section 7.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

7.12 Exhibits. Exhibits A and B attached to this Agreement are hereby expressly incorporated herein by reference.

7.13 Existing Encumbrances. Lessee represents and warrants that there are no deeds of trust, mortgages or other security interests that encumber Lessee's interest in the Existing Lease or the Premises except as disclosed in the Lender's Consent attached hereto, and that except for partnership consents that have been obtained by Lessee, no consent is required from any other person or entity as a condition to the effectiveness of this Agreement against Lessee and its interest in the Existing Lease and Premises.

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

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

HOLIDAY-PANAY WAY MARINA, L.P.,
a California limited partnership
By: GKB Development co., ~~LLC,~~ a General Partner
By: _____
Name: Warren L. Breslow, as Trustee
Its: of The Warren L. Breslow Trust, a Managing Member

ATTEST:

SACHI HAMAI,
Executive Officer of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.,
OFFICE OF COUNTY COUNSEL

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

1153128.9

LENDER CONSENT

The undersigned represents that it is the current beneficiary under that certain Deed of Trust With Assignment of Rents dated September 30, 1999, originally granted to Holiday Marinas, Inc., and recorded in the Official Records of Los Angeles County, California on October 1, 1999 as Instrument No. 99-187427 (the "Deed of Trust"), as assigned to the undersigned by Assignment of Deed of Trust dated January 31, 2001 and recorded in the Official Records of Los Angeles County, California as Instrument No. 01-0199678. As such current beneficiary the undersigned hereby consents to the foregoing Option to Amend Lease Agreement and agrees that the Deed of Trust is subject and subordinate to such Option to Amend Lease Agreement.

OVERLAND FINANCIAL COMPANY LLC, a California limited liability company
By: Overland Capital Corp., a Managing Member
By: _____
Name: Jona Goldrich
Its: President

EXHIBIT A

RESTATED LEASE

AMENDED AND RESTATED LEASE AGREEMENT

by and between

County of Los Angeles

and

Holiday-Panay Way Marina, L.P.

(Parcel 21--Lease No. _____)

Dated as of _____

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AMENDED AND RESTATED LEASE AGREEMENT
PARCEL 21--MARINA DEL REY

THIS AMENDED AND RESTATED LEASE AGREEMENT ("Lease") is made and entered into as of _____, ____ ("Effective Date"), by and between the COUNTY OF LOS ANGELES ("County"), and HOLIDAY-PANAY WAY MARINA, L.P., a California limited partnership (together with its permitted successors and assigns, "Lessee").

WITNESSETH

WHEREAS, the parties hereto or their predecessors in interest, entered into Lease No. 11210 dated September 27, 1966 (as amended prior hereto, the "Original Lease") whereby Lessee leases from County that certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 21 and which is more specifically described on Exhibit A attached hereto and incorporated herein by this reference ("Premises"), the term of which commenced on September 1, 1966 and currently extends through August 31, 2026 (the "Original Term"); and

WHEREAS, County and Lessee have entered into that certain Option to Amend Lease Agreement dated January ___, 2008 (the "Option Agreement"), pursuant to which County granted Lessee an option (the "Option") to amend and restate the Original Lease in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, an extension of the term through August 31, 2065; 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 as follows:

1. BACKGROUND AND GENERAL.

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

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

1.1.2. "ACTUAL COST" shall mean the reasonable cost and expenses incurred by County with respect to a particular activity or procedure, including without limitation (i) expenditures to third party legal counsel, financial consultants and advisors, (ii) costs incurred in connection with appraisals, and (iii) County's internal overhead and administrative costs, which include without limitation the value of services provided by County's in-house counsel, lease administrators and/or lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below the County department head).

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

1.1.4. "ADDITIONAL PARCEL 20 PARKING SPACES" shall have the meaning set forth in subsection 15.20.1.

1.1.5. "ADJUSTMENT DATES" shall have the meaning set forth in Section 4.3.

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

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

1.1.8. "ANCHORAGE IMPROVEMENTS" shall have the meaning set forth in Section 5.1.

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

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

1.1.11. "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 4.4.6, 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.

1.1.12. "APPROVED SLIP LEASE" shall have the meaning set forth in subsection 11.1.2.

1.1.13. "APPROVED FINAL PLANS, SPECIFICATIONS AND COSTS" shall have the meaning set forth in subsection 5.5.1.

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

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

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

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

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

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

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

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

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

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

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

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

1.1.26. "COMPLETION DATE" shall mean the date of receipt of the first Temporary Certificate of Occupancy or other applicable governmental permit, certificate or approval for the legal occupancy of any of the Improvements constructed on the Premises as part of the Redevelopment Work pursuant to Article 5 of this Lease.

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

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

1.1.29. "CONSUMER PRICE INDEX" shall mean the Consumer Price Index--All Urban Consumers for Los Angeles/Riverside/Orange Counties, 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.

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

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

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

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

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

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

1.1.36. "DESIGNEES" shall have the meaning set forth in subsection 15.20.2.

1.1.37. "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.

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

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

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

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

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

1.1.43. "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.

1.1.44. "ENTITLEMENTS" shall mean all entitlements, permits, licenses and other approvals required to be obtained from governmental authorities (including County and the California Coastal Commission) for the construction of the Redevelopment Work.

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

1.1.46. "EQUITY FORECLOSURE TRANSFEREE" shall have the meaning set forth in subsection 12.2.1.

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

1.1.48. "EXCESS PERCENTAGE RENT PAYMENT" shall have the meaning set forth in subsection 4.2.2.4.

1.1.49. "EXECUTION DATE" shall mean the date of execution of this Lease by County.

1.1.50. "EXCLUDED DEFAULTS" shall have the meaning set forth in subsection 12.3.3.

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

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

1.1.53. "FINANCING EVENT" shall have the meaning set forth in Section 12.1.1.

1.1.54. "FIRST ADJUSTMENT DATE" shall have the meaning set forth in Section 4.3.

1.1.55. "FORCE MAJEURE" shall have the meaning set forth in subsection 5.7.3.4.

1.1.56. "FORECLOSURE TRANSFER" shall have the meaning set forth in subsection 12.2.1.

1.1.57. "FORECLOSURE TRANSFEREE" shall have the meaning set forth in subsection 12.2.1.

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

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

1.1.60. "IMPROVEMENTS" means all buildings, structures, fixtures, docks, anchorage facilities, fences, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems and other improvements now or hereafter located on the Premises, including without limitation, the Redevelopment Work.

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

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

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

1.1.64. "INSTITUTIONAL LENDER" shall have the meaning set forth in subsection 12.3.1.

1.1.65. "INSURANCE RENEGOTIATION DATE" shall have the meaning set forth in Section 9.6.

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

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

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

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

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

1.1.71. "LETTER OF CREDIT" shall have the meaning set forth in Section 7.1.

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

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

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

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

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

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

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

1.1.79. "NEW COMMERCIAL BUILDING" shall have the meaning set forth in Section 5.1.

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

1.1.81. "ON-SITE PARKING SPACES" shall have the meaning set forth in subsection 15.20.1.

1.1.82. "OPERATION PLAN" shall have the meaning set forth in subsection 15.20.4.

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

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

1.1.85. "ORIGINAL LEASE" shall have the meaning set forth in the preamble to this Lease.

1.1.86. "ORIGINAL TERM" shall have the meaning set forth in the preamble to this Lease.

1.1.87. "OWNERSHIP INTERESTS" shall have the meaning set forth in subsection 12.1.1.

1.1.88. "PARCEL 147" shall mean the property previously commonly known as Parking Lot 8 or Parcel OT, including the annexation of a portion of Parcel P, in the Marina del Rey Small Craft Harbor [and currently leased by County to Lessee's affiliate, MDR Oceana, LLC, a California limited liability company, pursuant to that certain Lease Agreement dated _____ (the "Parcel 147 Lease")].

1.1.89. "PARCEL 20" shall mean the property commonly known as Parcel 20 in the Marina del Rey Small Craft Harbor and currently leased by County to Lessee's affiliate, Panay Way Marina, L.P., a California limited partnership, pursuant to that certain Amended and Restated Lease Agreement dated September 9, 2004, as amended by that certain Amendment No. 12 to Amended and Restated Lease dated as of _____, 2007 (as so amended, the "Parcel 20 Lease").

1.1.90. "PARCEL 147 LESSEE" shall mean the lessee from time to time under the Parcel 147 Lease.

1.1.91. "PARCEL 20 LESSEE" shall mean the lessee from time to time under the Parcel 20 Lease, and any other lessee of Parcel 20 (or the portion of Parcel 20 on which the anchorage improvements are located) designated from time to time by County.

1.1.92. "PARKING STRUCTURE" shall have the meaning set forth in Section 5.1.

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

1.1.94. "PARTIAL TERMINATION DATE" shall have the meaning set forth in Section 2.2.

1.1.95. "PARTIAL TERMINATION PREMISES" shall have the meaning set forth in Section 2.2.

1.1.96. "PAYMENT BOND" shall have the meaning set forth in subsection 5.5.4.2.

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

1.1.98. "PERFORMANCE BOND" shall have the meaning set forth in subsection 5.5.4.1.

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

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

1.1.101. "PREMISES" shall have the meaning set forth in the first recital to this Lease, as more specifically described in Exhibit A hereto.

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

1.1.103. "PROMENADE WORK" shall have the meaning set forth in Section 15.19.

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

1.1.105. "PUBLIC SERVICE PLAN" shall have the meaning set forth in subsection 4.2.2(t).

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

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

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

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

1.1.110. "RENOVATION FUND" shall have the meaning set forth in Section 5.15.

1.1.111. "RENOVATION PLAN" shall have the meaning set forth in Section 5.15.

1.1.112. "RENOVATION REQUIREMENT" shall have the meaning set forth in Section 5.15.

1.1.113. "REPLACEMENT PARCEL 147 PARKING SPACES" shall have the meaning set forth in subsection 15.20.1.

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

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

1.1.116. "REQUIRED COMPLETION DATE" shall have the meaning set forth in Section 5.7.

1.1.117. "SECTION" shall mean a Section of this Lease.

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

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

1.1.120. "STATE" shall mean the State of California.

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

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

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

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

1.1.125. "SUBSTANTIAL COMMENCEMENT OF CONSTRUCTION" shall have the meaning set forth in subsection 5.7.1.

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

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

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

1.1.129. "UNREASONABLE COUNTY ACT" shall have the meaning set forth in subsection 5.7.3.2.

1.1.130. "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.

1.2.1. As-Is. Lessee acknowledges that (1) it is currently in possession of the Premises, (2) Lessee or its predecessors-in-interest have continuously occupied and/or managed and operated the Premises since 1966, and (3) the Improvements now existing on the Premises were constructed by Lessee or its predecessors with contractors selected by them. Except as provided in subsection 1.2.2, 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 County, City, 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) the condition of title to the Premises, and (x) the economics of the operation of the Premises and/or any Improvements located thereon.

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 and/or any other public entity or agency having jurisdiction thereover, 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.

2. TERM.

2.1 Term. Unless terminated sooner in accordance with the provisions of this Lease, the term of this Lease shall be for the period commencing on September 1, 1966 and expiring at 11:59 p.m. on August 31, 2065 ("Term"). Each calendar year during the Term is referred to herein as a "Lease Year."

2.2 Partial Lease Termination. Effective upon the Partial Termination Date (as defined below), this Lease shall be terminated with respect to the westerly approximately 207 feet of the Premises (excluding the Promenade) as more particularly described on Exhibit A-1 attached to this Lease (the "Partial Termination Premises"). For purposes hereof, the "Partial Termination Date" means the earlier of (a) six (6) months following the issuance of the first certificate of occupancy for any portion of the "Development Work" described in the Parcel 147 Lease; or (b) six (6) months following the "Required Completion Date" under the Parcel 147 Lease; provided, however, that if the requirement for concurrent execution of the Parcel 147 Lease and this Lease is eliminated as contemplated under the Option Agreement, and the option for the Parcel 147 Lease is not exercised prior to the expiration or termination of such option, then the Partial Termination Date shall be the third (3rd) anniversary of the Effective Date of this Lease.

On or prior to the Partial Termination Date, Lessee shall (i) at Lessee's sole cost and expense, demolish and remove from the Partial Termination Premises all then-existing above and below-ground Improvements located on the Partial Termination Premises and construct a new surface parking lot (including without limitation, any required site work, paving, striping and lighting) on the Partial Termination Premises in accordance with plans and specifications provided by the Department (the "Parking Lot Work"), and (ii) surrender possession of the Partial Termination Premises to County. County agrees to use commercially reasonable efforts to cooperate with Lessee in the grant or reservation of any utility easements over the Partial Termination Premises required for the development of the remaining portion of the Premises as long as such utility easements do not interfere with the development and use of the Partial Termination Premises. If Lessee fails to perform its obligations under this Section 2.2 within the time periods required hereunder (subject to Force Majeure, as hereinafter defined, and subject to any applicable notice and cure periods), then such failure shall constitute a default by Lessee under this Lease, and in addition to any other rights or remedies that County may have in connection with such default, County shall have the right, but not the obligation, to exercise one or both of the following remedies: (I) to delay the Partial Termination Date until any date selected by County on or prior to the date of the completion of the Parking Lot Work, or (II) to perform the Parking Lot Work on Lessee's behalf, in which case Lessee shall be obligated under this Lease to pay to County the Actual Cost incurred by County in connection with the performance of the Parking Lot Work. No termination of the Lease with respect to the Partial Termination Premises shall release or relieve Lessee from its obligations under this Section 2.2, all of which shall survive any such termination. Subject to the immediately preceding sentence, effective on the Partial Termination Date the Term of the Lease shall expire with respect to the Partial Termination Premises and Lessee shall have no further rights or interests in the Partial Termination Premises (except as otherwise expressly provided herein). Subject to the performance of Lessee's obligations under this Section 2.2, Lessee shall continue to have all of its rights under this Lease with respect to the Partial Termination Premises (including without

limitation, the right to use and occupy the Partial Termination Premises) until the Partial Termination Date.

At County's request, Lessee shall execute an amendment to this Lease and a quitclaim deed with respect to the Partial Termination Premises, to confirm the termination of the Lease with respect to the Partial Termination Premises, and County and Lessee shall execute any other documents as reasonably necessary or appropriate to effectuate the termination of this Lease with respect to the Partial Termination Premises or the other matters set forth in this Section 2.2. Notwithstanding the foregoing, the termination of the Lease with respect to the Partial Termination Premises in accordance with the terms and provisions of this Section 2.2 shall not be conditioned upon the execution of any such amendment, quitclaim deed or other documentation. There shall be no adjustment to the Annual Minimum Rent or Percentage Rent payable under this Lease upon the termination of the Lease with respect to the Partial Termination Premises.

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 eleven (11) years, and no later than ten (10) 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 at any time, no later than four (4) 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 Lessee has received written notice of County's election to require Lessee to remove Improvements hereunder, Lessee shall, no later than the date which is ninety (90) days after the date upon which Lessee received such notice from County, provide County with a letter of credit, bond or other security or deposit of funds, in form, issuer and amount satisfactory to County, to secure the discharge of Lessee's removal and restoration obligations pursuant to this subsection. The amount of the letter of credit, bond or other security or deposit shall be equal to the greatest of (i) one hundred fifty percent (150%) of the estimated cost to remove the Improvements as set forth in the report described above (the "Estimated Costs"), (ii) the Estimated Costs adjusted to reflect the percentage change in the ENR Index over the five (5) year period immediately preceding the date of Lessee's delivery of the letter of credit, bond, or other security or deposit, or (iii) the Estimated Costs adjusted to reflect the percentage change in the CPI Index over the five (5) year period immediately preceding the date of Lessee's delivery of the letter of credit, bond, or other security or deposit. If by not later than four (4) years prior to the expiration of the Term (or concurrently on any earlier termination of the Lease by County) 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. <u>County's Right to Remove Improvements</u>. If, following an election by County to cause Lessee to remove the structures, buildings and Improvements as described in subsection 2.4.2 above, Lessee in fact fails to so remove said structures, buildings and Improvements and restore the Premises, County may 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 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. <u>Duty to Remove Equipment, Etc</u>. No later than the expiration of the Term or sooner termination of this Lease, 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 ten (10) 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. Notwithstanding the foregoing sentence, such utility lines, transformer vaults and all other utility facilities, 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) a commercial building used for retail, office, health club and yacht club purposes; (ii) boat anchorage facilities, including transient boat accommodations and liveaboards; (iii) a parking structure to (A) satisfy the parking requirements for the other Improvements located on the Premises, including the boat anchorage facilities, (B) provide 112 parking spaces to serve the boat anchorage facilities located on Parcel 20, and (C) provide 94 parking spaces as replacement public parking for public parking terminated on Parcel 147 in connection with the development of Parcel 147; 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"). Expect as specifically provided herein, the Premises shall be used for no other purpose 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.

Pacific Mariners Yacht Club and one or more other commercial tenants (the "Parcel 20 Commercial Subtenants") currently occupy the existing commercial building located on Parcel 20. Lessee agrees to offer to sublease to the Parcel 20 Commercial Subtenants a comparable amount of space in the New Commercial Building to facilitate the relocation of the Parcel 20 Commercial Subtenants to the New Commercial Building. The sublease offered to each of the Parcel 20 Commercial Subtenants shall be on market rate economic terms and conditions (but any non-economic terms and conditions, such as, but not limited to, liability and indemnification provisions, may at Lessee's option be consistent with those set forth in the Parcel 20 Commercial Subtenants' current subleases existing as of the date hereof).

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 detrimental nor shall any similar activity be permitted on any other portion of the Premises or on any adjacent public street or adjacent property.

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 inconsistent with any applicable governmental or public agency requirements;

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 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;

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 as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease;

3.2.2.7.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

3.2.2.8.The following uses shall not be permitted: (a) fuel sales; (b) boat or vehicle repair, other than minor servicing or owner maintenance; (c) live bait sales; (d) commercial sportfishing and tour boats; or (e) residential use.

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 in light of these objectives, consistent with the operation of commercial, boat anchorage and parking 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 Premises shall be open every day of the year. Any changes in the days and/or hours of operation of the public portions of the Premises shall be subject to the written approval of County.

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.

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.

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 commercial, boat anchorage and parking facilities in Marina del Rey, and delivered in writing to Lessee.

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 existing as of the date hereof or otherwise referenced in this Lease in, to, over or affecting the Premises for any purpose whatsoever.

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 City 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.

The Lease of the Premises is also subject to the easements reserved in Sections 15.19 and 15.20 below.

3.9 Yacht Club Use. It is agreed and acknowledged by County and Lessee that a primary purpose of the yacht club use permitted under Section 3.1 above is to provide for a continuing and ongoing program in boating instruction and safety and to contribute to the pleasure of private boat ownership by participation in yachting regattas and similar competitive events. To that end, Lessee agrees and covenants to undertake and carry on and participate in those activities set forth on Exhibit C attached hereto, or such substitute activities as may be hereafter approved by Director.

An annual Public Service Plan shall be submitted by Lessee for Director's approval, on or prior to January 15 of each year, certifying that, and describing the manner in which, the requirements of this Section 3.9 have been satisfied by Lessee, together with Lessee's plans to meet such requirements in the current calendar year.

4. PAYMENTS TO COUNTY.

4.1 Net Lease. The parties acknowledge that the payments to be made by Lessee under this Lease are intended to be absolutely net to County. The rent and other sums to be paid to County hereunder are not subject to any 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 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 may also be subject to possessory interest taxes, and that the Sublessee shall be responsible for any and all possessory interest taxes on the Sublessee's interest; however, Lessee acknowledges that the payment of such possessory interest taxes is the ultimate responsibility of Lessee.

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 Sections 4.3 and 4.4 below) during each 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"), except that any amounts payable for less than a full calendar year or month shall be prorated based on the number of days in such partial year or month as compared to the total number of days in the full calendar year or month during which such period occurs. During the period from the Effective Date until the earlier of the Completion Date or the Required Completion Date, the Annual Minimum Rent shall be equal to the product of (a) the average of the total Annual Rent payable by Lessee for each of the most recent three (3) year preceding the Effective Date but prior to the date that Lessee caused or permitted any space in the Improvements to become vacant in contemplation of the demolition and redevelopment of the Premises pursuant to Section 5.1 of this Lease, multiplied by (b) .75. During the three year period from and after the earlier of the Completion Date or the Required Completion Date, the Annual Minimum Rent shall be Two Hundred Fifteen Thousand Dollars ($215,000.00) per year. From and after the third anniversary of the earlier of the Completion Date or the Required Completion Date, the Annual Minimum Rent shall be as set forth in Sections 4.3 and 4.4 below.

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 one or more of the following percentage categories, as applicable. 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 and pay to County a sum equal to the total of the following percentages for said previous month, less the amount of monthly installment of 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; provided, however, that Percentage Rent from dockside gear lockers shall be TWENTY PERCENT (20%) of Gross Receipts therefrom;

(b) TWENTY FIVE PERCENT (25%) of Gross Receipts from the rental or other fees charged for the use of dry storage facilities, landside storage space, boats, motors, tackle, recreational equipment, tools, equipment, launch and retrieving of small boats and from the sale of live bait; provided, however, that Percentage Rent from landside gear lockers shall be TWENTY PERCENT (20%) of Gross Receipts therefrom;

(c) TEN AND ONE-HALF PERCENT (10.5%) of Gross Receipts or other fees charged for the occupancy of structures and other facilities including but not limited to (1) apartments, (2) hotel and/or motel accommodations, (3) house trailers, (4) meeting rooms, and (5) rental of land and/or water or facilities for activities not otherwise provided for in this Section such as but not limited to television and/or motion pictures;

(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) [INTENTIONALLY BLANK] _____ PERCENT (__%) of Gross Receipts from the sale of new or used boats, boat trailers, 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. However, the trade-in allowance for such used item taken in trade may be deducted from the sale price of said used item, provided said used item is sold within one hundred twenty (120) days of the date of the bill of sale which established said trade-in allowance;

(e) TWENTY FIVE PERCENT (25%) of commissions or other fees earned from boat brokerage, car rental agencies, marine insurance commissions where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage, laundry and dry cleaning commissions and other similar activities where earnings are normally on a commission basis when said activity is approved in advance by Director;

(f) FIVE PERCENT (5%) of Gross Receipts received by Lessee or sublessee, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee, from service enterprises, including, without limitation, cable, internet, satellite, telecommunication, telephone and other utility services, and valet parking services;

(g) SIX PERCENT (6%) of Gross Receipts received by Lessee or sublessee, or TWENTY PERCENT (20%) of any commissions or fees collected from commercial boating activities including, but not limited to, charter boat, bareboat charters and sportfishing boats;

(h) FIVE PERCENT (5%) of Gross Receipts received by Lessee or sublessee or TWENTY-FIVE PERCENT (25%) of any commissions or other fees collected for the installation and/or operation of coin-operated vending or service machines, including pay telephones;

(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) FOUR PERCENT (4%) of Gross Receipts from the operation of any 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 (s); 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) Intentionally omitted;

(l) Intentionally omitted;

(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) [INTENTIONALLY BLANK] _____ PERCENT (__%) of Gross Receipts or other fees charged from the operation of sightseeing boats, tour boats or water taxis;

(o) Intentionally omitted;

(p) [INTENTIONALLY BLANK] _____ PERCENT (___%) of Gross Receipts or other fees charged by authorized 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) TWENTY FIVE PERCENT (25%) of Gross Receipts from parking fees, except that (1) parking fees or charges, if any, which are collected in conjunction with an activity the Gross Receipts from which are required to be reported in a percentage category higher than twenty five percent (25%) shall be included in Percentage Rent at such higher percentage; and (2) valet parking charges, fees and tips shall not be included in Percentage Rent under this subsection, but instead shall be included in Percentage Rent under subsection (f) above;

(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) FIVE PERCENT (5%) of the Gross Receipts from the operation of all stores, shops or boutiques selling items at retail; and,

(t) Notwithstanding the foregoing, and notwithstanding the provisions of subsection (m) of this subsection 4.2.2, the percentage of Gross Receipts payable from club dues, initiation fees, and assessments shall be TEN PERCENT (10%) for so long as Lessee is in compliance with its "Public Service Plan". For the purposes of this subsection, compliance with its "Public Service Plan" shall mean, for any calendar year or portion thereof, that (1) Lessee has submitted to Director no later than January 15 of such year, and Director has approved, satisfactory evidence that Lessee has expended in the prior calendar year an amount no less than five percent (5%) of Gross Receipts payable from club dues, initiation fees, and assessments toward public service programs and expenditures which have been approved by Director and which may include Lessee's costs of compliance with the terms of Section 3.9 hereof. Such Public Service Plan shall additionally set forth in detail Lessee's plans, arrangements and intention to comply with the provisions of Section 3.9 of this Lease for such calendar year, together with (i) a Lessee's written certification that it has complied with the terms of Section 3.9 of this Lease and has fully implemented its Public Service Plan, as approved by Director, for the prior calendar year and (ii) Lessee's proposed expenditures of no less than five percent (5%) of Gross Receipts payable from club dues, initiation fees, and assessments toward public service programs in the current calendar year, to the extent that Lessee desires to avail itself of the percentage rent reduction in this subsection 4.2.2(t). In the event that Director disapproves Lessee's Public Service Plan or otherwise determines that Lessee is not in compliance with the requirements of its Public Service Plan or Section 3.9 of this Lease, or Lessee fails to provide Director with adequate

documentation evidencing Lessee's expenditures or compliance with the prior year's Public Service Plan, which failure is not remedied within thirty (30) days after written notice from Director to Lessee, the Percentage Rent applicable to the foregoing income category shall be increased by FIVE PERCENT (5%) from and after the first day of the first month after the date upon which Director determines Lessee was no longer in compliance with its Public Service Plan until compliance is reestablished to the satisfaction of Director. Nevertheless, Lessee's failure to comply with the requirements of its Public Service Plan (other than with respect to the requirements of Section 3.9) shall not constitute an Event of Default hereunder.

(u) The specific percentages set forth above apply to those Permitted Uses of the Premises which are applicable as of the Execution Date. Where a specific percentage in the foregoing schedule has not been provided, then, concurrent with County or Director's approval of a specific additional or related use, Director shall establish the specific percentage to be applied to such additional or related 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 by County, whether by arbitration or otherwise, with respect to the appropriate percentage to be applied to that use. The percentage rent for the related use as determined by Director shall remain in effect until the next Renegotiation Date.

4.2.2.1.Other Activities. If Director or Lessee 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. If Director and Lessee cannot agree upon such reasonable minimum monthly payment, the matter shall be resolved by arbitration as provided in Article 16 hereof.

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 all money, cash receipts, or other things of value, including but not limited to gross charges, sales, rentals, common area maintenance payments, operating expense reimbursements, fees and commissions made or earned by Lessee and/or all its assignees, Sublessees,

licensees, permittees or concessionaires, whether collected or accrued 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 or merchandise.

(i) 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, collection costs, discounts from credit card operations, insurance and taxes.

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

(iii) 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 for amounts owed by subtenants, assignees, licensees concessionaires or permittees 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. Notwithstanding anything to the contrary contained herein, Lessee shall be permitted to make monthly payments of Percentage Rent using the cash method of accounting to determine Gross Receipts, provided that Lessee provides County with an annual reconciliation of its cash basis determination of Gross Receipts to the accrual method (together with payment of any additional Percentage Rent due).

(iv) 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 or Sublessee, 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 Sublessee, or the amount of cash refunded or credit allowed thereon in lieu of Lessee's or Sublessee'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 or Sublessee 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 or Sublessee's stock in trade;

d. receipts from insurance claims other than rental interruption or business interruption insurance;

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

f. the Cost of Sublessee's submetered electricity, provided (1) each Sublessee's obligation to reimburse Lessee for such Sublessee's electrical 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 Sublesee's electricity; and (3) the receipt is actually credited against the cost of the Sublessee's electricity. For the purpose of the foregoing sentence, the "Cost" of the Sublessee's electricity shall mean the actual costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility's electric bill that is allocable to the Sublessee based on such Sublessee's submetered consumption of electricity, 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 subsection 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, licensee, or permittee is conducting a business or engaged in any use or occupation or any combination

thereof on Lessee's leasehold except for those uses or occupations delineated under Item (1) of subsection (c1) of subsection 4.2.2, Lessee shall report whichever of the following results in the greater percentage rental: (1) the Gross Receipts of each Sublessee under one or more of the appropriate subsections of this Section; or (2) Lessee's receipts from each Sublessee under subsection (c) or (c1) of this Section.

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.

4.3 Adjustments to Annual Minimum Rent. As of the third (3rd) anniversary of the Completion Date (or as of the third (3rd) anniversary of the Required Completion Date if the Completion Date does not occur on or before the Required Completion Date) (the "First Adjustment Date") and as of each third (3rd) anniversary of the First Adjustment Date thereafter (each an "Adjustment Date" and collectively the "Adjustment Dates"), the Annual Minimum Rent shall be adjusted. Until the Renegotiation Date provided in Section 4.4 hereof, the Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy five percent (75%) of the average of the scheduled total annual rent due (including Monthly Minimum Rent and Percentage Rent) from Lessee to County under Section 4.2 of this Lease during the thirty-six (36) month period immediately preceding the Adjustment Date; provided, however, if the Completion Date does not occur by the Required Completion Date, then for purposes of determining the average total annual rent that was payable for the thirty-six (36) month period prior to the First Adjustment Date, the total per diem annual rent for the period from the Required Completion Date until the Completion Date shall be deemed to be the same total per diem annual rent that was payable by Lessee for the period from the Completion Date until the next anniversary of the Required Completion Date.

4.4 Renegotiation of Annual Minimum and Percentage Rents. Effective on each tenth (10th) anniversary of the Completion Date (or effective on each tenth (10th) anniversary of the Required Completion Date if the Completion Date does not occur on or before the Required Completion Date (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 (with any and all Improvements existing thereon deemed to be owned by County as of the Renegotiation Date) 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. Notwithstanding any contrary provision hereof, in no event shall the Fair Market Rental Value of Percentage Rents ever be less than the specific numeric percentages set forth in subsection 4.2.2 of this Lease.

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, and Lessee shall have fifteen (15) days 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, 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 pay to County Annual Minimum Rent and Percentage Rent at the level existing for the last year of the ten (10) year period then completed.

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 seven (7) 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, compounded monthly, 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:

(i) 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,

(ii) the interest rate applicable to any period of time in excess of six (6) months following the Renegotiation Date shall be the average daily variable 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 4.2.2.4. 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 is not received by County within five (5) days after 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 not paid within five (5) days after the date due and payable; provided that the Late Fee shall be waived with respect to the first occurrence during any Lease Year of a late payment if such payment is received by County within one (1) business day following written notice from County that the unpaid amount was not paid by the date due. 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 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) 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 11 and 12 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 or in any Major Sublease, (b) Lessee's granting of a Major Sublease or (c) any transaction or series of related transactions not described in subsections 4.6.1(a) or (b) which constitute an Aggregate Transfer of fifty percent (50%) or more of the beneficial interests in, or a Change of Control of, Lessee, this Lease or a Major Sublease. For the purposes of this Lease, "Change of Control" shall refer to a transaction whereby the transferee acquires a beneficial interest in Lessee, this Lease or a Major Sublease which brings its cumulative beneficial interest in Lessee, this Lease or a Major Sublease, 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 shall not be deemed to create an obligation to pay County a Net Proceeds Share, and, except for a transfer described in subsection 4.6.2.1, County shall have no approval rights with respect thereto (other than those approval rights set forth below regarding the managing general partner of Lessee), although County shall be provided with prior written notice of the change of ownership and Lessee shall reimburse County for the Actual Cost of its review of such transactions, which review with respect to the transactions described in subsections 4.6.2.2 through 4.6.2.6 shall be limited to confirming that each change of ownership qualifies as an Excluded Transfer under this subsection 4.6.2:

4.6.2.1.a transfer by any direct or indirect partner (which for purposes of this subsection 4.6.2 shall also mean member, shareholder or other interest holder if Lessee becomes an entity other than a partnership) of Lessee as of the Execution Date, to any other direct or indirect partner of Lessee as of the Execution Date;

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, or a transfer by a direct or indirect partner of Lessee directly to a spouse, sibling or descendant; provided, however, that County shall at all times have the right to approve the managing general partner, or managing member if Lessee hereby becomes a limited liability company (and the controlling interest in such managing general partner or managing member), of Lessee following such a transfer;

4.6.2.3.a transfer of the existing interests in Lessee held by a direct or indirect partner of Lessee to any living trust, by way of gift, devise, intestate succession or operation of law, where the transferee living trust's assets are substantially the same as the transferor and the beneficiaries of said trust are members of the transferor's immediate family (which for the purposes of this subsection shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), together with the subsequent transfer of such interests to such beneficiaries upon the death of such partner; provided, however, the parties

acknowledge (a) that a subsequent dilution or transfer of said interests shall be subject to County approval and fees as provided herein, and (b) County shall have at all times the right to approve the managing general partner, or managing member in the event that Lessee becomes a limited liability company (and the controlling interest in such managing general partner or managing member), of Lessee.

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 whose stock is traded publicly on a national stock exchange or is traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

4.6.2.5.a mere change in the form, method or status of ownership (other than a transfer of beneficial interests between or among individuals and/or entities controlled by such individuals); provided that this exclusion shall not apply to a single transaction or series of related transactions whereby an Aggregate Transfer of fifty percent (50%) or more of the beneficial interests in Lessee, this Lease or a Major Sublease has occurred, except if the transfer is purely a change in the form of ownership, such as a conversion of Lessee's partnership to a corporation or limited liability company, as long as there is a continuity of management; or

4.6.2.6.any transfer resulting from a Condemnation by County or other governmental entity having the power of eminent domain if consented to by County.

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 interests in Lessee, this Lease or a Major Sublease, as appropriate) transferred in all 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.

4.6.4. Beneficial Interest. As used in this Lease, the "beneficial interest," "beneficial interest in this Lease," or "beneficial interest in a Major Sublease" shall refer to the interests of the natural persons who comprise the ultimate owner or owners of Lessee's interest in this Lease or a Major Sublease, or a Major Sublessee's interest in a Major Sublease, whichever is appropriate, regardless of the form of such ownership and regardless of whether such interests are owned through corporations, trusts, partnerships, limited liability companies or layers thereof; provided, however, that if an entity with an ownership interest in the Lease or a Major Sublease is a partnership, corporation or limited liability entity (a) whose beneficial interest in this Lease or a Major Sublease, whichever is appropriate, comprises less than fifteen percent (15%) of its total assets or (b) in which no ten (10) shareholders, partners or members together own more than thirty percent (30%) of the partnership interests, shares, membership interests or other equity interests in the entity, then for the purposes of Sections 4.6 through 4.8 hereof, the entity

itself shall be deemed to be the ultimate owner of the beneficial interest in this Lease or a Major Sublease, as appropriate, and the owners of such entity shall not be treated as the ultimate owners of such beneficial interest.

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 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, 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 and any 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, which 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 date of the execution of this Lease (or a Major Sublease) by Lessee, (c) 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 (d) 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; provided, however, that the transferee shall not be liable for the payment of the Administrative Charge or Net Proceeds Share if the transferor provides County with a deposit, letter of credit or other security satisfactory to County for the payment thereof. 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.

4.8 Net Proceeds Share. In the event of a Change of Ownership, 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), or (b) twenty percent (20%) of the Net Transfer Proceeds from such transfer. With respect to a Financing Event, the Net Proceeds Share (if any) shall be equal to twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event.

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 total cash and other consideration received (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), less the following costs with respect to Lessee (but not its successors or assignees):

4.8.1.1. $_____ (the "Existing Value"), (b) the amount of the Option Fee paid by Lessee under the Option Agreement, (c) the actual out-of-pocket costs incurred by Lessee for its third party consultants and attorneys in connection with the negotiation and consummation of the transactions resulting in the execution of this Lease, and (d) the Actual Costs reimbursed by Lessee to County pursuant to Section 15.3 of this Lease (the "Base Value"); plus

4.8.1.2. the final actual construction costs paid by Lessee in connection with the construction of the Redevelopment Work or other physical Improvements to the Premises in accordance with Article 5 herein (including future capital redevelopment and rehabilitation work, but not periodic maintenance and repair) to the Premises in accordance with the requirements of this Lease ("Improvement Costs"), whose costs have been submitted to Director within thirty (30) days after the completion of such Improvements and which costs shall have been certified in writing to Director by Lessee to have been incurred, along with evidence reasonably satisfactory to Director that such costs have been incurred. Alternatively, with respect to capital improvements that are not part of the initial Redevelopment Work, Lessee shall be entitled to adopt a program of annual submissions to Director within ninety (90) days following the end of each Lease Year. Construction costs shall include all hard and soft costs (including out-of-pocket design and predevelopment costs incurred prior to the date of the Lease for Redevelopment Work or other physical Improvements constructed after the Effective Date, construction period interest on Lessee's construction loan, and developer fees incurred by Lessee, as long as such developer fees do not exceed four percent (4%) of hard construction costs); plus

4.8.1.3. commissions, title and escrow costs, documentary transfer taxes, reasonable attorneys' fees, prepayment or yield maintenance premiums 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 (collectively, "Documented Transaction Costs"); plus

4.8.1.4 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 total cash and other consideration received by that successor Lessee (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), minus the following costs with respect to such successor Lessee:

4.8.2.1. the greatest of (a) the Base Value plus the amount of any Improvement Costs incurred prior to such successor Lessee's acquisition of its leasehold interest in the Premises, (b) the purchase price such successor paid to Lessee or such successor's seller for the interest acquired (or the fair market value of the interests transferred in connection with the seller's acquisition of the leasehold if utilized in connection with the calculation of Net Transfer Proceeds with respect to that sale) 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, and not subsequently repaid with Net Refinancing Proceeds, provided that such costs have been submitted to and approved by County to the extent provided in subsection 4.8.1.1 with respect to Lessee; 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 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 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 Existing Value (if any) and Improvement Costs in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred 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 such Net Proceeds Share, as if it had been 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 Execution Date, minus (i) the greatest of (a) the Existing Value, (b) the principal amount of Lessee's existing financing as of the Execution Date or (c) the principal amount of any subsequent refinancing by Lessee in connection with which County was paid a Net Proceeds Share, together with any portion of the proceeds of the Financing Event which shall be used for Improvement Costs, (ii) other Improvement Costs incurred by Lessee and not paid for or repaid with the proceeds of any Financing Event, and (iii) Documented Transaction Costs with respect to such Financing Event.

4.8.6. Effect of Refinancing on Improvement Costs. Upon payment to County of a Net Proceeds Share in connection with a Financing Event, then the Improvement Costs incurred by Lessee prior to such Financing Event shall be increased by the amount of New Refinancing Proceeds derived from such Financing Event and the Documented Transaction Costs in connection therewith and shall be in addition to Improvement Costs incurred by Lessee after such Financing Event.

4.8.7. 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.

4.8.8. Payment. Net Proceeds Share shall be due and payable concurrently with the transfer giving rise to the obligation to pay such fees 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. 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).

4.8.9: Shareholder, Partner, Member, Trustee and Beneficiary List. Prior to the Execution 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, its constituent shareholders, partners, members or other interest holders, 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 its constituent shareholders, partners, members or other interest holders, this Lease or a Major Sublease.

5. CONSTRUCTION OF IMPROVEMENTS.

5.1 Redevelopment Work. It is expressly understood and agreed that Lessee shall demolish the existing Improvements located on the Premises, and construct new Improvements on the Premises in accordance with the Redevelopment Plan attached to this Lease as Exhibit B, including without limitation, the following new Improvements: (i) a new commercial building (the "New Commercial Building") containing not less than 29,000 square feet of rentable area of space to be initially allocated approximately as follows: 5,000 rentable square feet of yacht club space, 10,000 rentable square feet of health club space, 2,916 rentable square feet of retail space and 11,432 rentable square feet of marine commercial office space; (ii) an attached parking structure with 447 parking spaces or such other number of parking spaces as required under Section 15.20 below (the "Parking Structure"); (iii) complete replacement of the existing 182 boat slips and related Improvements with 87 new boat slips with an average slip length of 36 lineal feet and related Improvements (all such boat slips and related Improvements, as approved and constructed, the "Anchorage Improvements"); and (iv) the Promenade Work described in Section 15.19 of this Lease. The demolition and construction work described in the immediately preceding sentence, along with all associated improvement, hardscape, landscape and other site work approved by County and to be performed in connection with such construction work, are herein collectively referred to as the "Redevelopment Work." The design, density, site coverage,

layout and open space, view corridors, building height, construction materials, landscaping, hardscaping and other improvement specifications pertaining to the Redevelopment Work shall be subject to County's approval as set forth in this Section 5, and shall be subject to the receipt by Lessee of all Entitlements. The boat slips to be constructed as part of the Anchorage Improvements shall be constructed with concrete or such other materials as approved by the Director. 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 Redevelopment Work, which expenditures shall be subject to the verification and reasonable approval by County. The "Minimum Development Cost" shall mean $13,000,000 increased by the same percentage increase (if any) in the ENR Index from April, 2005 through the date of the commencement of construction of the Redevelopment Work. Lessee shall comply with all time deadlines and schedules set forth in this Section 5 relating to the completion of the design and construction of the Redevelopment Work. Lessee's failure to do so shall, if not cured within the applicable cure set forth in subsection 13.1.2, constitute an Event of Default.

5.2 Schematics and Narrative. If, and to the extent, not completed by Lessee prior to the Effective Date in accordance with Section 4.3 of the Option Agreement, 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 any and all Improvements to be constructed, altered or modified on the Premises as part of the Redevelopment Work. Such plans shall, among other things, clearly delineate the architectural theme or motif of the Improvements and shall identify and illustrate the boundaries of the Premises and all rights-of-way or other areas reserved to County or third parties which are located thereon. The schematic plans and other materials required to be submitted by Lessee after the Effective Date pursuant to this Section 5.2 (i.e., not including those required to be submitted by Lessee during the Option Term pursuant to Section 4.3 of the Option Agreement) shall be submitted by Lessee to Director in accordance with a schedule that facilitates Lessee's completion of the Redevelopment Work on or before the Required Completion Date (subject to any extension thereof permitted hereunder) set forth in Section 5.7 below (taking into consideration the other plan submittal and approval periods set forth in this Lease). Director shall have sixty (60) days within which to approve or disapprove Lessee's submission under this Section 5.2. Failure of Director to approve such submission in writing within said sixty (60) day period shall be deemed disapproval of said submission. After approval of schematic plans (or subsequent approval of Preliminary or Approved Final Plans, Specifications and Costs, as defined herein) by Director, if changes in such plans are required by conditions of approval of the Improvements 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 the changes required by the California Coastal Commission or other governmental agency, as appropriate, unless such changes materially prejudice County's ability to enjoy the rights and benefits granted to County pursuant to this Lease.

5.3 Preliminary Plans and Specifications. If, and to the extent, not completed by Lessee prior to the Effective Date in accordance with Section 4.3 of the Option Agreement, Lessee shall submit to Director six (6) sets of preliminary plans, outline specifications and construction cost estimates for the Improvements set forth therein. 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. The preliminary plans, outline specifications and construction cost estimates required to be submitted by Lessee after the Effective Date pursuant to this Section 5.3 (i.e., not including those required to be submitted by Lessee during the Option Term pursuant to Section 4.3 of the Option Agreement) shall be submitted by Lessee to Director in accordance with a schedule that facilitates Lessee's completion of the Redevelopment Work on or before the Required Completion Date set forth in Section 5.7 below (taking into consideration the other plan submittal and approval periods set forth in this Lease). Director shall have twenty-one (21) days within which to approve or reasonably disapprove Lessee's submission under this Section 5.3, and Director may disapprove said preliminary plans on the grounds that they do not reflect a natural evolution from the approved schematic plans or that they materially differ from the approved schematic plans and narrative. 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, 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 SECTION 5.3 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL 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."

5.4 Final Plans and Specifications. If, and to the extent, not completed by Lessee prior to the Effective Date in accordance with Section 4.3 of the Option Agreement, Lessee shall submit for approval by Director six (6) complete sets of final plans, detailed specifications and a construction cost statement for all Improvements to be constructed, altered or modified by Lessee on the Premises, 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 difference in the scope, size, configuration, arrangement or motif of the Improvements from those described in the approved preliminary plans and specifications shall be separately identified and described. The final plans and other materials required to be submitted by Lessee after the Effective Date pursuant to this Section 5.4 (i.e., not including those, if any, required to be submitted by Lessee during the Option Term pursuant to Section 4.3 of the Option Agreement) shall be submitted by

Lessee to Director in accordance with a schedule that facilitates Lessee's completion of the Redevelopment Work on or before the Required Completion Date set forth in Section 5.7 below, taking into consideration the Director's approval periods set forth in Section 5.5.1 below.

5.5 Conditions Precedent to the Commencement of Construction. No construction, alteration or modification by Lessee of any Improvements on the Premises shall be commenced until each and all of the following conditions have been satisfied:

5.5.1. Approval of Final Plans and Specifications. The final plans, detailed construction specifications and construction cost statement described in Section 5.4 for the Improvements have been approved by Director ("Approved Final Plans, Specifications and Costs"), which approval shall not be unreasonably withheld provided that the final plans and specifications reflect a natural progression and logical evolution from the approved preliminary plans and specifications. Director shall have twenty one (21) days within which to approve or disapprove such submission, and Director may disapprove such submission on the grounds that they do not reflect a natural evolution from or that they materially differ from the approved preliminary plans, outline specifications and construction cost estimates. Failure of Director to disapprove said preliminary plans 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, 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 SECTION 5.5.1 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL 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."

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. No material modification shall be made to the Improvements described in the Approved Final Plans, Specifications and Costs without the prior written approval of Director, which shall not be unreasonably withheld.

5.5.2. Permits and Other Approvals. Lessee shall have received and furnished County with copies of all permits, licenses and other governmental approvals necessary

to construct the Improvements described in the Approved Final Plans, Specifications and Costs. Lessee agrees to apply for all such permits, licenses and other governmental approvals at the earliest commercially reasonable time and thereafter shall use diligent efforts (which shall be deemed to include expenditures of funds, including without limitation application fees, travel, architectural, consulting and lobbying fees, as reasonably necessary to expedite the permit, license or other approval process) to procure such permits, licenses and other approvals at the earliest reasonably possible time.

5.5.3. 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 Improvements described in the Approved Final Plans, Specifications and Costs.

5.5.4. 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 or with other security for the construction of the Improvements as set forth in subsection 5.5.5 below:

5.5.4.1.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 Final Plans, Specifications and Costs. 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, Specifications and Costs.

5.5.4.2.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 set forth in the Approved Final Plans, Specifications and Costs, 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 5.5.4.

5.5.5. Alternative Security. In lieu of providing the Payment and Performance Bonds, Lessee may (i) deposit a Certificate of Deposit with County or post an additional Letter of Credit in favor of County, equal in amount to one hundred percent (100%) of the construction contract price, which may be drawn upon by County to complete the construction of the Improvements if same have not been completed by Lessee or if an Event of Default has occurred under this Lease, or (ii) provide a payment and performance guaranty from an individual or entity acceptable to County and in form and substance acceptable to County, which guaranty shall guaranty (I) the Lessee's obligation to complete the Improvement described in the Approved Final Plans, Specifications and Costs, and (II) the payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of said construction work and for labor performed in connection therewith. A condition precedent to Lessee's right to provide the alternative security described in this Section 5.5.5 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 of the Improvements does not constitute a public work of improvement requiring the delivery of the bonds described in Section 5.5.4 above.

5.5.6. Evidence of Financing. Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by Director, to complete the Improvements as set forth in the Approved Final Plans, Specifications and Costs. 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.

5.5.7. Work Schedule. Lessee shall have provided County with a construction schedule reasonably acceptable to Director. Such construction schedule for the Redevelopment Work shall be consistent with the completion of the Redevelopment Work, as set forth in the Approved Final Plans, Specifications and Costs, on or before the Required Completion Date set forth in Section 5.7 below, as such date may be extended as provided in this Article 5.

5.6 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. 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.

5.7 Construction Schedule.

5.7.1. Substantial Commencement of Construction. It is a condition of this Lease that, except to the extent Lessee is prevented from so doing by the events identified in subsection 5.7.3, Lessee shall cause the Substantial Commencement of Construction of the Redevelopment Work to have occurred in accordance with the Approved Final Plans, Specifications and Costs by the date therefore set forth in the construction schedule approved by Director pursuant to Section 5.5.7 above, and shall substantially complete the Redevelopment Work by not later than the fifth (5th) anniversary after the Effective Date (the "Required Completion Date"). For the purposes of this Lease, "Substantial Commencement" or "Substantial Commencement of Construction" shall mean that all demolition and excavation work required in connection with the Redevelopment Work has been completed and the construction of the new Improvements to be constructed as part of the Redevelopment Work has been commenced. The required date for the Substantial Commencement of Construction and the Required Completion Date will only be extended under the specific circumstances set forth in subsection 5.7.3, and under no other circumstances. Notwithstanding the foregoing, the parties hereto specifically agree that so long as Lessee is otherwise diligently and in good faith attempting to satisfy the condition set forth in the first sentence of this subsection 5.7.1, and as long as it would have been extremely unlikely that any other developer could have caused the subject Improvements to be Substantially Commenced and/or completed within such timeframe, then Lessee will not be in breach of this subsection for its failure to achieve Substantial Commencement by the required date set forth herein or completion of the Redevelopment Work by the Required Completion Date.

5.7.2. After Substantial Commencement. Once construction of the Improvements set forth in the Approved Final Plans, Specifications and Costs has been Substantially Commenced, Lessee shall thereafter diligently pursue the completion of such construction by the Required Completion Date in substantial compliance with the Approved Final Plans, Specifications and Costs. Completion of construction of the Improvements following Substantial Commencement will be extended only under the specific circumstances set forth in subsection 5.7.3 and under no other circumstances.

5.7.3. Extension of Dates. The required date for the Substantial Commencement of Construction and the Required Completion Date shall be extended only for the reasons set forth in this subsection 5.7.3. In the event Lessee has not met the condition set forth in the first sentence of subsection 5.7.1 (subject to the last sentence of subsection 5.7.1 and subject to any extension granted pursuant to this subsection 5.7.3), then at County's option this Lease shall be amended such that the terms and provisions of this Lease revert back to the terms and provisions of the Original Lease (including, without limitation, the Original Term), as modified by the "Non-Exercise Amendment" described in the Option Agreement (the "Reversion Amendment").

5.7.3.1.Injunction by Third Party, Nonregulatory Body. The required date for the Substantial Commencement of Construction shall be extended if the construction of the Improvements is the subject of (i) a then current judicial or administrative action, brought by a person or entity (other than Lessee or any affiliate of Lessee, or the County or the California Coastal Commission acting in their governmental capacity) that appeals or otherwise challenges the previous issuance of Entitlements for the Improvements, or seeks to enjoin, restrain, contest or otherwise limit the right of Lessee to construct the Improvements, or (ii) a temporary restraining order ("TRO") or injunction issued in connection therewith. In such case, the required date for the Substantial Commencement of Construction shall be extended until the dismissal, removal or other resolution of any such action or order, and the lapse of any applicable appeal period. Lessee shall diligently pursue the dismissal, removal or other resolution of any such action, TRO, injunction, judgment or order so issued and shall exhaust all commercially reasonable efforts to appeal any adverse TRO, injunction, judgment or order, and any extension of the required date for the Substantial Commencement of Construction shall be expressly conditioned upon such Lessee diligence. In the event that a permanent injunction, order or settlement prohibiting the construction of the Improvements becomes final and is no longer subject to appeal, then, at County's or Lessee's option, this Lease shall be amended in accordance with the Reversion Amendment.

5.7.3.2.Delay Caused by Unreasonable County Acts. The required date for the Substantial Commencement of Construction shall be extended if Lessee has been delayed in the obtaining of any permits or other approvals necessary for the commencement of construction of the Improvements set forth in the Approved Final Plans, Specifications and Costs due to Unreasonable County Activity. For the purposes of this Lease, the following shall be deemed to be "Unreasonable County Activity": County's failure to provide required joinder, if any, in Lessee's proposals for the Improvements described in the Approved Final Plans, Specifications and Costs before any governmental agency; or, 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 Substantial Commencement of Construction and which action or inaction occurred after the date hereof. Nothing contained in this Section 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 shall be available under this subsection only if all of the following procedures have been followed:

(i) Within a reasonable time under the circumstances, but in no event to exceed three (3) days after Lessee's discovery of any alleged Unreasonable County Activity, 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.

(ii) 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 of the permit/approval process likely to be caused by the Unreasonable County Activity.

(iii) 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.

The period of any extension pursuant to this subsection shall be equal to the period of the delay caused by the Unreasonable County Activity.

5.7.3.3.Delay in Obtaining Permits or Approvals. Except as otherwise provided in subsection 5.7.3.5, if as of the required date for the Substantial Commencement of Construction (as it may be extended as provided above), Lessee has not obtained a permit or other approval necessary to the commencement of construction from a regulatory body or agency other than County, or such regulatory body has obtained an injunction preventing the commencement of construction, and such permits, approvals or the removal of such injunction constitute(s) the major remaining impediment to the commencement of construction, then the required date for the Substantial Commencement of Construction shall be extended to thirty (30) days after the date upon which such permit is issued or injunction dissolved, provided that (1) Lessee has exhausted and continues to exhaust all commercially reasonable efforts to obtain such approval or permit or dissolution of such injunction, and (2) such extended required date for the Substantial Commencement of construction shall not be extended for more than two (2) years. If the required date for the Substantial Commencement of construction is so extended, then the Required Completion Date shall be extended by the same number of days that the required

date for the Substantial Commencement of construction was extended. The extension provided by this subsection shall be the only extension available in a situation where such permits and/or approvals have not been issued or such regulatory body or agency has obtained such an injunction.

5.7.3.4.Force Majeure. Notwithstanding any contrary provision hereof, any date by which Lessee is required to satisfy an obligation under this Article 5, including, without limitation, the Substantial Commencement of Construction by the date required herein and the completion of the Redevelopment Work by the Required Completion Date, shall be extended for delays in the ability of Lessee to comply therewith as a result of fire, earthquake, flood, tornado or other casualty, acts of God, civil riots or disturbance, embargo, war, acts of terrorism, industry wide strike or labor dispute or other unforeseeable event reasonably beyond the control of Lessee ("Force Majeure"); provided, however, that Lessee shall commence and complete the portions, if any, of the Improvements not impacted by such delay within the timeframe set forth in this Lease. Lessee and Director shall discuss and attempt to agree on the length of time of any Force Majeure delay. If they are unable to agree within thirty (30) days after the event or occurrence giving rise to Lessee's claim to a Force Majeure delay under this subsection 5.7.3.4, the matter shall be arbitrated as set forth in Article 16. In no event shall any extensions of any dates under this subsection 5.7.3 exceed two (2) years in the aggregate for any or all of the reasons set forth in this subsection 5.7.3.

5.7.3.5.Limitation of Extensions. Notwithstanding the foregoing, Lessee shall not be entitled to any extension under this subsection 5.7.3 unless Lessee had actually been pursuing the process of obtaining all permits, approvals, financing and other items necessary for the Substantial Commencement of Construction with due diligence, and unless all Improvements specified and plans and specifications submitted by Lessee in connection with any such permit, approval, financing or other item substantially conformed to (i) the Approved Final Plans, Specifications and Costs, and (ii) the land use laws and regulations and the Local Coastal Plan existing as of the date of execution of this Lease by Lessee.

5.7.3.6.No Effect on Rent. Notwithstanding anything to the contrary contained in this Lease, no extension, relaxation or modification of the requirement to Substantially Commence construction of the Improvements by the date required hereunder and complete such Improvements 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.

5.7.4. Failure to Reach Substantial Commencement. Lessee agrees that the primary purpose for County having entered into this Lease is to provide the public with the opportunity to enjoy the Improvements described in the Approved Final Plans, Specifications and Costs at the earliest practicable date. Therefore, it is understood and

agreed that the time periods and requirements for extensions contained in Sections 5.2 through 5.7 shall be strictly enforced and should Lessee, or any party claiming through Lessee, fail to meet the conditions for Substantial Commencement of Construction within the terms of Sections 5.2 through 5.7, then at County's option this Lease shall be amended in accordance with the Reversion Amendment.

5.8 Manner of Construction.

5.8.1. 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 to areas outside of the Premises caused by such work, and shall restore any such damaged areas 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.

5.8.2. 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.

5.8.3. 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.

5.8.4. 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.

5.8.5. 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 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 in connection with said construction activity, Lessee agrees to repair such

damage immediately at no cost or expense to County or, in the event that Lessee fails to effectuate such repair within five (5) business days after written notice from County (or such longer period as may be reasonably required to complete such repair so long as Lessee commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), County may enter upon the Premises to make such repairs, the Actual Cost of which shall be paid by Lessee within two (2) business days after demand by County.

5.8.6. Rights of Access. Representatives of the Department of Beaches and Harbors of the County shall, upon reasonable notice and at reasonable times, 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. 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.

5.8.7. Notice of Completion. Upon completion of the Improvements, as set forth in the Approved Final Plans, Specifications and Costs, 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 such Improvements and Lessee shall deliver to County, at no cost to County, two (2) sets of conoflex or mylar final as-built plans and specifications of such Improvements.

5.9 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 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 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.

5.10 Additional Construction. Lessee may, at its own expense, make or construct, or cause to be made or constructed, Improvements during the Term in addition to the Redevelopment Work, including such alterations, modifications or changes to Improvements as Lessee may desire; provided, however, that all such additional Improvements, and all alterations, modifications or changes to Improvements shall be (i) consistent with, and within the scope of, the Permitted Uses set forth in Article 3, (ii) first approved in writing by the Director, except as otherwise provided in Section 5.11 below, which approval shall not be unreasonably withheld,

conditioned or delayed, and (iii) made in accordance and compliance with all terms and provisions set forth in Sections 5.2 through 5.5 (other than as provided in Section 5.11), and Sections 5.8, 5.9 and 5.12. Lessee acknowledges that, except to the extent set forth in a prior written approval or agreement by Director or County, Director may refuse permission for the construction of any proposed Improvement, addition, alteration, modification or change, and such decision, if reasonable, will be final and binding upon Lessee. Lessee acknowledges that such proposed Improvement, addition, alteration, modification or change will also be subject to other governmental requirements and conditions, including those of the California Coastal Commission and other governmental authorities that may have jurisdiction.

5.11 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 Sections 5.2 through 5.5) where all of the following conditions are satisfied: (1) none of the proposed construction activity is structural in nature; (2) none of the proposed construction, additions, modifications or changes affect or are visible from the exterior of the Premises; (3) the proposed construction, additions, modifications or changes will not lessen the value of the Improvements; and (4) the Improvements will remain in compliance with the Permitted Uses; provided, however, that whenever Lessee makes or constructs or permits any Improvements in or to the Premises, Lessee shall (i) give written notice thereof (including a description of the work to be done and the permits obtained for such work), and (ii) furnish a copy of "as-built" plans upon completion of such work to County.

5.12 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 Premises or County.

5.12.1. 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, the Premises and the Improvements thereon 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, in order to enable County timely to post such notices.

5.12.2. 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.

5.12.3. 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 the bond described in California Civil Code Section 3143, or successor statute, which results in the removal of such lien from the Premises, 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.

5.13 Capital Improvement Fund. Commencing with the first calendar month following the third (3rd) anniversary of the Completion Date and continuing through the end of the Term, 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 capital renovations to the Premises and Improvements, other than the Anchorage Improvements. Lessee and County agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide funds for the ongoing revitalization of the Improvements on the Premises through the replacement, renovation, rehabilitation, upgrading, addition and installation of physical Improvements to the Premises after the completion of the Redevelopment Work. The Capital Improvement Fund shall be used only for Permitted Capital Expenditures. "Permitted Capital Expenditures" shall mean expenditures by Lessee for an addition, replacement, renovation or significant upgrade of or to the buildings on the Premises, including building exteriors or 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 buildings or their major systems, as applicable. Permitted Capital Expenditures do not include periodic, recurring or ordinary expenditures, repairs or replacements that keep the Improvements in an orderly efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life good. Permitted Capital Expenditures must be for items that are considered capital replacements, improvements and equipment under generally accepted accounting principles, consistently applied. All 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. Notwithstanding any contrary provision hereof, no portion of the Capital Improvement Fund shall be used for the Redevelopment Work, the Renovation Requirement described in Section 5.15 below, or for any Anchorage Improvement purposes, including without limitation, the Anchorage Improvements replacement work described in Section 5.14 below.

The Capital Improvement Fund shall be 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. Lessee shall

commence deposits to the Capital Improvement Fund on the first calendar month following the third (3rd) anniversary of the Completion Date. The Capital Improvement Fund deposits shall be made on or before the fifteenth (15th) day of each calendar month based on Gross Receipts for the immediately preceding month. During the first two years that Lessee is required to make Capital Improvement Fund deposits, each monthly deposit shall be an amount equal to one percent (1.0%) of Gross Receipts for the preceding calendar month. During the next five (5) years, each monthly deposit shall be an amount equal to one and one quarter percent (1.25%) of Gross Receipts for the preceding calendar month. Thereafter, and continuing during the remaining Term of the Lease, each monthly deposit shall be an amount equal to one and one half percent (1.50%) of Gross Receipts for the preceding calendar month. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund and held in accordance with the provisions of this Section 5.13, 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. If Lessee desires to obtain advance approval from Director for Capital Improvement Fund disbursements on an annual basis, Lessee shall have the right to submit to Director on an annual basis a renovation plan for the upcoming year which details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Lessee requests Director's advance approval, which approval shall not be unreasonably withheld. Any anticipated expenditure set forth in such renovation 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 renovation 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 renovation plan in effect for such year or individual expenditures not noted on any previously approved renovation plan for such year. 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. Funds in the Capital Improvement Fund must be used for Permitted Capital Expenditures from time to time during the Term of the Lease.

5.14 As of the date that is ten (10) 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 have Lessee remove the Improvements from the Premises at the end of the Term pursuant to subsection 2.4.2 of this Lease, then Lessee shall thereafter have the right to apply future deposits under this Section 5.13 to fund the security required for such removal costs as provided in subsection 2.4.2 if and to the extent that deposits under this Section 5.13 are not thereafter required for Capital Improvement Fund purposes.

5.15 Replacement of Anchorage Facilities. During the period between the thirtieth (30th) and thirty-fifth (35th) anniversaries of the Effective Date, Lessee shall commence and complete the replacement, at Lessee's cost, of all of the Anchorage Improvements with new

Anchorage Improvements. The new Anchorage Improvements shall be of a first-class and state of the art quality as of the date of such replacement, and shall comply with (i) the then most recent edition of Policy Statement No. 25 and the Specifications and Minimum Standards of Architectural Treatment and Construction for Marina del Rey, 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 (or such similar successor policy statement or publication then in effect), (ii) the then most recent edition of Layout and Design Guidelines for Small Craft Facilities issued by the California Department of Boating and Waterways (or such similar successor publication then in effect), and (iii) design memoranda as provided by the Harbor Engineer of the Los Angeles County Department of Beaches and Harbors. The construction of such replacement Anchorage Improvements shall be performed in accordance with and be subject to the requirements imposed upon Lessee under this Article 5 with respect to the making of Alterations.

5.15 Renovation Requirement. During the period between September 1, 2034 and August 31, 2036, Lessee shall be required to complete a renovation of the Improvements (the "Renovation Requirement"). The Renovation Requirement shall consist of such renovation and construction work as necessary in the reasonable judgment of Director to reposition the Improvements to a condition and appearance at least equal to other then-existing commercial projects in Marina del Rey (taking into consideration renovations then being made or required to be made within three (3) years thereafter by other lessees). The Renovation Requirement shall not pertain to the Anchorage Improvements that are required to be replaced pursuant to Section 5.14 above. Substantial Commencement of Construction of the Renovation Requirement shall occur not earlier than September 1, 2034 and the Renovation Requirement shall be completed not later than August 31, 2036.

Prior to the commencement of the Renovation Requirement, Lessee shall submit to Director a renovation plan ("Renovation Plan"), which renovation plan shall (a) describe the proposed renovation work in such detail as reasonably acceptable to Director, (b) include a design, governmental approval and construction schedule for the work described therein, (c) include a budget for all work costs, and (d) address such other matters as Director reasonably requests. The Renovation Plan shall be submitted by Lessee to County not later than such date as, taking into consideration the approval periods described in this Section 5.15 and Sections 5.2 through 5.5 above, the estimated time required to obtain all necessary governmental approvals and permits, and the estimated time required to complete the work, will permit the completion by Lessee of the Renovation Requirement by not later than August 31, 2036. Director shall have sixty (60) days within which to reasonably approve or disapprove the Renovation Plan, or to approve the 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 Renovation Plan shall be deemed Director's disapproval of the Renovation Plan. Upon Director's approval of the Renovation Plan, Lessee shall proceed to satisfy all conditions in this Article 5 to the commencement of the Renovation Requirement and to commence and complete the Renovation Requirement in accordance with the Renovation Plan and the terms and conditions of this Article 5. Director's approval of the actual plans and specifications for the Renovation Requirement shall proceed in accordance with the protocol for plan submission and approval set forth in Sections 5.2 through 5.5 of this Lease, except that the schematic plan submittal requirements set forth in Section 5.2 shall not be applicable to the extent that the

Renovation Plan approved by Director satisfies the requirements of such Section 5.2.

Lessee's failure to comply with the schedule approved by Director as part of the Renovation Plan and/or to meet the construction commencement and completion deadlines pertaining to the Renovation Requirement set forth in this Section 5.15 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 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 Renovation Plan and as a result thereof Lessee is delayed in the completion of the Renovation Requirement by the required completion date set forth in the first paragraph of this Section 5.15, then the required date for the completion of such Renovation Requirement shall be extended by the duration of the delay caused by Director's failure to reasonably approve the Renovation Plan, provided that the required date for the completion of the Renovation Requirement shall not be extended beyond the date reasonably required for the completion by Lessee of the Renovation Requirement.

Commencing with the month following the month during which the Completion Date occurs, and continuing each month thereafter until the Substantial Commencement of Construction of the Renovation Requirement (but at least through the month of August, 2034), Lessee shall establish and make monthly deposits to a reserve fund (the "Renovation Fund") in accordance with the provisions of this Section 5.15 for the purpose of funding a portion of the cost of the Renovation Requirement. Renovation Fund deposits shall be made on or before the fifteenth (15th) day of each calendar month in an amount equal to one percent (1%) of the Gross Receipts for the immediately preceding month. All interest and earnings on the Renovation Fund shall be added to the Renovation Fund and held in accordance with the provisions of this Section 5.15, but shall not be treated as a credit against the Renovation Fund deposits required to be made by Lessee pursuant to this Section 5.15. The Renovation 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 deposited into the Renovation 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. Lessee shall have the right to fund or replace amounts deposited in the Renovation Fund with a letter(s) of credit in form and issued by an institutional issuer reasonably satisfactory to Director.

Disbursements shall be made from the Renovation Fund only for costs which have been approved by Director and which satisfy the requirements of this Section 5.15. Prior to the disbursement of any amounts from the Renovation 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 Renovation Fund. Director shall have no obligation to approve the disbursement of amounts from the Renovation Fund unless and until Director has approved Lessee's Renovation Plan and Lessee has furnished to Director evidence reasonably satisfactory to Director that Lessee has sufficient financial resources to pay for all costs of the Renovation Requirement.

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 Section 4.3 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 taken 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 inourred 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.

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, 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.

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. Concurrent with the execution of this Lease, Lessee shall deliver to County, in the form of a cashier's check, wire transfer of immediately available funds, certificate of deposit or irrevocable letter of credit ("Letter of Credit") acceptable to County with

respect to form, content and issuer, a security deposit in an amount which represents three (3) times the current Monthly Minimum Rent (the "Security Deposit"). Within thirty (30) days after any adjustment of the Monthly Minimum Rent, the Security Deposit shall be increased by Lessee or may be reduced such that it at all times (other than during said thirty (30) day period) is equal to three (3) times the current Monthly Minimum Rent. 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 delinquent rent not paid by Lessee within any applicable notice and cure period and any other Events of Default of Lessee under this Lease. The Security Deposit shall be applied at the discretion of County. 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 or a Letter of Credit, 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 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 five (5) 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 the 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 five (5) 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 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, Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease.

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 million
Products/Completed Operations Aggregate:	$20 million
Personal and Advertising Injury:	$ 10 million
Each Occurrence:	$ 10 million

Lessee may satisfy the above coverage limits with a combination of primary coverage and excess liability/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, (b) the excess liability/umbrella coverage is for an aggregate limit of at least Fifty Million Dollars ($50,000,000), which limits may, at Lessee's election, be carried in the form of two separate policies, (c) the primary coverage and all excess liability/umbrella coverages are issued by the same insurer and such insurer is reasonably satisfactory to County, and (d) the combination of such primary coverage and excess liability/umbrella coverage

provides County with at least the same protection in all respects as if Lessee had carried primary coverage for the entire limits listed above in this Section 9.1.1 and in accordance with the other terms and provisions set forth herein applicable to such coverage.

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 $2 million for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto." 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 $3 million 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 million
Disease - policy limit:	$1 million
Disease - each employee:	$1 million

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 property, 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 two (2) years annual rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the Premises and Improvements.

9.1.5 For construction projects, including any Alterations or restoration, on the Premises, Lessee or Lessee's contractor 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 required by the County for the Alterations. The products/completed operations coverage shall continue to be maintained for a period to be determined by the County from the date the Alterations are completed and accepted by the Lessee.

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 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.) with limits as required by the County for the Alterations. This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project.

9.1.5.5 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants. 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 requests. 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 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). 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; 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 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:

(a) 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;

(b) 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;

(c) 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;

(d) 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;

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

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

(g) 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;

(h) 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,

(i) 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 report to County any accident or incident on or about the Premises which involves injury or property damage which might reasonably be thought to result in the filing of a claim or lawsuit against Lessee and/or

County. Such report shall be made in writing within 72 hours of Lessee's knowledge of such occurrence.

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, in conformance with such reasonable rules and regulations regarding the use and occupancy of commercial and marina facilities in Marina del Rey (such as the Premises) as may be promulgated by County from time to time for general applicability on a non-discriminatory basis, as revised from time to time. 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 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 shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, or as reasonably required in writing by Director to Lessee incident to the provisions of this Article 10. Lessee shall maintain all Improvements on the Premises in a safe, clean, wholesome and sanitary condition, to the reasonable satisfaction 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 reasonably necessary to create a pleasing development to the reasonable satisfaction of Director. 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. Lessee shall at all times during the Term keep all slips in good repair and condition in accordance with 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 (the "Minimum Standards"). Such obligation shall include the use of new materials, parts and components rather than the repair or rejuvenation of existing materials, parts and components. Any requirement for repair of slips 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. On or before the commencement of each Lease Year following the Effective Date Lessee shall submit to the Director, for the Director's approval in its reasonable discretion, a work plan for the repair and refurbishment of the slips on the Premises during the upcoming Lease Year. 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. Lessee's obligation to maintain and restore is absolute, and is not in any way dependent upon the existence or availability of insurance proceeds, except as otherwise provided in this Article 10. Restoration shall take place in accordance with the provisions of Article 5.

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 health or safety related 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, 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. 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 of the deficiency notice. 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. 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. 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 Premises 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 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 No Option to Terminate for Insured Casualty. 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 No County Obligation to Make Repairs. County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Premises.

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.

10.8 Notice of Damage. Lessee shall give prompt notice to County of any fire or 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, 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 an Approved Slip Lease, or of any amendment or assignment of such Sublease, Lessee shall submit a copy of such Sublease, amendment or assignment to Director for approval, which approval shall be given or withheld at Director's sole and absolute discretion. 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.

Notwithstanding any contrary provision of this Article 11, Lessee shall not be required to obtain County's approval of any Sublease of an individual boat slip in the ordinary course (but not the master lease of multiple slips) to a person or persons who will physically occupy the subleased slip, as long as such Sublease is in the form of the standard boat slip lease hereafter submitted to and approved by County and the term of such Sublease does not exceed one (1) year (each, an "Approved Slip Lease"). The terms and provisions of Sections 11.2 and 11.3 of this Lease shall not be applicable to Approved Slip Leases. Upon request by County, Lessee shall furnish County with a current rent roll respecting the Approved Slip Leases and a copy of all of such Approved Slip Leases.

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 the all or substantially all of the Premises. Any Change of Ownership shall constitute an assignment of Lessee's interest under this Lease. In addition, for purposes of this provision, the following acts of Lessee shall require the prior written consent of County to be effective, unless they are Excluded Transfers: (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; (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock in a corporation which owns or is a general partner in a partnership owning 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 assignment as provided herein. These same limitations and approval requirements shall 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 unreasonably withhold or delay its consent to any proposed assignment.

11.2.2. Involuntary Transfers Prohibited. Except as otherwise specifically provided in this Lease, neither this Lease nor any interest therein 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 this 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 costs of legal, financial and/or other analyses, as well as County's Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately grants its approval to the proposed assignment. However, in the event that County approves the proposed assignment, Lessee shall receive a credit toward those costs to the extent that an Administrative Charge is paid in connection with the assignment.

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:

(i) 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;

(ii) 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.

(iii) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation 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.

(iv) Business Plan. County shall be provided with the proposed assignee's business plan for the Premises, if applicable, 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. Subject to the requirements of the Public Records Act, County shall use its good faith efforts to keep such business plan confidential.

(v) 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.

(vi) 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.

(vii) 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.

(viii) 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 in connection with 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 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. Other than in connection with an Excluded Transfer as described in subsection 4.6.2, 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, the 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, Lessee shall deliver to County 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. 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 cause Lessee to issue 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 Lessee shall be entitled to consummate the Proposed Transfer with a third party (subject to County's approval rights as otherwise set forth in this Lease) during the ensuing nine (9) month period so long as the Proposed Transfer price is equal to or greater than the Lessee Sale Price last offered to County and upon no more favorable material terms to the assignee. In the event of a proposed Sublease or other permitted assignment of less than all of the Premises, County's election shall pertain to such portion of the Premises subject to the proposed 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, 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 lieu of the credit described in (2) above, 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.

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 subsection 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 successors and assigns 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 any designee which has 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 permitted successors, assigns or designees shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease; provided, however, no successor, assign or designee of an Encumbrance Holder that is affiliated with Lessee or any person or entity with a direct or indirect ownership interest in Lessee shall be entitled to any of the rights or protections granted 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 Events. 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 to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days 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 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. In addition, no Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger the obligation to pay a Net Proceeds Share to County or any recapture right of County under subsection 11.2.4 of this Lease.

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 subsection 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 of this Lease.

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 subsection 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this subsection 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 recapture right on the part of County, or (iii) 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 subsection 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 work described in Sections 5.1, 5.14 or 5.15 above 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 subsection 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 No Subordination. 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 (except with respect to the Partial Termination Premises pursuant to Section 2.2 above, or 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 (other than a termination with respect to the Partial Termination Premises pursuant to Section 2.2 above, or in accordance with the provisions of this Article 12) 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), 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, except in each case other than the partial termination of the Lease with respect to the Partial Termination Premises pursuant to Section 2.2, 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 Capital Improvement Fund or Renovation 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.

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, within five (5) 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, within such five (5) day period.

13.1.2. Failure to Comply with Construction Obligations. The failure of Lessee to comply with the obligations and timeframes set forth in Article 5 of this Lease if not cured within ten (10) days after written notice of such failure, if no other notice of such failure is otherwise required hereunder.

13.1.3. Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 8 of this Lease if not cured within five (5) days after written notice of such failure.

13.1.4. 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.

13.1.5. 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.

Any notice required to be given by County pursuant to subsections 13.1.1 through and including 13.1.4 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.

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 having a recorded interest pertaining to County's interest in this Lease or the Premises. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person 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.

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, 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. Lessee shall utilize the accrual method of accounting with respect to its preparation of the reports and maintenance of records required herein or, at its option, may utilize the cash method of accounting, provided Lessee reconciles its filings, records and reports to an accrual method to the extent requested by County; notwithstanding the foregoing, Lessee shall be permitted to make monthly payments of Percentage Rent using the cash method of accounting to determine Gross Receipts, provided that Lessee provides County with an annual reconciliation of its cash basis Gross Receipts to the accrual method (together with payment of any additional Percentage Rent due).

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 will not be unreasonably withheld.

The requirements of this paragraph may be waived or modified in advance by Director upon submission by Lessee of a substitute plan acceptable to Director for recording sales and other income.

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 showing Gross Receipts during the preceding calendar month, together with its calculation of the amount payable to County under Sections 4.2 through 4.8 inclusive, and shall accompany same with remittance of amount so shown to be due.

14.4 Availability of Records for Inspector's Audit. Books of account and records 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 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. 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. 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 Additional Accounting Methods. County may require the installation of any additional accounting methods or machines which are typically used by major office buildings and major parking service companies and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

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

14.8 Annual Financial Statements. Within six (6) months after the end of each Accounting Year or, at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall deliver to County a set of audited and certified financial statements prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County, setting forth Lessee's financial condition and the result of Lessee's operations for such Accounting Year and shall include a certification of and unqualified opinion concerning Lessee's Gross Receipts (including a breakdown by category). All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises.

14.9 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 and the delivery to County of audited certified financial statements and unqualified opinions as to Gross Receipts.

14.10 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 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 within ninety (90) days after the Execution 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 Premises since 1966. 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.

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 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.

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, 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.

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 and 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 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 Department of Beaches and Harbors Los Angeles County 13837 Fiji Way Marina del Rey, California 90292 Phone: 310/305-9522 Fax: 310/821-6345
With a Copy to:	Office of County Counsel Los Angeles County 500 West Temple Street Los Angeles, California 90012 Attn: County Counsel Phone: 213/974-1801 Fax: 213/617-7182
LESSEE:	Holiday-Panay Way Marina, L.P. c/o Goldrich & Kest Industries 5150 Overland Avenue Culver City, California 90230 Attn: Warren Breslow Phone: 310/204-2050 Fax: 310/204-1900
With a Copy to:	Holiday-Panay Way Marina, L.P. c/o Goldrich & Kest Industries 5150 Overland Avenue Culver City, California 90230 Attn: William Yerrick, General Counsel Phone: 310/280-5043 Fax: 310/280-5014

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 immediately upon 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 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, 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 an amendment to implement an arbitration judgment and other than an amendment to confirm the termination of the Lease with respect to the Partial Termination Premises pursuant to Section 2.2, 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.

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 an affirmative 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 necessary in order to secure such affirmative vote or approval 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: (1) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (2) 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); (3) the dates, if any, to which all rental due thereunder has been paid; and (4) whether the certifying party is then aware of any charges, offsets or defenses against the enforcement by the other party of any agreement, covenant or condition hereof to be performed or observed by the certifying party (and, if so, specifying the same). Prospective purchasers 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 Waterfront Promenade. As a part of the Redevelopment Work, Lessee agrees to (i) provide a continuous pedestrian walkway and view piers approved by County ("Promenade")

along the entire waterfront portion of the Premises to comply with the intent of the Local Coastal Program's waterfront promenade plan, (ii) replace all fencing on the Premises with new fencing approved by County, (iii) repave all parking areas, and (iv) complete new or refurbished restrooms for the anchorage tenants. The foregoing work is collectively referred to in this Lease as the "Promenade Work." Lessee shall perform the Promenade Work as part of the Redevelopment Work. The facilities to be constructed under this Section 15.19 shall be constructed in accordance with the provisions of Article 5. Lessee shall join the Promenade located on the Premises with the adjacent promenade located on Parcel 20 and repair any damage to the promenade improvements located on Parcel 20 incurred in connection with Lessee's construction of the Promenade under this Lease. County hereby reserves a public easement for access over and use of the Promenade for 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 maintenance and repair standards established by the County from time to time. 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.

15.20 Parking.

15.20.1 General. As part of the Redevelopment Work Lessee is required to construct the Parking Structure described in Section 5.1 of this Lease. It is contemplated that the New Commercial Building and the new Anchorage Improvements will require the construction of 241 parking spaces. The exact number of parking spaces required by applicable code to serve the New Commercial Building and the new Anchorage Improvements is referred to herein as the "On-Site Parking Spaces." In addition to the On-Site Parking Spaces, Lessee shall construct 112 parking spaces to serve the anchorage improvements located on Parcel 20 (the "Additional Parcel 20 Parking Spaces") and 94 public parking spaces to satisfy replacement public parking required to be constructed in connection with the development of Parcel 147 (the "Replacement Parcel 147 Parking Spaces") to the extent that the requirement for the Replacement Public Parking Spaces is not eliminated or reduced in connection with receipt of the entitlements and governmental approvals required for the development of Parcel 147. The 447 parking spaces required to be contained in the Parking Structure pursuant to Section 5.1 is based on the foregoing parking requirements. If the required number of On-Site Parking Spaces and/or Replacement Parcel 147 Parking Spaces changes, then the total number of parking spaces required to be contained in the Parking Structure shall be adjusted to reflect any such change. The Parking Structure shall be designed and constructed at the sole cost of Lessee. Any cost sharing agreement that Lessee, the Parcel 147 Lessee and/or the Parcel 20 Lessee may have entered into with respect to the cost of the design and construction of the Parking Structure shall be a matter as between Lessee and such other lessees, and shall not limit or otherwise affect Lessee's obligations to County with respect to the

construction of the Parking Structure. County shall have no obligation with respect to the cost of the design and construction of the Parking Structure.

15.20.2 Additional Parcel 20 Parking Spaces. County hereby reserves a non-exclusive, irrevocable easement on, over and across the Parking Structure and other portions of the Premises required for access to and from the Parking Structure (including without limitation driveways, ramps, aisles, entrances, exits, sidewalks, stairs, elevators and other Improvements) for vehicular and pedestrian access to and use of the Additional Parcel 20 Parking Spaces for parking purposes for the benefit of the anchorage improvements located on Parcel 20. Lessee shall not have the right to charge County, the Parcel 20 Lessee or any Designee (as defined below) for the use of the parking set forth in this subsection 15.20.2, except that during any period during which Parcel 20 continues to be leased to Parcel 20 Lessee, Lessee and such Parcel 20 Lessee shall have the right to mutually agree to a parking charge for the use of the Additional Parcel 20 Parking Spaces, but such charge shall not be binding on County on and after any termination of the lease for Parcel 20 in effect as of the date of this Lease. The Additional Parcel 20 Parking Spaces shall be in a location approved by Director in connection with the approval by Director of the Approved Final Plans, Specifications and Costs, or such other location as approved by Director from time to time. The users of the Additional Parcel 20 Parking Spaces shall have access to and use of the Additional Parcel 20 Parking Spaces 24 hours per day, every day, in accordance with the Operation Plan approved by Director pursuant to subsection 15.20.4 below. The easement described in this subsection 15.20.2 shall run for the benefit of County, as fee owner of the portion of Parcel 20 on which the anchorage improvements are located, and any Parcel 20 Lessee, as lessee of such portion of Parcel 20. The Parcel 20 Lessee (or County if there is no Parcel 20 Lessee) shall have the right to designate users of the anchorage improvements located on Parcel 20 (including visitors) as permitted users of the parking rights set forth in this subsection 15.20.2 ("Designees"), but this subsection 15.20.2 is not intended to confer any rights (including, without limitation, rights to enforce this subsection 15.20.2 as a third party beneficiary) on any third parties, including any such Designee. At Director's election, County and Lessee shall execute in recordable form a separate parking easement agreement that documents the terms and conditions of the parking rights set forth in this subsection 15.20.2. Parcel 20 Lessee shall indemnify, defend and hold Lessee harmless from and against all claims, losses, liabilities, costs or expenses (including without limitation reasonable attorneys' fees) incurred by Lessee for the death of or injury to persons or damage to property, arising in connection with or related to the use of the easement described in this subsection 15.20.2 by Parcel 20 Lessee or its Designees.

15.20.3 Replacement Parcel 147 Parking Spaces. County hereby reserves a public easement on, over and across the Parking Structure and other portions of the Premises required for access to and from the Parking Structure (including without limitation driveways, ramps, aisles, entrances, exits, sidewalks, stairs, elevators and other Improvements) for vehicular and pedestrian access to and use of the Replacement Parcel 147 Parking Spaces for public parking purposes. The location of Replacement Parcel 147 Parking Spaces and the access ways and circulation plan for public use of the

Replacement Parcel 147 Parking Spaces shall be approved by Director in connection with the approval by Director of the Approved Final Plans, Specifications and Costs. The Replacement Parcel 147 Parking Spaces shall be open to the public seven (7) days per week in accordance with such rules and regulations (including hours of public access) as are promulgated from time to time by County regulating such public use. Lessee shall make no use of the Premises, including without limitation the other parking located thereon, that interferes with the public easement described in this subsection 15.20.3 or is prohibited under or in conflict with the rules and regulations established by County for the use of the Replacement Parcel 147 Parking Spaces. County shall not be obligated to pay Lessee any compensation for the Replacement Parcel 147 Parking Spaces. Lessee shall have the right to charge the users of the Replacement Parcel 147 Parking Spaces for the use thereof in accordance with rates approved by County (with California Coastal Commission approval as required under Applicable Law) consistent with the public parking rates established (as modified from time to time) for other similar public parking in Marina del Rey. At Director's election, County and Lessee shall execute in recordable form a separate parking easement agreement that documents the terms and conditions of the public parking rights set forth in this subsection 15.20.3.

15.20.4 Parking Structure Operation Plan. Not later than ninety (90) days prior to the opening of the Parking Structure, Lessee shall submit to Director for Director's approval, a plan for the operation of the Parking Structure (the "Operation Plan"), including without limitation, hours of operation, access procedures, security, parking charges (if any) and other specifications pertaining to the operation of the Parking Structure. Lessee shall be obligated to operate, maintain and repair the Parking Structure at its sole cost and expense, in accordance with a standard of operation, repair and maintenance at least commensurate the standard of operation of other comparable first-class parking facilities in Marina del Rey. Lessee shall operate the Parking Structure in accordance with the Operation Plan, as approved by Director, and shall make no modifications to such Operation Plan without the prior written approval of Director.

15.21 Dockmasters. Throughout the Term, Lessee shall maintain a dockmaster program acceptable to County to manage Lessee's anchorage at the Premises. Such dockmaster system may be jointly operated with the anchorage for Parcels 18 and 20.

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 the Director, that as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels 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 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.

15.24 No Merger. If, prior to the expiration of the Term, County or Lessee shall acquire the interest of the other in the Promises, or any portion thereof, there shall be no merger of the leasehold estate into (a) the fee simple estate in the Premises, (b) the sub-reversionary interest held by County or (c) any leasehold estate superior to that held by Lessee.

15.25 365 Election. County and Lessee agree, for the benefit of any Encumbrance Holder, that for so long as an Encumbrance shall encumber Lessee's interest in the Premises, the right of election arising under Section 365(h)(1) of the Bankruptcy Code may be exercised solely by Encumbrance Holder and not by Lessee. Any exercise or attempted exercise of such right of election by Lessee shall be void.

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:

(a) 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.

(b) 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:

(1) 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;

(2) 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;

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

(4) 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.

(c) 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:

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

(2) 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;

(3) 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);

(4) 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

To enrich lives through effective and caring service

Los Angeles County
Department of Beaches & Harbors

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

February 7, 2008

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan Wisniewski

SUBJECT: **ITEM 5a - APPROVAL OF LEASE AGREEMENT – SANTA MONICA WINDJAMMERS YACHT CLUB-PARCEL 47 (13589 MINDINAO WAY) - MARINA DEL REY**

Item 5a on your agenda pertains to a new 5-year lease between the County of Los Angeles and the Santa Monica Windjammers Yacht Club (Yacht Club). The Yacht Club is a sublessee of the Parcel 47 lessee (SMYC Marina) and the County lease with SMYC Marina is terminating effective March 24, 2008. To retain the Yacht Club in their current facilities, we are proposing a 5-year lease agreement.

The new lease agreement allows the Yacht Club to use the existing yacht club building and other appurtenant areas on Parcel 47, including the use of seven reserved parking spaces and 27 dry boat storage spaces for the benefit of its yacht club members. Additionally, the intent of the lease agreement is to provide time for the County to design and develop an expanded Chace Park wherein we intend to provide facilities for the Yacht Club.

The Board of Directors of the Yacht Club met on February 5, 2008 and voted to recommend to the members of the Yacht Club ratification of the negotiated lease. The members of the Yacht Club will hold a special meeting on February 16, 2008 to vote on the ratification of said lease.

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 lease. Your Commission's endorsement of the Chief Executive Office recommendations to the Board of Supervisors is respectfully requested.

SW:SHK:dlg.shk

Attachment

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6315 • internet: http://marinadelrey.lacounty.gov

March 4, 2008

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:

DEPARTMENT OF BEACHES AND HARBORS: APPROVAL OF LEASE AGREEMENT– SANTA MONICA WINDJAMMERS YACHT CLUB (Parcel 47 at 13589 Mindanao Way) - MARINA DEL REY (4th DISTRICT) (4 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that approval of the recommended actions 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. Authorize the Director to enter into County agreements to retain the yacht club subtenant (Santa Monica Yacht Club, Inc., dba Santa Monica Windjammers Yacht Club) and slip tenants in good standing upon the termination of the lease with S.M.Y.C. Marina.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Your Board previously approved a negotiated deal in Closed Session to terminate the existing Parcel 47 lease and negotiate a Term Sheet with the Parcel 47 yacht club sublessee, the Santa Monica Windjammers Yacht Club (Yacht Club). The agreement allows the Yacht Club to continue to occupy its current facility for a 5 year lease term. If the County determines that it is able to accommodate the Yacht Club in a new facility in the proposed expansion of Chace Park but the new facility is not completed at the end of the 5 year lease term, the lease term may be extended for up to 3 additional periods of one year each. In anticipation of the County's termination of the existing Parcel 47 ground lease, the ground lessee has given the Department of Beaches and Harbors (Department) written notice of the Parcel 47 ground lessee's decision to terminate the existing ground lease effective March 24, 2008, as allowed under the terms of said lease. The proposed lease with the Yacht Club is intended to commence effective upon the termination of the existing ground lease. The Board of Directors of the Yacht Club

recommended that the Yacht Club members ratify the terms of the new Parcel 47 Lease. The members then held a special meeting on February 16, 2008 and approved the new Lease.

The new Yacht Club Lease provides for a monthly rent of $8,000 (subject to annual CPI increase up to 3% per year), net of property taxes, insurance, utilities, and common area costs ("NNN"), plus percentage rent of (a) 7.35% of the first $390,000 of gross receipts generated in connection with the use or operation of the yacht club facility, including without limitation, yacht club dues, meeting room rentals, parking charges (if any), restaurant/bar sales, telephone/vending receipts or other gross receipts received by the Yacht Club or a successor yacht club in the yacht club facility, plus (b) 17.5% of the above gross receipts over $390,000; plus (c), 25% of gross receipts for dry storage and storage lockers; use by the Yacht Club of the existing yacht club building, along with the adjacent sidewalks and landscaping, the dry storage facilities, the exterior patio areas located in the back of the yacht club building and the patio/deck on the top of the boater restrooms, the fenced in mule storage area, and other areas on which the hoist and waterside areas are located, including the dock/slip adjacent to the hoist (G1626 and 1628); a security deposit of $13,000; the reversion to the County of the boater bathrooms, the Promenade, and the adjacent parking lot except that Yacht Club has the right to use 27 parking spaces in the parking lot for dry dock storage and designate 7 parking spaces in the parking lot exclusively for the Yacht Club use; reversion to the County of the existing anchorage on the Parcel 47 Marina with qualified Yacht Club members having the first right to lease vacant slips; Yacht Club's obligation to maintain and repair the areas controlled by the Yacht Club while the County has the obligation for structural repairs to the yacht club building (including building exterior and HVAC and elevator systems) and all other areas reverting to the County; the Yacht Club's payment of a pro rata share of maintenance costs for the exterior areas maintained by the County; liquidated damages of $100 per day (adjusted for inflation) for each cited lessee maintenance deficiency that remains uncured after the specified cure period; payment of late fees and interest on overdue County payments and certain record-keeping standards. The Department is requesting authority from your Board to execute the new Lease in substantially the form attached hereto as Exhibit A.

Implementation of Strategic Plan Goals

In furtherance of County Goals #1 and #4, "Service Excellence" and "Fiscal Responsibility", respectively, 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 enhancing public access to and enjoyment of the Marina through property redevelopment and modernized lease provisions.

The following chart details the proposed terms of the 5-year lease with SMWYC:

BOARD POLICY ITEM	*TERMS*
PREMISES	• The demised premises ("Premises") will include the SMWYC Clubhouse building and its most adjacent sidewalks and landscaping, the exterior patio areas located at the back of the building and the patio/deck on top of the boater restrooms, the dry storage facilities, the fenced in mule storage area, and certain areas on which the hoist and waterside staging area are located, including the dock/slip located adjacent to the hoist (G1626 and G1628). • SMWYC will be provided with access rights over those areas not included in the Premises to the extent necessary for access to and between portions of the Premises, and County will reserve easements over exterior portions of the Premises as necessary for use of and access to and between parking, anchorage, boater restrooms and other associated exterior areas.
PARKING	• SMWYC shall have the right to use 27 parking spaces for dry boat storage purposes. The 27 dry storage spaces are: 1) all the parking spaces along the eastern boundary of Parcel 47; 2) the 10 most eastern spaces (90 feet) on the water side of the planter median; and 3) the most eastern spaces (90 feet) along the southern boundary of Parcel 47. • SMWYC shall have the right to designate up to 7 parking spaces for exclusive yacht club use.
BOAT SLIPS	• SMWYC shall have the first right of refusal for vacant boat slips for a period of ten days.
TERM	• 5 years from expiration of existing lease subject to early termination for: a) relocation to a new facility; or b) failure of the Yacht Club to maintain $175,000 annual dues.

BOARD POLICY ITEM	*TERMS*
RENT	Minimum Rent • $8,000 per month, net of property taxes, insurance, utilities, and common area costs. • Annual CPI increase up to 3% per year. Percentage Rent • 7.35% of first $390,000 of gross receipts derives from the operation of the Yacht Club • 17.5% of all gross receipts derived from the operation of the Yacht Club over $390,000 • 25% of all gross receipts derived from dry storage and storage lockers
ARBITRATION	• Arbitration will use rent-a-judge procedure. "Baseball" type arbitration provision.
ASSIGNMENT OR SUBLEASE	• SMWYC shall not assign the Lease or sublease the Premises without the County's prior written consent, which consent may be withheld in its sole and absolute discretion. Notwithstanding the foregoing, County agrees not to unreasonably withhold its consent to a merger of SMWYC with one or more other Marina del Rey yacht clubs, and the assignment of the Lease to a successor entity resulting from such a merger.
LEASE ADMINISTRATIVE ITEMS	• A 6% late charge after the 5th day plus interest at Prime + 3% for any late payments from due date until paid. Lessee entitled to waiver of late charge once each year so long as paid within one business day of notice by County. Interest applies to all overdue amounts regardless of notice provisions. • Security deposit of $13,000. • County reserves the right to adjust insurance levels if the Term of the Lease extends beyond 5 years. • SMWYC to provide monthly reports and an annual CPA certification of gross receipts.
PROMENADE	• County to maintain promenade, with reimbursement by Lessee of 20% of such maintenance costs in accordance with section RENT above.

BOARD POLICY ITEM	*TERMS*
MAINTENANCE	• SMWYC to maintain and repair Premises except for structural elements such as building exteriors and HVAC system and elevators).
INSURANCE	• SMWYC will be required to carry and maintain insurance on the Premises and its use of the parking, common areas and hoist in accordance with County risk management policy.
HOIST	• During the Term of the Lease SMWYC will own the hoist and be responsible for its operation, maintenance and repair. Ownership of the hoist shall transfer to County at the termination of the Lease.

FISCAL IMPACT/FINANCING

The termination of the existing lease and approval of the new Lease for Parcels reflects the County's attempt to accommodate a preferred use. The new Lease will produce a fiscal benefit to the County due to: a) the negotiated rent (minimum and percentage) that the Yacht Club will be paying; and b) collection of rents directly from the existing slip tenants (rather than collection of percentage rent from lessee) due to the reversion of the existing docks to the County. The rental increase is discussed in detail below.

Revenue Increase Due to Lease Termination and approval of the new Lease

The total revenue derived from Parcel 47 during fiscal year 2006-2007 was approximately $259,000. After termination of the existing lease and commencement of the new Lease, the County anticipates a net revenue increase in the range of $320,000 to $550,000 annually from the negotiated rent to be paid by the Yacht Club and collection of anchorage rents directly from the slip tenants for the continued use of the land and water area.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The existing lease for Parcel 47 expires on March 24, 2008 due to existing lessee giving the County notice of lessee's decision to terminate the lease, as allowed under the existing lease. The members of the Yacht Club have ratified the terms of the new Parcel 47 Lease between the County and the Yacht Club. Upon termination of the existing

lease, the County will enter into a new lease with the Yacht Club for an additional 5 year period.

Parcel 47 consists of an existing yacht club facility and an anchorage with 173 slips and six end-ties (with the possibility of mooring up to 11 boats on the end-ties) and is located on Mindinao Way adjacent to Burton Chace Park. The yacht club will rent the Premises from the County but will allow control of the parking lot (except for 27 parking spaces for dry boat storage and 7 parking spaces designated for the use of the Yacht Club) and the anchorage to revert to the County which will manage the parking lot and anchorage and collect rent directly from the Yacht Club and slip tenants

The County anticipates incorporating Parcel 47 into its final design for the expansion of Burton Chace Park wherein it plans to include a facility for the Yacht Club as part of the overall development, either on Parcel 47 or in another part of the expanded Burton Chace Park.

Entering into leases of the County's Marina del Rey real property is authorized by Government Code Sections 25907 and 25536. The lease terms are in conformance with the maximum 99-year period authorized by California law.

At its meeting of February 13, 2008, the Small Craft Harbor Commission _____ the recommendations to approve the new Lease for Parcel 47 in the form attached. County Counsel has approved the documents as to form.

ENVIRONMENTAL DOCUMENTATION

Approval of the recommended actions 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 agreements does not authorize construction or reconstruction of any improvements on the parcel.

CONTRACTING PROCESS

The Yacht Club's proposal for a new Lease was received in response to County's decision not to renew the existing lease on Parcel 47. The new Lease for Parcel 47 will be available to the Yacht Club upon the termination of the existing lease. .

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects, as the County will manage, maintain and control all aspects of the Parcel 47 property operations.

CONCLUSION

Authorize the Executive Officer/Clerk of the Board to send two copies of the executed lease agreement to the Department of Beaches and Harbors.

Respectfully submitted,

William T Fujioka

SW:SK:GB:shk

Attachment (1)

c: County Counsel

LEASE AGREEMENT

by and between

COUNTY OF LOS ANGELES

and

SANTA MONICA YACHT CLUB

(Lease No. _____)

Dated as of _____, 2008

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EXHIBIT B PARKING LOT B-1
EXHIBIT C ANCHORAGE C-1

LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Lease**") is made and entered into as of _____, 2008 ("**Effective Date**"), by and between the COUNTY OF LOS ANGELES ("**Landlord**"), as landlord, and SANTA MONICA YACHT CLUB, a California corporation, dba Santa Monica Windjammers Yacht Club ("**Tenant**"), as tenant.

RECITALS

A. Landlord owns fee title to certain land and improvements located in the Marina del Rey Small Craft Harbor and referred to herein as the Premises.

B. Landlord desires to lease to Tenant, and Tenant desire to lease from Landlord, the Premises, on and subject to the terms and conditions set forth in this Lease.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. BACKGROUND AND GENERAL.

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

1.1.1 "**ACCESS AREAS**" shall have the meaning set forth in Section 1.2.3.

1.1.2 "**ADA**" shall have the meaning set forth in Section 1.2.1.

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

1.1.4 "**ANCHORAGE**" shall mean the boat slips depicted on Exhibit C attached to this Lease.

1.1.5 "**ANNUAL ESTIMATE STATEMENT**" shall have the meaning set forth in Section 4.4.

1.1.6 "**ANNUAL RECONCILIATION STATEMENT**" shall have the meaning set forth in Section 4.4.

1.1.7 "**APPLICABLE LAWS**" shall have the meaning set forth in Section 1.2.1.

1.1.8 "**APPLICABLE RATE**" shall mean an annually compounded rate of interest equal to the (a) the Prime Rate plus three percent (3%) per annum; or (b) the maximum rate of interest which may be charged pursuant to Applicable Laws.

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

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

1.1.11 **"BOATER RESTROOMS"** shall mean the restroom, showers and laundry building owned by County and located adjacent to the Premises, and which is used as restrooms, showers and laundry facilities that serve the Anchorage.

1.1.12 **"BUILDING"** shall have the meaning for such term set forth in the definition of Premises in this Section 1.1.

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

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

1.1.15 **"CPI"** 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 Landlord and Tenant.

1.1.16 **"COUNTY"** shall mean Los Angeles County, California.

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

1.1.18 **"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.

1.1.19 **"DRY STORAGE FACILITIES"** shall mean the portion of the Premises located in the Parking Lot that are used for the dry storage of boats, as depicted in Exhibits A and B attached to this Lease.

1.1.20 **"DRY STORAGE GROSS RECEIPTS"** shall have the meaning set forth in Section 4.2.

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

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

1.1.23 **"GROSS RECEIPTS"** shall have the meaning set forth in Section 4.3.

1.1.24 **"GROSS RECEIPTS REPORT"** shall have the meaning set forth in Section 4.3.2.

1.1.25 **"HOIST"** shall have the meaning for such term set forth in the definition of Premises in this Section 1.1.

1.1.26 **"IMPROVEMENTS"** means all buildings, structures, fixtures, fences, walls, paving, driveways, walkways, plazas, landscaping, permanently affixed utility systems and other improvements now or hereafter located on the Premises.

1.1.27 **"LANDLORD"** shall have the meaning set forth in the first paragraph of this Lease.

1.1.28 **"LATE FEE"** shall have the meaning set forth in Section 4.6.

1.1.29 **"LEASE"** shall mean this Lease Agreement.

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

1.1.31 **"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 in Marina del Rey.

1.1.32 **"MONTHLY BASE RENT"** shall have the meaning set forth in Section 4.1.

1.1.33 **"PARKING LOT"** shall have the meaning set forth in Section 1.2.4.

1.1.34 **"PERCENTAGE RENT"** shall have the meaning set forth in Section 4.2.

1.1.35 **"PERMITTED USE"** shall have the meaning set forth in Section 3.1.

1.1.36 **"PREMISES"** shall mean the land and water depicted on Exhibit A attached to this Lease and all Improvements located thereon, except any portions thereof expressly excluded from the Premises pursuant to this paragraph. For purposes of clarification, the Premises shall include the following land, water and improvements within the outline of the Premises shown on Exhibit A (the **"Premises Outline"**): (a) Tenant's existing clubhouse building (the **"Building"**) and all fixtures and utility systems and equipment located therein; (b) the sidewalks and landscaped areas included within Premises Outline; (c) the exterior patio areas located at the back of the Building and the patio/deck located on top of the Boater Restrooms (but excluding the Boater Restrooms); (d) the Dry Storage Facilities; (e) the fenced in mule storage area; (e) the boat hoist shown on Exhibit A (the **"Hoist"**) and, to the extent within the Premises Outline, the areas on which the Hoist and waterside staging area are located; and (f) the docks commonly known as G1626 and G1628. The Premises exclude the adjacent parking facilities, the Boater Restrooms, the Promenade and the Anchorage. In addition to the

Premises, Tenant has certain rights of access to other adjacent facilities in accordance with the provisions of Sections 1.2.3 and 1.2.4 of this Lease.

1.1.37 **"PREMISES OUTLINE"** shall have the meaning for such term set forth in the definition of Premises in this Section 1.1.

1.1.38 **"PRIMARY GROSS RECEIPTS"** shall have the meaning set forth in Section 4.2.

1.1.39 **"PRIME RATE"** shall mean the prime or reference rate of interest announced from time to time by Bank of America, N.A. or its successor, or if Bank of America, N.A. or its successor ceases to exist, then the prime or reference rate of interest announced from time to time by the largest California chartered bank in terms of deposits.

1.1.40 **"PROMENADE"** shall mean the waterfront boardwalk and promenade located adjacent or substantially adjacent to the Premises and between the Premises and the adjacent water area, including without limitation, all landscaping and improvements thereon.

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

1.1.42 **"RELOCATION FACILITY"** shall have the meaning set forth in Section 2.4.

1.1.43 **"REPLACEMENT FACILITY"** shall have the meaning set forth in Section 2.2.

1.1.44 **"SECTION"** shall mean a section of this Lease.

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

1.1.46 **"STATE"** shall mean the State of California.

1.1.47 **"TENANT"** shall have the meaning set forth in the first paragraph of this Lease.

1.1.48 **"TENANT PARTY"** shall mean any agent, officer, employee, licensee, concessionaire, permittee, subtenant, contractor, vendor, member, invitee or guest of Tenant.

1.1.49 **"TENANT'S OPERATING EXPENSES"** shall have the meaning set forth in Section 4.4.4.

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

1.1.51 **"TERM COMMENCEMENT DATE"** shall have the meaning set forth in Section 2.1.

1.1.52 **"TERM EXPIRATION DATE"** shall have the meaning set forth in Section 2.1.

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

1.2 **Lease**. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases and hires from Landlord, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined), upon the terms and conditions and subject to the requirements set forth herein.

1.2.1 **As-Is**. Tenant acknowledges that it is currently in possession of and has previously occupied the Premises pursuant to a pre-existing lease and thus is fully aware and apprised of the condition of the Premises. Tenant 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 Tenant hereby represents that it has performed all investigations necessary in connection with its acceptance of the Premises "AS IS WITH ALL FAULTS". Tenant hereby accepts the Premises on an "AS IS WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Tenant is not relying on any representation or warranty of any kind whatsoever, express or implied, from Landlord or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises and the Improvements included therewith, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises, 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, (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, including all Improvements, (iv) the use, habitability, merchantability or fitness, or the suitability, value or adequacy of the Premises and/or Improvements for any particular purpose, (v) the zoning or other legal status of the Premises or any public or private restrictions on use of the Premises, (vi) the compliance of the Premises and/or Improvements with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of the City, 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, as amended from time to time ("**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 Section 1.2.2 below, the condition of title to the Premises, and (x) the economics of the operation of the Premises and/or the Improvements included therewith.

1.2.2 **Title**. Landlord represents that Landlord owns fee title to the Premises and that Landlord has authority to enter into this Lease. Tenant hereby acknowledges the title of Landlord 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 Tenant may occupy the Premises pursuant to the terms and conditions of this Lease.

1.2.3 **Additional Access Rights**. In addition to possession of the Premises, Tenant shall have non-exclusive rights of access to the following improvements and/or areas located adjacent to the Premises (collectively, the "**Access Areas**"): (a) the electrical panel located in the Boater Restrooms as necessary for access to the circuit breaker for the Hoist; (b) the Boater Restrooms for use by subtenants of the Dry Storage Facilities; (c) those portions of the Parking Lot that are not included in the Premises, subject to and in accordance with terms and provisions of Section 1.2.4 below; and (d) any sidewalks, walkways and driveways located adjacent to the Premises for pedestrian access to the extent such access is both consistent with the current use of the Premises and necessary for ingress and egress to, from, among and between the Premises and the Access Areas described in clauses (a) through (c) above. Tenant's rights of access to and use of the Access Areas shall be subject to and in accordance with the following provisions: (i) Tenant's access to and use of the Access Areas shall be subject to compliance with the reasonable rules and regulations for such access and use promulgated from time to time by Landlord, including without limitation, the hours of such access and use; (ii) Tenant shall not exercise its rights under this Section 1.2.3 in any manner that interferes with, obstructs or impairs the access to, use and enjoyment of the Access Areas by Landlord or any other persons or entities to which Landlord grants rights of access or use; (iii) Tenant shall maintain liability insurance with respect to the exercise of its rights under this Section 1.2.3 in accordance with the terms of this Lease as if the Access Areas were a part of the Premises; (iv) Tenant shall have no right to make any Improvements or Alterations to the Access Areas or to place any furniture, fixtures or equipment in the Access Areas; (v) Tenant shall be solely responsible for all costs and expenses incurred by County in connection with any damage to the Access Areas or any Improvements or equipment located therein or adjacent to the Access Areas, to the extent caused by or incurred in connection with any access to or use of the Access Areas by Tenant or any Tenant Party; and (v) Tenant agrees to indemnify, defend and hold Landlord harmless from and against all liabilities, losses, damages, claims, costs and/or expenses (including reasonable attorneys' fees) incurred by Landlord as a result of or in connection with access to or use of the Access Areas by Tenant or any Tenant Party.

1.2.4 **Parking Lot**. Exhibit B attached to this Lease is a depiction of the surface parking lot located adjacent to the Building (the "**Parking Lot**"). The Parking Lot currently contains one hundred seventy-nine (179) parking spaces. Twenty-seven (27) of such spaces are used for the Dry Storage Facilities and are included in the

Premises. Use of an additional one hundred forty-five (145) of the parking spaces in the Parking Lot are reserved to Landlord to serve Anchorage users or for such other purposes as determined by Landlord. In addition to the Dry Storage Facilities, Landlord hereby grants Tenant a right of access to and use of the seven (7) parking spaces specifically marked for Tenant's use on Exhibit B.

The current striping plan for the Parking Lot is different than the striping plan that was originally in effect for the Parking Lot, and results in a reduction from the number of parking spaces originally contained in the Parking Lot. If the Department determines that the number of parking spaces in the Parking Lot is inadequate for the Anchorage or Premises, or if another governmental agency requires the number of parking spaces to be increased (up to and including the number of parking spaces that were originally contained in the Parking Lot), then Landlord shall re-stripe the Parking Lot in a manner acceptable to Department and/or any such governmental agency (as applicable) and Tenant shall pay to Landlord within thirty (30) days after written demand, twenty percent (20%) of the cost of such re-striping; provided, however, that no re-striping required by the Department shall restrict Tenant's ability to provide functionally equivalent dry boat storage facilities immediately adjacent to the Hoist. If Tenant desires to re-stripe the Parking Lot, then such re-striping shall be at Tenant's cost and shall be conditioned upon Landlord's prior written approval and subject to any subsequent re-striping pursuant to the preceding provisions of this paragraph. If as a result of any re-striping there is an adjustment to the location and/or number of spaces used for dry boat storage purposes, Anchorage tenants and/or the Building, then the parties shall enter into an amendment to this Lease to reflect such adjustment.

The Parking Lot shall be operated and maintained by Landlord, including the management of non-permit temporary or overnight parking and abandoned vehicles. Access to the Parking Lot shall continue to be generally controlled via a key card access system, as necessary in Landlord's judgment to limit use of the Parking Lot to Tenant's yacht club members, Anchorage tenants and as otherwise permitted hereunder. Tenant shall have the right to raise the gate arms for deliveries to the Building. Use of the parking spaces that are not included in the Premises for dry boat storage purposes shall be on a non-reserved first-come, first-served basis (subject to the limitation on the total number of spaces allocated to each party under this Section 1.2.4), except that (a) Tenant shall have the right to designate and mark (in a manner acceptable to Landlord) for exclusive yacht club use Tenant's seven (7) parking spaces described in the first paragraph of this Section 1.2.4; and (b) Landlord reserves the right to designate specific spaces for Anchorage tenants if necessary in the Landlord's judgment. Tenant shall in all cases have the right to use the Parking Lot for yacht club event purposes for up to six (6) yacht club events per year. Tenant shall use its best efforts to provide Landlord with sixty (60) days prior written notice of the date of such yacht club events to permit Landlord to notify Anchorage tenants. In no case shall Tenant provide Landlord less than forty-five (45) days' prior written notice of the date of any such yacht club event. Landlord shall have the right to use the Parking Lot for other parking purposes during non-peak times on weekdays, including evening meetings (e.g., by raising the gate arms

at Landlord's option), as long as such use does not interfere with Tenant's use of its parking rights under this Section 1.2.4.

1.2.5 **Anchorage**. The Anchorage shall be owned and operated (at Landlord's discretion) by Landlord (or its successor or designee) and Tenant shall have no rights with respect to the Anchorage, except as set forth in this Section 1.2.5. Landlord shall have the right to establish and modify from time to time the rents and any other charges (including without limitation, surcharges or additional fees for liveaboards) for use and occupancy of boat slips in the Anchorage. The remaining terms and provisions of this Section 1.2.5 shall be applicable only during such periods as the Anchorage continues to be operated and rented to individual boat slip users. Tenant shall have a first right to have its yacht club members rent vacant slips in accordance with the terms of this Section 1.2.5. Landlord shall have the right to limit the number of liveaboard boat slip tenants in the Anchorage to that number that were in legal occupancy and in good standing as of March 8, 2007.

Landlord agrees to notify Tenant in writing of all boat slip vacancies (a "**Vacancy Notice**") prior to the lease of a vacant slip to another user. Landlord shall have the right to deliver the Vacancy Notice during the termination notice period for the previous tenant. Tenant must exercise its first right under this Section 1.2.5, if at all, by delivery to Landlord within ten (10) days after the Vacancy Notice of a written referral of a qualified member (or members) of Tenant's yacht club for the rental of the vacant slip (or slips) referenced in the Vacancy Notice and a completed application (along with all associated forms) and rental agreement signed by such member. The application/forms and rental agreement shall be in such form as required by Landlord from time to time. Landlord and Tenant shall cooperate to agree on a procedure (a) for the preparation of a waiting list of Tenant's members (organized by slip size) who desire to rent slips, (b) the pre-qualification of such members, and (c) the delivery to County of completed applications/forms and signed rental agreements for consideration by County. All applications and prospective slip renters must satisfy the Landlord's standard conditions and qualifications for renting a slip. If County does not receive the above-required application/forms and executed rental agreement for a vacant slip from a qualified member within the foregoing ten (10) day period, then Landlord shall be free to rent such slip to any person or entity and on such terms that Landlord desires. The terms and provisions of this Section 1.2.5 shall inure only to the benefit of Tenant, and no members of Tenant shall have any rights under this Section 1.2.5 (including without limitation, as third party beneficiaries) nor shall Landlord have any obligation or liability to such members.

Tenant shall have the right to directly lease from Landlord (as opposed to having its individual members lease from Landlord) up to two (2) boat slips in the Anchorage pursuant to the right of offer set forth in this Section 1.2.5. Tenant shall have the right to sublease such two (2) boat slips to its individual yacht club members, provided that any such sublease shall be subject to Landlord's approval of the subtenant and the sublease, and Tenant shall not charge rent or other amounts in connection with such sublease that

exceed the rent and charges payable by Tenant to Landlord in connection with Tenant's direct lease of the boat slip from Landlord.

Any member of Tenant's club that rents a boat slip in the Anchorage shall have the right to permit the use of such slip on a temporary basis by a visitor to Tenant's club that is a member of another yacht club that shares reciprocal yacht club privileges with Tenant's club, without additional charge to Tenant or the visitor.

2. **LEASE TERM.**

2.1 **Term**. The term of the Lease ("**Term**") shall commence on _____ [INSERT THE DAY FOLLOWING THE EFFECTIVE TERMINATION DATE OF THE EXISTING LEASE] (the "**Term Commencement Date**") and, unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on the day preceding the fifth (5th) anniversary of the Term Commencement Date (the "**Term Expiration Date**"). For purposes of this Lease, "**Lease Year**" shall mean each year during the Term of this Lease commencing on the Term Commencement Date and each successive anniversary thereof.

2.2 **Early Termination or Extension of Term in Connection with Replacement Facility**. Landlord intends to pursue consideration of the development of a replacement facility for the future occupancy of Tenant (and potentially other users) (a "**Replacement Facility**"). Landlord shall take into consideration input from Tenant as to the scope, size and programmatic requirements for such Replacement Facility. The development and lease to Tenant of a Replacement Facility shall be subject to compliance with any request for proposal ("**RFP**") process implemented by Landlord for such Replacement Facility. Subject to such RFP process, Landlord and Tenant shall negotiate in good faith to attempt to agree upon mutually acceptable terms for the lease to Tenant of space in the Replacement Facility. If Landlord develops a Replacement Facility and the parties reach agreement upon mutually acceptable terms for the lease to Tenant of space in the Replacement Facility, then this Lease shall terminate effective as of the commencement of the term of the new lease to Tenant for the Replacement Facility. If Landlord develops a Replacement Facility and the parties reach agreement upon mutually acceptable terms for the lease to Tenant of space in the Replacement Facility, but the Replacement Facility is not completed for Tenant's occupancy of the Replacement Facility by the Term Expiration Date, then upon the mutual agreement of Landlord and Tenant the Term of this Lease shall be subject to extension for up to three (3) periods of one (1) year each.

2.3 **Early Termination for Failure to Meet Dues Threshold**. If during any Lease Year the aggregate amount of dues paid to Tenant by its members is less than One Hundred Seventy Five Thousand Dollars ($175,000.00), then Tenant shall have the right to terminate the Lease upon not less than six (6) months prior written notice to Landlord.

2.4 **Relocation of Premises During Term**. If during the Term Landlord requires use of the Premises for another purpose (including without limitation, park or development purposes) County shall have the right during the Term to relocate the Premises to another facility of comparable size and facility improvements, and with comparable access to parking, boat slips and dry storage (a "**Relocation Facility**"). If County elects to relocate the Premises pursuant to

this Section 2.4, the Premises shall be relocated to the Relocation Facility on not less than sixty (60) days prior written notice to Tenant and the parties shall execute an amendment to this Lease to document the change in location of the Premises to the Relocation Facility. Landlord shall be responsible for the cost to relocate and install in the Relocation Facility Tenant's furniture, fixtures, equipment and other property.

3. USE OF PREMISES.

3.1 **Permitted Use**. The Premises shall be used by Tenant only for the operation of the Santa Monica Windjammers Yacht Club (or its successor pursuant to Article 14 below) and for no other purpose (the "**Permitted Use**"). Tenant shall also have the right on an ancillary basis to permit other organizations (e.g., the Coast Guard Auxiliary) to hold meetings at the Premises in a manner and frequency consistent with Tenant's past practices.

3.2 **Prohibited Uses**. Notwithstanding the foregoing:

3.2.1 **Nuisance**. Tenant 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.

3.2.2 **Restrictions and Prohibited Uses**. Without expanding upon or enlarging the Permitted Use 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 in any way in a manner inconsistent with the Permitted Use; 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 condition shall be permitted to exist upon the Premises which shall induce, breed or harbor infectious plant diseases, rodents, or noxious insects and Tenant 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;

3.2.2.4 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 Tenant outdoors above ground on any portion of the Premises, whether attached to an Improvement or otherwise; Landlord hereby approves Tenant's continued use of the existing antennae installed on the Premises as of the date of this Lease in the manner in which such antennae have been used prior to the date of this Lease, as long as such use does not violate any other provision of this Lease;

3.2.2.5 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, 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 the Permitted Use, and (b) conducted in compliance with all Applicable Laws.

3.3 **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 in writing by Director (and to the extent required under then Applicable Law, the Design Control Board).

3.4 **Compliance with Regulations**. Tenant 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. Tenant shall be responsible for making all Alterations to the Premises required to comply with Applicable Laws to the extent pertaining to those portions of the Premises required to be maintained and repaired by Tenant pursuant to Section 10.1 below. Landlord shall be responsible for making all Alterations to the Premises required to comply with Applicable Laws to the extent pertaining to those portions of the Premises required to be maintained and repaired by Landlord pursuant to Section 10.1 below; provided, however, that to the extent that the requirement to make an Alteration to comply with Applicable Laws is triggered by (a) any Alterations made to the Premises by Tenant, or (b) any change in the use of the Premises by Tenant, then Tenant shall be responsible for the costs and expenses incurred by Landlord for such Alteration.

3.5 **Rules and Regulations**. Tenant agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Premises as may be promulgated by Landlord from time to time and delivered in writing to Tenant. Any dispute as to whether Landlord has acted unreasonably in connection with the matters described in this Section 3.5 shall be submitted to arbitration pursuant to Article 16 of this Lease.

3.6 **Reservations**. County hereby reserves an easement and right of access to and use of the exterior portions of the Premises as necessary or appropriate in the reasonable judgment of County for ingress and egress to, from, among and between the land and improvements located adjacent to the Premises, including without limitation, the Parking Facilities, Boater Restrooms,

Promenade and Anchorage. Tenant also 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 as of the Effective Date, (b) otherwise referenced in this Lease in, to, over or affecting the Premises, or (c) consented to by Tenant.

Without limiting the foregoing, Tenant expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record and the right of the City or County 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 the City or County to convey such easements and transfer such rights to others.

4. RENT AND OTHER PAYMENTS.

4.1 **Base Rent**. Tenant shall pay Landlord base rent ("**Monthly Base Rent**") during the Term. The Monthly Base Rent for the first Lease Year shall be Eight Thousand Dollars ($8,000.00) per month. The Monthly Base Rent shall be subject to adjustment effective as of the first day of the second and each successive Lease Year during the Term to an amount equal to the product of (a) the Monthly Base Rent in effective for the first Lease Year, multiplied by (b) a fraction the numerator of which is the CPI for the month that is three (3) months prior to the month during which the Monthly Base Rent adjustment is to take effect, and the denominator of which is the CPI for the month that is three (3) months prior to the month during which the Term Commencement Date occurs. Notwithstanding the foregoing, (i) in no event shall the Monthly Base Rent for any Lease Year be less than the Monthly Base Rent in effect for the immediately preceding Lease Year; and (ii) in no event shall the Monthly Base Rent for any Lease Year exceed the Monthly Base Rent in effect for the first Lease Year increased at a cumulative and compounded annual rate of three percent (3%) per year during the Term.

4.2 **Percentage Rent**. In addition to Monthly Base Rent, Tenant shall pay to Landlord percentage rent ("**Percentage Rent**") equal to the sum of (a) seven and 35/100 percent (7.35%) of the first Three Hundred Ninety Thousand Dollars ($390,000.00) of Primary Gross Receipts (as defined below) for each Lease Year, plus (b) seventeen and 50/100 percent (17.5%) of all Primary Gross Receipts for each Lease Year in excess of Three Hundred Ninety Thousand Dollars ($390,000.00), plus (c) twenty-five percent (25%) of Dry Storage Gross Receipts (as defined below). For purposes of this Lease, (a) "**Primary Gross Receipts**" shall mean all Gross Receipts generated in connection with the use or operation of the Premises, including without limitation, yacht club dues, meeting room rentals, parking charges (if any), restaurant/bar receipts, telephone/vending receipts, mail box charges, locker rentals and production/filming receipts, but excluding Dry Storage Gross Receipts; and (b) "**Dry Storage Gross Receipts**" shall mean all Gross Receipts generated in connection with the use or operation of the Dry Storage Facilities or storage lockers.

4.3 **Gross Receipts**. For purposes of this Lease, "**Gross Receipts**" means the gross amount of all money, receipts, dues, commissions, charges, fees, payments, reimbursements,

compensation, accounts or notes receivable or other things of value, received by or payable to Tenant (and/or any assignee, subtenant, licensee, permittee or concessionaire, although this section shall not be interpreted to permit any use, occupancy or operation of the Premises by any person or entity other than Tenant) from or in connection with the use, occupation or operation of any activity or business on the Premises or in any Access Areas, calculated in accordance with the accounting method described in the last sentence of Section 14.1.

4.3.1 **Calculation of Gross Receipts**. In the calculation of Gross Receipts, the following shall be applicable:

(1) 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, utilities, credit card fees, insurance premiums and taxes.

(2) Gross Receipts shall not include and retail sales tax imposed upon the consumer, collected by Tenant and remitted by Tenant to the applicable governmental agency.

(3) Gross Receipts must include the usual charges for any services, goods, rentals or facilities. Bona fide bad debts actually accrued by Tenant for delinquent payables owed to Tenant 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 excluded from Gross Receipts shall be included in Gross Receipts in the Lease Year in which they are collected.

(4) Gross Receipts shall not include any of the following items:

a. refunds to members or customers on merchandise sold to such members or customers and returned to Tenant;

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

c. receipts from insurance claims other than proceeds related to the replacement of Gross Receipts; and

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

(5) Interest, service or late charges collected in conjunction with a transaction, sale or activity shall be included in Gross Receipts in the same percentage category as the underlying transaction, sale or activity is required to be reported.

(6) Although Tenant has no right to sublease the Premises or any portion thereof, or to permit any licensee, concessionaire or other person or entity to occupy, use or conduct any business or activity on the Premises or Access Areas, if any person or entity other than Tenant occupies, uses or conducts any business or activity on or from the Premises or Access Areas, the Gross Receipts of such subtenant, licensee, concessionaire or other person or entity from such business or activity shall be included in Gross Receipts.

(7) Gross Receipts shall not include receipts from charity events held on the Premises provided that (a) such events are conducted only on an ancillary basis and are consistent in scope and frequency with Tenant's past practices; (b) the recipient of the receipts from the event is a bona fide charitable organization (based on federal income tax status) that is not affiliated with Tenant or any subtenant and whose operation and mission are not related to boating, sailing or other marina activities; and (c) all receipts from the event (after offset of bona fide out-of-pocket expenses, without compensation to Tenant) are donated to a qualified recipient under clause (b) above. Tenant shall provide Landlord with such information and materials as requested by Landlord to permit Landlord to verify the application of this subsection (7).

(8) Director, by Policy Statement and with the approval of Auditor-Controller and County Counsel may further interpret the definition of Gross Receipts, with such interpretations to be a guideline in implementing the calculation of Percentage Rent.

4.3.2 **Reporting of Gross Receipts and Payment of Percentage Rent**. Within fifteen (15) days after the end of each calendar month (or partial calendar month) during the Term, (a) Tenant shall deliver to Landlord a written report (**"Gross Receipts Report"**) that sets forth the Primary Gross Receipts and Dry Storage Gross Receipts for such immediately preceding month and the aggregate Primary Gross Receipts and Dry Storage Gross Receipts to date for the then current Lease Year, in such form and detail as reasonably acceptable to Landlord, and (b) pay to Landlord Percentage Rent payable for the Primary Gross Receipts and Dry Storage Gross Receipts for the immediately preceding month. The monthly payments of Percentage Rent for Primary Gross Receipts shall be equal to seven and 35/100 percent of Primary Gross Receipts until the aggregate Primary Gross Receipts for such Lease Year exceed Three Hundred Ninety Thousand Dollars ($390,000.00), following which Percentage Rent for Primary Gross Receipt shall be payable at the rate of seventeen and 50/100 percent (17.5%) of such Primary Gross Receipts for the remainder of such Lease Year. Tenant shall comply with all recordkeeping and accounting procedures, as well as the inspection and audit rights granted to Landlord, set forth in Article 14 of this Lease.

4.4 **Net Lease**. All references to "rent" under this Lease shall mean the Monthly Base Rent, Percentage Rent or other amounts payable by Tenant to Landlord under this Lease. The parties acknowledge that the rent to be paid by Tenant under this Lease is intended to be

absolutely net to Landlord. The rent and other sums to be paid to Landlord hereunder are not subject to any credit, demand, set-off or other withholding.

4.4.1 **Utilities**. In addition to rent, Tenant shall pay, or cause to be paid, to County or the utility provider (as applicable), all utility and service charges for water, electricity or other power, gas, sewage disposal, telephone service, cable service, garbage and trash collection and other utilities and services to the Premises. If any utilities are not separately metered or submetered, Tenant shall pay to County the cost of the utilities reasonably allocated to the Premises.

4.4.2 **Insurance**. Tenant shall pay to County the cost of all insurance maintained by County with respect to the Premises. The cost of any insurance that pertains to the Premises and other property owned by County shall be apportioned between the Premises and such other property on a reasonable basis.

4.4.3 **Taxes and Assessments**. Tenant shall prior to delinquency all taxes, assessments, fees, or charges which at any time may be levied by the State, County, City or other levying body upon any interest in this Lease or any possessory right which Tenant may have in or to the Premises allocable to the Term of this Lease, 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. Tenant shall have the right to contest the amount of any assessment imposed against the Premises or its possessory interest therein; provided, however, all costs and expenses of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Tenant.

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 Tenant. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. The possessory interest taxes and any other taxes applicable to the Premises or Tenant's interest in this Lease shall be pro-rated for any partial tax years included in the Term.

4.4.4 **Expenses Relating to Access Areas and Promenade**. Tenant shall pay to County twenty percent (20%) of all direct variable expenses incurred by Landlord for insurance, utilities, trash removal, maintenance, repair, landscaping and other common area services or costs attributable to the Access Areas, the Promenade, any other exterior common areas and the Common Water Heater (the "**Tenant's Operating Expenses**"). If expenses are incurred with respect to both the areas described in the immediately preceding sentence and other areas owned by County, such expenses shall be apportioned between the areas described in the immediately preceding sentence and such other areas on a reasonable basis. Prior to the commencement of each Lease Year, Landlord shall deliver to Tenant a statement setting forth Landlord's good faith estimate of Tenant's Operating Expenses projected to be incurred for the ensuing Lease Year (the "**Annual Estimate Statement**"). On or before the first day of each month during each Lease Year, Tenant shall pay to Landlord Tenant's Operating Expenses on an estimated basis in an amount equal to one-twelfth (1/12) of the estimated amount set forth in the

Annual Estimate Statement for such Lease Year. No delay of failure of Landlord to deliver the Annual Estimate Statement shall relieve Tenant of its obligations under this Section 4.4.4, except that until Landlord has delivered the Annual Estimate Statement for a Lease Year Tenant shall continue to pay monthly estimated installments of Tenant's Operating Expenses based on the estimate set forth in the Annual Estimate Statement for the preceding Lease Year. Within ninety (90) days after the end of each Lease Year, Landlord shall deliver to Tenant a statement (the "**Annual Reconciliation Statement**") setting for the actual amount of Tenant's Operating Expenses for the preceding Lease Year. In the event that the monthly estimated amounts of Tenant's Operating Expenses paid by Tenant for such Lease Year are less than the actual Tenant's Operating Expenses for such Lease Year, then Tenant shall pay the difference to Landlord within thirty (30) days after receipt by Tenant of the Annual Reconciliation Statement. In the event that the monthly estimated amounts paid by Tenant for such Lease Year exceed the actual Tenant's Operating Expenses for such Lease Year, then Tenant shall be entitled to credit the difference against the next rent payable to Landlord under this Lease, or, in the case of the final Lease Year, any such overpayment shall be returned to Tenant concurrent with the delivery by Landlord of the Annual Reconciliation Statement. Landlord shall not be in default or liable to Tenant for a delay in the delivery of the Annual Reconciliation Statement, but any overpayments by Tenant on an estimated basis shall bear interest at the Prime Rate during any period of delay in the delivery by Landlord of the Annual Reconciliation Statement.

4.5 **Rent Payments**. Monthly Base Rent and Tenant's Operating Expenses shall be paid by Tenant in advance on or before the first (1st) day of each calendar month of the Term. If the Term Commencement Date does not occur on the first day of a calendar month, then the first payment of Monthly Base Rent and Tenant's Operating Expenses shall be paid by Tenant on or before the Term Commencement Date, and the Monthly Base Rent and Tenant's Operating Expenses for the first and last partial months during the Term shall be calculated on a pro rata basis based on the number of days in each such partial month as compared to the total number of days in the applicable calendar month during which such partial month occurs.

Percentage Rent for each month (or partial month) during the Term shall be paid by Tenant in arrears on or before the fifteenth (15th) day of the following month in accordance with Section 4.3.2 above.

All payments under this Lease shall be by check or draft issued and payable to the County of Los Angeles, delivered to the Department of Beaches and Harbors, Los Angeles, California, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, or such other address as may be provided to Tenant by Landlord from time to time. Tenant acknowledges that Landlord 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 Tenant has received no such statement, invoice or demand.

4.5 **Late Fees**. If any payment under this Lease is not received by Landlord by the date due, Tenant acknowledges that Landlord 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 payable with respect to any amount that remains unpaid five (5) days after such amount was due and payable; provided, however, that Tenant shall not be required to pay a Late Fee in the case of the first instance in any calendar year that a payment is not made by Tenant within the foregoing five (5) day period, so long as such delinquency is cured within one (1) business day after written notice from Landlord. In addition to any Late Fee, any unpaid amounts shall additionally bear interest at the Applicable Rate, computed from the date such amount was due and payable, compounded monthly, until paid. Tenant acknowledges that such Late Fee and interest shall be applicable to all monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on any unpaid 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 Landlord).

5. IMPROVEMENTS; ALTERATIONS; SURRENDER AT TERMINATION OF LEASE.

5.1 **Ownership of Improvements**. All Improvements included in the Premises and all Alterations (as defined below) thereto shall be owned by Landlord, and Tenant shall have only a leasehold interest therein pursuant to this Lease; provided, however, during the Term Tenant shall be considered as the owner of the Hoist and shall be fully and solely responsible for the operation, maintenance, repair and/or replacement (as necessary) of the Hoist. Tenant shall have no right to remove the Hoist from the Premises, except if Tenant replaces the Hoist with a new replacement hoist acceptable to County. At the expiration or earlier termination of the Term, ownership of the Hoist shall automatically transfer to County.

5.2 **No Alterations Without Approval of Landlord**. Tenant shall not make any additional improvements, modifications, installations or other alterations (collectively, **"Alterations"**) of, on or to the Premises or any utility or other systems serving the Premises, without the prior written consent of Landlord, which consent may be withheld or conditioned by Landlord in its sole and absolute discretion. Notwithstanding the foregoing, on prior written notice to Landlord, but without requiring Landlord's consent, Tenant shall have the right to make cosmetic alterations to the interior of the Building (such as paint and carpet) as long as such alterations do not reduce the value of the Building, affect the utility systems serving the Building, or cost in excess of an aggregate of Ten Thousand Dollars ($10,000.00).

5.3 **Protection of Landlord**. Nothing in this Lease shall be construed as constituting the consent of Landlord, express or implied, to the performance of any labor or the furnishing of any materials to the Premises by any contractor, subcontractor, laborer or materialman, in such manner as would give rise to the filing of mechanics' liens or other claims against Landlord or Landlord's interest in the Premises.

5.3.1 **Posting Notices**. Landlord shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which Landlord may deem necessary for the protection of Landlord's interest in the Premises from mechanics' liens or other claims.

5.3.2 **Liens; Indemnity**. Tenant shall keep the Premises free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Tenant and/or any parties claiming through Tenant. Tenant agrees to and shall indemnify, defend and hold Landlord harmless from and against any claims, liability, losses, damages, costs, expenses (including without limitation, attorneys' fees) incurred in connection with any claims of liens of laborers or materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under it. In the event any lien is recorded, Tenant shall, within five (5) business days after demand, satisfy or otherwise cause such lien to be removed of record, whether by bonding or otherwise.

5.4 **Surrender of Possession at Termination of Lease**. At the expiration of the Term or sooner termination of this Lease, (a) Tenant shall surrender possession of the Premises to Landlord in the condition that such Premises was required to be maintained and repaired by Tenant under this Lease, and (b) Tenant shall remove from the Premises all unaffixed furniture, equipment and other personal property owned by Tenant, and repair any damage to the Premises incurred in connection with such removal. If Tenant fail to remove its personal property from the Premises as required under this Section 5.4, then Tenant shall lose all right, title and interest in and to such personal property, and Landlord may elect to keep the same upon the Premises or to sell, remove, or destroy the same, in event of which sale, removal, or destruction Tenant shall reimburse Landlord for its costs incurred in connection with such sale, removal or destruction in excess of the consideration, if any, received by Landlord as a result of the sale of any such personal property.

6. **CONDEMNATION**. In the event that more than ten percent (10%) of the floor area of the Building, or such portion of any other areas of the Premises or Parking Lot that prevents the occupancy or operation of the remaining portion of the Premises, is taken by eminent domain or condemnation, then either Landlord or Tenant shall have the option of terminating this Lease upon giving written notice of such election to the other within thirty (30) days after receipt of written notice of such taking. If the Lease is not terminated, then Monthly Base Rent shall be equitably reduced on a reasonable basis to reflect the relative value to Tenant of the portion of the Premises that is taken. The entire condemnation award shall belong to Landlord, except that Tenant shall be entitled to the portion of any award, if any, allocated by the condemning authority to the taking of or damage to Tenant's personal property or relocation expenses.

7. **SECURITY DEPOSIT**.

7.1 **Amount and Use**. Tenant shall deliver to and maintain with Landlord a security deposit (the "**Security Deposit**") in an initial amount equal to Thirteen Thousand Dollars ($13,000.00). Effective as of each date that the Monthly Base Rent is increased under Section 4.1 of this Lease, the amount of the Security Deposit shall be increased by the same percentage

increase as the percentage increase in the Monthly Base Rent. The Security Deposit shall secure Tenant's obligations pursuant to this Lease, and may be drawn on by Landlord, in whole or in part, to cover (a) delinquent rent not paid by Tenant within any applicable notice and cure period, and (b) any other Events of Default of Tenant under this Lease. The Security Deposit shall be applied at the discretion of Landlord. Tenant shall have the right to maintain the Security Deposit either in the form of cash, or in the form of a certificate of deposit, letter of credit or other approved investment instrument issued with Landlord as the sole owner or beneficiary, in each case acceptable to Landlord in form, content and issuer. As long as no Event of Default by Tenant exists under the Lease, Tenant shall be entitled to a credit for any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to Landlord in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Tenant shall not be entitled to interest). Notwithstanding any contrary provision hereof, Landlord 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 Tenant under the Lease.

7.2 **Replacement**. In the event that some or all of the Security Deposit is drawn against by Landlord and applied against any delinquent rent not paid by Tenant within any applicable notice or cure period, or against other Events of Default of Tenant hereunder, Tenant 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 Landlord, or cause the issuer of any letter of credit to reissue the letter of credit, such that Tenant once again maintains the full amount of the Security Deposit required under this Article 7. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Section 13.1.2, shall constitute an Event of Default hereunder.

7.3 **Renewal**. Any letter of credit procured by Tenant and delivered to Landlord shall provide for notice to Landlord 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, Tenant has not provided Landlord with satisfactory evidence of its renewal or replacement, or has not provided Landlord with adequate replacement security, Landlord may draw down upon the letter of credit and hold the funds as security for Tenant's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Tenant within any applicable notice and cure period and/or any other Event of Default of Tenant under this Lease.

8. INDEMNITY.

Except to the extent caused by the gross negligence or willful misconduct of any indemnitee, Tenant shall at all times relieve, defend, indemnify, protect, and save harmless Landlord 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 Tenant and reasonably satisfactory to Landlord, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of Landlord 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 by Tenant or any Tenant Party, (b) the acts, omissions, or negligence of Tenant or any Tenant Party, or (c) the failure of Tenant or any Tenant Party 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 Tenant to so relieve, defend, indemnify, protect, and save harmless Landlord 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 Tenant beyond the expiration of the Term or other termination of this Lease.

9. **INSURANCE**.

9.1 **Tenant's Insurance**. Without limiting Tenant's indemnification of Landlord, during the Term of this Lease Tenant 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 Landlord as an additional insured, with respect to the Premises and Access Areas, with limits of not less than the following:

General Aggregate:	$10 million
Products/Completed Operations Aggregate:	$10 million
Personal and Advertising Injury:	$5 million
Each Occurrence:	$5 million

Tenant may satisfy the above coverage limits with a combination of primary coverage and excess liability/umbrella coverage as long as (a) Tenant's primary coverage is at least One Million Dollars ($1,000,000) per occurrence, One Million Dollars ($1,000,000) annual aggregate, which limits may, at Tenant's election, be carried in the form of two separate policies, (b) the primary coverage and all excess liability/umbrella coverages are issued by the same insurer and such insurer is reasonably satisfactory to Landlord, and (c) the combination of such primary coverage and excess liability/umbrella coverage provides Landlord with at least the same protection in all respects as if Tenant had carried primary coverage for the entire limits listed above in this Section 9.1.1 and in accordance with the other terms and provisions set forth herein applicable to such coverage.

9.1.2 If any vehicles are owned or operated by or on behalf of Tenant, Tenant shall maintain Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than $1 million for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto." In all cases Tenant shall provide Garagekeeper's Legal Liability coverage, (written on ISO form CA 99 37 or its equivalent) with limits of not less than $1 million 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 Tenant is responsible, and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	$1 million
Disease - policy limit:	$1 million
Disease - each employee:	$1 million

9.1.4 Commercial Property insurance covering damage to the Improvements, 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 $5,000, and also including business interruption, including loss of rent, equal to two (2) years annual rent. Landlord shall be named as insured party and loss payee of insurance proceeds for damage to the Improvements, with proceeds to be made available by Landlord for repair and restoration of the Improvements to the extent required under this Lease if this Lease is not terminated.

9.1.5 For construction projects, including any Alterations or restoration, on the Premises, Tenant or Tenant's contractor will provide the following insurance (Landlord 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 Landlord furnished materials and equipment, against loss or damage until completion and acceptance by Tenant. Landlord shall be named as insured party and loss payee

of insurance proceeds for damage to the Improvements, with proceeds to be made available by Landlord for repair and restoration of the Improvements to the extent required under this Lease if this Lease is not terminated.

9.1.5.2 General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as required by the Landlord for the Alterations. The products/completed operations coverage shall continue to be maintained for a period to be determined by the Landlord from the date the Alterations are completed and accepted by the Tenant.

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 required by the Landlord 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.) with limits as required by the Landlord for the Alterations. This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project.

9.1.5.5 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants. 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 requests. 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 required by the Landlord 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). 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 Landlord as the insured party and loss payee with respect to the coverage pertaining to the Improvements (as opposed to Tenant's personal property) and name Landlord as an additional insured with respect to loss or rent coverage.

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 Landlord, 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 Tenant 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; 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 prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Tenant and filed with Director.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Tenant may submit in a form reasonably acceptable to Landlord a certificate of insurance from the insurance company (but not from an insurance broker) that is legally binding upon such insurance company.

Any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to Landlord 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**, Tenant's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

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

(b) 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 the additional insured which might otherwise result in forfeiture of such insurance;

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

(d) 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;

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

(f) 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 Landlord or ten (10) business days in case of cancellation for failure to pay the premium;

(g) 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,

(h) 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 Tenant fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from Landlord, in addition to the other rights and remedies provided hereunder, Landlord may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by Landlord shall be repaid by Tenant, with interest thereon at the Applicable Rate, to Landlord within five (5) business days after Tenant'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 Landlord and Tenant 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**. Tenant shall report to Landlord any accident or incident on or about the Premises which involves injury or property damage which might reasonably be thought to result in the filing of a claim or lawsuit against Tenant and/or Landlord. Such report shall be made in writing within 72 hours of Tenant's knowledge of such occurrence.

10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 **Allocation of Maintenance and Repair Obligations**. Tenant shall be fully responsible for the maintenance and repair of the interior of the Building (including exterior windows and doors) and all fixtures and utility systems and equipment located therein, except for structural elements, the roof, and heating, ventilation and air conditioning, and elevator systems. Landlord shall be responsible for the maintenance and repair of the structural elements, roof, heating, ventilation and air conditioning and elevator systems and exterior of the Building (excluding exterior windows and doors). Tenant shall be responsible for the maintenance and repair of the patio and other exterior surface and landscaped areas included in the Premises, the Dry Storage Facilities, the fenced in mule storage area, the Hoist and any Hoist/waterside staging areas included in the Premises. Tenant shall be responsible for any damage or degradation to the leak-free condition of the roof membrane of the Boater Restrooms arising in connection with Tenant's use of the patio above the Boater Restrooms. Landlord shall be responsible for the maintenance and repair of the portion of the Parking Lot that is not included in the Premises and the other Access Areas (including without limitation, the Boater Restrooms).

Landlord shall also be responsible for the maintenance and repair of docks G1626 and G1628. In consideration of Landlord's maintenance and repair of docks G1626 and G1628, Tenant shall pay to Landlord on a monthly basis concurrent with its payment of Monthly Base Rent, a maintenance and repair fee equal to twenty-five percent (25%) of the monthly boat slip rental rate charged from time to time for boat slips in the Anchorage of a size comparable to G1626 and G1628. Tenant shall also be required to reimburse Landlord for the cost of any maintenance, repair or replacement of docks G1626 and G1628 necessitated by the act or omission of Tenant or any Tenant Party.

A common water heater (the "**Common Water Heater**") that serves the Premises and the Boater Restrooms is located in an exterior closet in the Building. Landlord shall be responsible for the maintenance, repair and replacement (as necessary) of the Common Water Heater. Tenant shall provide Landlord with access to the Common Water Heater (including keys to the closet). Tenant shall be required to reimburse Landlord for its share of the costs incurred by Landlord for the maintenance, repair and replacement (as necessary) of the Common Water Heater as a part of (and in accordance with the same Tenant's percentage share as) Tenant's Operating Expenses. If Landlord fails to commence the remedy of any malfunction of the Common Water Heater within five (5) business days after written notice from Tenant, then Tenant shall have the right to perform the required repair or replacement on written notice to Landlord and to offset Landlord's share of the reasonable cost incurred by Tenant for such repair or replacement (i.e., 80%) against the next rent payable under this Lease.

Tenant shall perform its maintenance and repair obligations (a) at its sole cost and expense, (b) such that the portions of the Premises and associated areas required to be maintained and repaired by Tenant are kept in a good, safe, clean and working order and condition, (c) in compliance with all Applicable Laws, and (d) in conformance with the Minimum Standards regarding the use and occupancy of commercial projects in Marina del Rey as revised from time to time by Landlord in a manner consistent with commercially reasonable maintenance standards applicable to other comparable commercial projects in Marina del Rey (the "**Maintenance Standard**"). Any dispute as to whether revisions to the Maintenance Standard adopted by the

Landlord 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. Landlord 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.

Landlord's repair and maintenance obligations under this Section 10.1 shall be at Landlord's cost, except (i) for those items included within Tenant's Operating Expenses pursuant to Section 4.4; (ii) Landlord shall not be responsible for exterior Building painting unless Tenant agrees to reimburse Landlord for the direct variable cost of such painting, provided that if the Term is extended beyond the initial five (5) year Term and in the Department's judgment the Building requires painting, then Landlord shall have the right to require Tenant to pay for the direct variable cost of such painting as part of the agreed upon terms for the extension of the Term; (iii) Tenant shall be required to varnish the exposed wood rail caps at least once every two (2) years; (iv) Tenant shall be responsible for the cost of any repair necessitate by the act or omission of Tenant or a Tenant Party; and (v) as provided above with respect to docks G1626 and G1628 and the Common Water Heater.

Landlord shall not have any direct or indirect liability to Tenant (including, without limitation, consequential damages or any right to abate, withhold or offset rent) for any malfunction or interruption in operation of the items required to be repaired and maintained by Landlord under this Lease or for any interference with Tenant's operations resulting therefrom or in connection with the performance of Landlord's maintenance and repair obligations under this Lease. Except as expressly provided to the contrary in this Lease, Tenant shall not have the right to perform any work on Landlord's behalf or to offset any costs, expenses or other amounts against rent.

10.2 **Maintenance Deficiencies**. If Landlord provides written notice to Tenant of a deficiency or other breach in the performance by Tenant of the maintenance and repair obligations of Tenant under Section 10.1 above, then Tenant shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the Landlord'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 Landlord shall have the right to immediately require Tenant to take all appropriate steps to avoid damage or injury. If Tenant fails to cure any such deficiency within the cure period set forth in Landlord'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 Landlord may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Tenant shall pay to Landlord 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 Landlord's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Tenant), then as long as during the specified cure period Tenant commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such

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.

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 subsection 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 successors and assigns 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 any designee which has 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 permitted successors, assigns or designees shall enjoy all of the rights and protections given to Encumbrance Holders under this Lease; provided, however, no successor, assign or designee of an Encumbrance Holder that is affiliated with Lessee or any person or entity with a direct or indirect ownership interest in Lessee shall be entitled to any of the rights or protections granted 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 Events. 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 to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days 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 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. In addition, no Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger the obligation to pay a Net Proceeds Share to County or any recapture right of County under subsection 11.2.4 of this Lease.

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 subsection 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 of this Lease.

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 subsection 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this subsection 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 recapture right on the part of County, or (iii) 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 subsection 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 work described in Sections 5.1, 5.14 or 5.15 above 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 subsection 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 No Subordination. 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 (except with respect to the Partial Termination Premises pursuant to Section 2.2 above, or 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 (other than a termination with respect to the Partial Termination Premises pursuant to Section 2.2 above, or in accordance with the provisions of this Article 12) 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), 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, except in each case other than the partial termination of the Lease with respect to the Partial Termination Premises pursuant to Section 2.2, 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 Capital Improvement Fund or Renovation 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.

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, within five (5) 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, within such five (5) day period.

13.1.2. Failure to Comply with Construction Obligations. The failure of Lessee to comply with the obligations and timeframes set forth in Article 5 of this Lease if not cured within ten (10) days after written notice of such failure, if no other notice of such failure is otherwise required hereunder.

13.1.3. Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 8 of this Lease if not cured within five (5) days after written notice of such failure.

13.1.4. 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.

13.1.5. 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.

Any notice required to be given by County pursuant to subsections 13.1.1 through and including 13.1.4 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.

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 having a recorded interest pertaining to County's interest in this Lease or the Premises. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person 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.

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, 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. Lessee shall utilize the accrual method of accounting with respect to its preparation of the reports and maintenance of records required herein or, at its option, may utilize the cash method of accounting, provided Lessee reconciles its filings, records and reports to an accrual method to the extent requested by County; notwithstanding the foregoing, Lessee shall be permitted to make monthly payments of Percentage Rent using the cash method of accounting to determine Gross Receipts, provided that Lessee provides County with an annual reconciliation of its cash basis Gross Receipts to the accrual method (together with payment of any additional Percentage Rent due).

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 will not be unreasonably withheld.

The requirements of this paragraph may be waived or modified in advance by Director upon submission by Lessee of a substitute plan acceptable to Director for recording sales and other income.

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 showing Gross Receipts during the preceding calendar month, together with its calculation of the amount payable to County under Sections 4.2 through 4.8 inclusive, and shall accompany same with remittance of amount so shown to be due.

14.4 Availability of Records for Inspector's Audit. Books of account and records 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 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. 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. 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 Additional Accounting Methods. County may require the installation of any additional accounting methods or machines which are typically used by major office buildings and major parking service companies and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

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

14.8 Annual Financial Statements. Within six (6) months after the end of each Accounting Year or, at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall deliver to County a set of audited and certified financial statements prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County, setting forth Lessee's financial condition and the result of Lessee's operations for such Accounting Year and shall include a certification of and unqualified opinion concerning Lessee's Gross Receipts (including a breakdown by category). All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises.

14.9 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 and the delivery to County of audited certified financial statements and unqualified opinions as to Gross Receipts.

14.10 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 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 within ninety (90) days after the Execution 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 Premises since 1966. 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.

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 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.

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, 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.

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 and 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 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 Department of Beaches and Harbors Los Angeles County 13837 Fiji Way Marina del Rey, California 90292 Phone: 310/305-9522 Fax: 310/821-6345
With a Copy to:	Office of County Counsel Los Angeles County 500 West Temple Street Los Angeles, California 90012 Attn: County Counsel Phone: 213/974-1801 Fax: 213/617-7182
LESSEE:	Holiday-Panay Way Marina, L.P. c/o Goldrich & Kest Industries 5150 Overland Avenue Culver City, California 90230 Attn: Warren Breslow Phone: 310/204-2050 Fax: 310/204-1900
With a Copy to:	Holiday-Panay Way Marina, L.P. c/o Goldrich & Kest Industries 5150 Overland Avenue Culver City, California 90230 Attn: William Yerrick, General Counsel Phone: 310/280-5043 Fax: 310/280-5014

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 immediately upon 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 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, 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 an amendment to implement an arbitration judgment and other than an amendment to confirm the termination of the Lease with respect to the Partial Termination Premises pursuant to Section 2.2, 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.

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 an affirmative 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 necessary in order to secure such affirmative vote or approval 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: (1) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (2) 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); (3) the dates, if any, to which all rental due thereunder has been paid; and (4) whether the certifying party is then aware of any charges, offsets or defenses against the enforcement by the other party of any agreement, covenant or condition hereof to be performed or observed by the certifying party (and, if so, specifying the same). Prospective purchasers 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 Waterfront Promenade. As a part of the Redevelopment Work, Lessee agrees to (i) provide a continuous pedestrian walkway and view piers approved by County ("Promenade")

along the entire waterfront portion of the Premises to comply with the intent of the Local Coastal Program's waterfront promenade plan, (ii) replace all fencing on the Premises with new fencing approved by County, (iii) repave all parking areas, and (iv) complete new or refurbished restrooms for the anchorage tenants. The foregoing work is collectively referred to in this Lease as the "Promenade Work." Lessee shall perform the Promenade Work as part of the Redevelopment Work. The facilities to be constructed under this Section 15.19 shall be constructed in accordance with the provisions of Article 5. Lessee shall join the Promenade located on the Premises with the adjacent promenade located on Parcel 20 and repair any damage to the promenade improvements located on Parcel 20 incurred in connection with Lessee's construction of the Promenade under this Lease. County hereby reserves a public easement for access over and use of the Promenade for 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 maintenance and repair standards established by the County from time to time. 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.

15.20 Parking.

15.20.1 General. As part of the Redevelopment Work Lessee is required to construct the Parking Structure described in Section 5.1 of this Lease. It is contemplated that the New Commercial Building and the new Anchorage Improvements will require the construction of 241 parking spaces. The exact number of parking spaces required by applicable code to serve the New Commercial Building and the new Anchorage Improvements is referred to herein as the "On-Site Parking Spaces." In addition to the On-Site Parking Spaces, Lessee shall construct 112 parking spaces to serve the anchorage improvements located on Parcel 20 (the "Additional Parcel 20 Parking Spaces") and 94 public parking spaces to satisfy replacement public parking required to be constructed in connection with the development of Parcel 147 (the "Replacement Parcel 147 Parking Spaces") to the extent that the requirement for the Replacement Public Parking Spaces is not eliminated or reduced in connection with receipt of the entitlements and governmental approvals required for the development of Parcel 147. The 447 parking spaces required to be contained in the Parking Structure pursuant to Section 5.1 is based on the foregoing parking requirements. If the required number of On-Site Parking Spaces and/or Replacement Parcel 147 Parking Spaces changes, then the total number of parking spaces required to be contained in the Parking Structure shall be adjusted to reflect any such change. The Parking Structure shall be designed and constructed at the sole cost of Lessee. Any cost sharing agreement that Lessee, the Parcel 147 Lessee and/or the Parcel 20 Lessee may have entered into with respect to the cost of the design and construction of the Parking Structure shall be a matter as between Lessee and such other lessees, and shall not limit or otherwise affect Lessee's obligations to County with respect to the

construction of the Parking Structure. County shall have no obligation with respect to the cost of the design and construction of the Parking Structure.

15.20.2 Additional Parcel 20 Parking Spaces. County hereby reserves a non-exclusive, irrevocable easement on, over and across the Parking Structure and other portions of the Premises required for access to and from the Parking Structure (including without limitation driveways, ramps, aisles, entrances, exits, sidewalks, stairs, elevators and other Improvements) for vehicular and pedestrian access to and use of the Additional Parcel 20 Parking Spaces for parking purposes for the benefit of the anchorage improvements located on Parcel 20. Lessee shall not have the right to charge County, the Parcel 20 Lessee or any Designee (as defined below) for the use of the parking set forth in this subsection 15.20.2, except that during any period during which Parcel 20 continues to be leased to Parcel 20 Lessee, Lessee and such Parcel 20 Lessee shall have the right to mutually agree to a parking charge for the use of the Additional Parcel 20 Parking Spaces, but such charge shall not be binding on County on and after any termination of the lease for Parcel 20 in effect as of the date of this Lease. The Additional Parcel 20 Parking Spaces shall be in a location approved by Director in connection with the approval by Director of the Approved Final Plans, Specifications and Costs, or such other location as approved by Director from time to time. The users of the Additional Parcel 20 Parking Spaces shall have access to and use of the Additional Parcel 20 Parking Spaces 24 hours per day, every day, in accordance with the Operation Plan approved by Director pursuant to subsection 15.20.4 below. The easement described in this subsection 15.20.2 shall run for the benefit of County, as fee owner of the portion of Parcel 20 on which the anchorage improvements are located, and any Parcel 20 Lessee, as lessee of such portion of Parcel 20. The Parcel 20 Lessee (or County if there is no Parcel 20 Lessee) shall have the right to designate users of the anchorage improvements located on Parcel 20 (including visitors) as permitted users of the parking rights set forth in this subsection 15.20.2 ("Designees"), but this subsection 15.20.2 is not intended to confer any rights (including, without limitation, rights to enforce this subsection 15.20.2 as a third party beneficiary) on any third parties, including any such Designee. At Director's election, County and Lessee shall execute in recordable form a separate parking easement agreement that documents the terms and conditions of the parking rights set forth in this subsection 15.20.2. Parcel 20 Lessee shall indemnify, defend and hold Lessee harmless from and against all claims, losses, liabilities, costs or expenses (including without limitation reasonable attorneys' fees) incurred by Lessee for the death of or injury to persons or damage to property, arising in connection with or related to the use of the easement described in this subsection 15.20.2 by Parcel 20 Lessee or its Designees.

15.20.3 Replacement Parcel 147 Parking Spaces. County hereby reserves a public easement on, over and across the Parking Structure and other portions of the Premises required for access to and from the Parking Structure (including without limitation driveways, ramps, aisles, entrances, exits, sidewalks, stairs, elevators and other Improvements) for vehicular and pedestrian access to and use of the Replacement Parcel 147 Parking Spaces for public parking purposes. The location of Replacement Parcel 147 Parking Spaces and the access ways and circulation plan for public use of the

Replacement Parcel 147 Parking Spaces shall be approved by Director in connection with the approval by Director of the Approved Final Plans, Specifications and Costs. The Replacement Parcel 147 Parking Spaces shall be open to the public seven (7) days per week in accordance with such rules and regulations (including hours of public access) as are promulgated from time to time by County regulating such public use. Lessee shall make no use of the Premises, including without limitation the other parking located thereon, that interferes with the public easement described in this subsection 15.20.3 or is prohibited under or in conflict with the rules and regulations established by County for the use of the Replacement Parcel 147 Parking Spaces. County shall not be obligated to pay Lessee any compensation for the Replacement Parcel 147 Parking Spaces. Lessee shall have the right to charge the users of the Replacement Parcel 147 Parking Spaces for the use thereof in accordance with rates approved by County (with California Coastal Commission approval as required under Applicable Law) consistent with the public parking rates established (as modified from time to time) for other similar public parking in Marina del Rey. At Director's election, County and Lessee shall execute in recordable form a separate parking easement agreement that documents the terms and conditions of the public parking rights set forth in this subsection 15.20.3.

15.20.4 Parking Structure Operation Plan. Not later than ninety (90) days prior to the opening of the Parking Structure, Lessee shall submit to Director for Director's approval, a plan for the operation of the Parking Structure (the "Operation Plan"), including without limitation, hours of operation, access procedures, security, parking charges (if any) and other specifications pertaining to the operation of the Parking Structure. Lessee shall be obligated to operate, maintain and repair the Parking Structure at its sole cost and expense, in accordance with a standard of operation, repair and maintenance at least commensurate the standard of operation of other comparable first-class parking facilities in Marina del Rey. Lessee shall operate the Parking Structure in accordance with the Operation Plan, as approved by Director, and shall make no modifications to such Operation Plan without the prior written approval of Director.

15.21 Dockmasters. Throughout the Term, Lessee shall maintain a dockmaster program acceptable to County to manage Lessee's anchorage at the Premises. Such dockmaster system may be jointly operated with the anchorage for Parcels 18 and 20.

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 the Director, that as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels 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 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.

15.24 No Merger. If, prior to the expiration of the Term, County or Lessee shall acquire the interest of the other in the Promises, or any portion thereof, there shall be no merger of the leasehold estate into (a) the fee simple estate in the Premises, (b) the sub-reversionary interest held by County or (c) any leasehold estate superior to that held by Lessee.

15.25 365 Election. County and Lessee agree, for the benefit of any Encumbrance Holder, that for so long as an Encumbrance shall encumber Lessee's interest in the Premises, the right of election arising under Section 365(h)(1) of the Bankruptcy Code may be exercised solely by Encumbrance Holder and not by Lessee. Any exercise or attempted exercise of such right of election by Lessee shall be void.

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:

(a) 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.

(b) 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:

(1) 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;

(2) 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;

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

(4) 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.

(c) 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:

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

(2) 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;

(3) 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);

(4) 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

To enrich lives through effective and caring service

Los Angeles County
Department of Beaches & Harbors

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

February 7, 2008

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan Wisniewski

SUBJECT: **ITEM 5a - APPROVAL OF LEASE AGREEMENT – SANTA MONICA WINDJAMMERS YACHT CLUB-PARCEL 47 (13589 MINDINAO WAY) - MARINA DEL REY**

Item 5a on your agenda pertains to a new 5-year lease between the County of Los Angeles and the Santa Monica Windjammers Yacht Club (Yacht Club). The Yacht Club is a sublessee of the Parcel 47 lessee (SMYC Marina) and the County lease with SMYC Marina is terminating effective March 24, 2008. To retain the Yacht Club in their current facilities, we are proposing a 5-year lease agreement.

The new lease agreement allows the Yacht Club to use the existing yacht club building and other appurtenant areas on Parcel 47, including the use of seven reserved parking spaces and 27 dry boat storage spaces for the benefit of its yacht club members. Additionally, the intent of the lease agreement is to provide time for the County to design and develop an expanded Chace Park wherein we intend to provide facilities for the Yacht Club.

The Board of Directors of the Yacht Club met on February 5, 2008 and voted to recommend to the members of the Yacht Club ratification of the negotiated lease. The members of the Yacht Club will hold a special meeting on February 16, 2008 to vote on the ratification of said lease.

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 lease. Your Commission's endorsement of the Chief Executive Office recommendations to the Board of Supervisors is respectfully requested.

SW:SHK:dlg.shk

Attachment

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://marinadelrey.lacounty.gov

March 4, 2008

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:

DEPARTMENT OF BEACHES AND HARBORS: APPROVAL OF LEASE AGREEMENT– SANTA MONICA WINDJAMMERS YACHT CLUB (Parcel 47 at 13589 Mindanao Way) - MARINA DEL REY (4th DISTRICT) (4 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that approval of the recommended actions 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. Authorize the Director to enter into County agreements to retain the yacht club subtenant (Santa Monica Yacht Club, Inc., dba Santa Monica Windjammers Yacht Club) and slip tenants in good standing upon the termination of the lease with S.M.Y.C. Marina.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Your Board previously approved a negotiated deal in Closed Session to terminate the existing Parcel 47 lease and negotiate a Term Sheet with the Parcel 47 yacht club sublessee, the Santa Monica Windjammers Yacht Club (Yacht Club). The agreement allows the Yacht Club to continue to occupy its current facility for a 5 year lease term. If the County determines that it is able to accommodate the Yacht Club in a new facility in the proposed expansion of Chace Park but the new facility is not completed at the end of the 5 year lease term, the lease term may be extended for up to 3 additional periods of one year each. In anticipation of the County's termination of the existing Parcel 47 ground lease, the ground lessee has given the Department of Beaches and Harbors (Department) written notice of the Parcel 47 ground lessee's decision to terminate the existing ground lease effective March 24, 2008, as allowed under the terms of said lease. The proposed lease with the Yacht Club is intended to commence effective upon the termination of the existing ground lease. The Board of Directors of the Yacht Club

recommended that the Yacht Club members ratify the terms of the new Parcel 47 Lease. The members then held a special meeting on February 16, 2008 and approved the new Lease.

The new Yacht Club Lease provides for a monthly rent of $8,000 (subject to annual CPI increase up to 3% per year), net of property taxes, insurance, utilities, and common area costs ("NNN"), plus percentage rent of (a) 7.35% of the first $390,000 of gross receipts generated in connection with the use or operation of the yacht club facility, including without limitation, yacht club dues, meeting room rentals, parking charges (if any), restaurant/bar sales, telephone/vending receipts or other gross receipts received by the Yacht Club or a successor yacht club in the yacht club facility, plus (b) 17.5% of the above gross receipts over $390,000; plus (c), 25% of gross receipts for dry storage and storage lockers; use by the Yacht Club of the existing yacht club building, along with the adjacent sidewalks and landscaping, the dry storage facilities, the exterior patio areas located in the back of the yacht club building and the patio/deck on the top of the boater restrooms, the fenced in mule storage area, and other areas on which the hoist and waterside areas are located, including the dock/slip adjacent to the hoist (G1626 and 1628); a security deposit of $13,000; the reversion to the County of the boater bathrooms, the Promenade, and the adjacent parking lot except that Yacht Club has the right to use 27 parking spaces in the parking lot for dry dock storage and designate 7 parking spaces in the parking lot exclusively for the Yacht Club use; reversion to the County of the existing anchorage on the Parcel 47 Marina with qualified Yacht Club members having the first right to lease vacant slips; Yacht Club's obligation to maintain and repair the areas controlled by the Yacht Club while the County has the obligation for structural repairs to the yacht club building (including building exterior and HVAC and elevator systems) and all other areas reverting to the County; the Yacht Club's payment of a pro rata share of maintenance costs for the exterior areas maintained by the County; liquidated damages of $100 per day (adjusted for inflation) for each cited lessee maintenance deficiency that remains uncured after the specified cure period; payment of late fees and interest on overdue County payments and certain record-keeping standards. The Department is requesting authority from your Board to execute the new Lease in substantially the form attached hereto as Exhibit A.

Implementation of Strategic Plan Goals

In furtherance of County Goals #1 and #4, "Service Excellence" and "Fiscal Responsibility", respectively, 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 enhancing public access to and enjoyment of the Marina through property redevelopment and modernized lease provisions.

The following chart details the proposed terms of the 5-year lease with SMWYC:

BOARD POLICY ITEM	*TERMS*
PREMISES	• The demised premises ("Premises") will include the SMWYC Clubhouse building and its most adjacent sidewalks and landscaping, the exterior patio areas located at the back of the building and the patio/deck on top of the boater restrooms, the dry storage facilities, the fenced in mule storage area, and certain areas on which the hoist and waterside staging area are located, including the dock/slip located adjacent to the hoist (G1626 and G1628). • SMWYC will be provided with access rights over those areas not included in the Premises to the extent necessary for access to and between portions of the Premises, and County will reserve easements over exterior portions of the Premises as necessary for use of and access to and between parking, anchorage, boater restrooms and other associated exterior areas.
PARKING	• SMWYC shall have the right to use 27 parking spaces for dry boat storage purposes. The 27 dry storage spaces are: 1) all the parking spaces along the eastern boundary of Parcel 47; 2) the 10 most eastern spaces (90 feet) on the water side of the planter median; and 3) the most eastern spaces (90 feet) along the southern boundary of Parcel 47. • SMWYC shall have the right to designate up to 7 parking spaces for exclusive yacht club use.
BOAT SLIPS	• SMWYC shall have the first right of refusal for vacant boat slips for a period of ten days.
TERM	• 5 years from expiration of existing lease subject to early termination for: a) relocation to a new facility; or b) failure of the Yacht Club to maintain $175,000 annual dues.

BOARD POLICY ITEM	*TERMS*
RENT	Minimum Rent • $8,000 per month, net of property taxes, insurance, utilities, and common area costs. • Annual CPI increase up to 3% per year. Percentage Rent • 7.35% of first $390,000 of gross receipts derives from the operation of the Yacht Club • 17.5% of all gross receipts derived from the operation of the Yacht Club over $390,000 • 25% of all gross receipts derived from dry storage and storage lockers
ARBITRATION	• Arbitration will use rent-a-judge procedure. "Baseball" type arbitration provision.
ASSIGNMENT OR SUBLEASE	• SMWYC shall not assign the Lease or sublease the Premises without the County's prior written consent, which consent may be withheld in its sole and absolute discretion. Notwithstanding the foregoing, County agrees not to unreasonably withhold its consent to a merger of SMWYC with one or more other Marina del Rey yacht clubs, and the assignment of the Lease to a successor entity resulting from such a merger.
LEASE ADMINISTRATIVE ITEMS	• A 6% late charge after the 5th day plus interest at Prime + 3% for any late payments from due date until paid. Lessee entitled to waiver of late charge once each year so long as paid within one business day of notice by County. Interest applies to all overdue amounts regardless of notice provisions. • Security deposit of $13,000. • County reserves the right to adjust insurance levels if the Term of the Lease extends beyond 5 years. • SMWYC to provide monthly reports and an annual CPA certification of gross receipts.
PROMENADE	• County to maintain promenade, with reimbursement by Lessee of 20% of such maintenance costs in accordance with section RENT above.

BOARD POLICY ITEM	*TERMS*
MAINTENANCE	• SMWYC to maintain and repair Premises except for structural elements such as building exteriors and HVAC system and elevators).
INSURANCE	• SMWYC will be required to carry and maintain insurance on the Premises and its use of the parking, common areas and hoist in accordance with County risk management policy.
HOIST	• During the Term of the Lease SMWYC will own the hoist and be responsible for its operation, maintenance and repair. Ownership of the hoist shall transfer to County at the termination of the Lease.

FISCAL IMPACT/FINANCING

The termination of the existing lease and approval of the new Lease for Parcels reflects the County's attempt to accommodate a preferred use. The new Lease will produce a fiscal benefit to the County due to: a) the negotiated rent (minimum and percentage) that the Yacht Club will be paying; and b) collection of rents directly from the existing slip tenants (rather than collection of percentage rent from lessee) due to the reversion of the existing docks to the County. The rental increase is discussed in detail below.

Revenue Increase Due to Lease Termination and approval of the new Lease

The total revenue derived from Parcel 47 during fiscal year 2006-2007 was approximately $259,000. After termination of the existing lease and commencement of the new Lease, the County anticipates a net revenue increase in the range of $320,000 to $550,000 annually from the negotiated rent to be paid by the Yacht Club and collection of anchorage rents directly from the slip tenants for the continued use of the land and water area.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The existing lease for Parcel 47 expires on March 24, 2008 due to existing lessee giving the County notice of lessee's decision to terminate the lease, as allowed under the existing lease. The members of the Yacht Club have ratified the terms of the new Parcel 47 Lease between the County and the Yacht Club. Upon termination of the existing

lease, the County will enter into a new lease with the Yacht Club for an additional 5 year period.

Parcel 47 consists of an existing yacht club facility and an anchorage with 173 slips and six end-ties (with the possibility of mooring up to 11 boats on the end-ties) and is located on Mindinao Way adjacent to Burton Chace Park. The yacht club will rent the Premises from the County but will allow control of the parking lot (except for 27 parking spaces for dry boat storage and 7 parking spaces designated for the use of the Yacht Club) and the anchorage to revert to the County which will manage the parking lot and anchorage and collect rent directly from the Yacht Club and slip tenants

The County anticipates incorporating Parcel 47 into its final design for the expansion of Burton Chace Park wherein it plans to include a facility for the Yacht Club as part of the overall development, either on Parcel 47 or in another part of the expanded Burton Chace Park.

Entering into leases of the County's Marina del Rey real property is authorized by Government Code Sections 25907 and 25536. The lease terms are in conformance with the maximum 99-year period authorized by California law.

At its meeting of February 13, 2008, the Small Craft Harbor Commission _____ the recommendations to approve the new Lease for Parcel 47 in the form attached. County Counsel has approved the documents as to form.

ENVIRONMENTAL DOCUMENTATION

Approval of the recommended actions 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 agreements does not authorize construction or reconstruction of any improvements on the parcel.

CONTRACTING PROCESS

The Yacht Club's proposal for a new Lease was received in response to County's decision not to renew the existing lease on Parcel 47. The new Lease for Parcel 47 will be available to the Yacht Club upon the termination of the existing lease. .

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects, as the County will manage, maintain and control all aspects of the Parcel 47 property operations.

CONCLUSION

Authorize the Executive Officer/Clerk of the Board to send two copies of the executed lease agreement to the Department of Beaches and Harbors.

Respectfully submitted,

William T Fujioka

SW:SK:GB:shk

Attachment (1)

c: County Counsel

LEASE AGREEMENT

by and between

COUNTY OF LOS ANGELES

and

SANTA MONICA YACHT CLUB

(Lease No. _____)

Dated as of _____, 2008

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EXHIBIT B PARKING LOT B-1
EXHIBIT C ANCHORAGE C-1

LEASE AGREEMENT

THIS LEASE AGREEMENT (**"Lease"**) is made and entered into as of _____, 2008 (**"Effective Date"**), by and between the COUNTY OF LOS ANGELES (**"Landlord"**), as landlord, and SANTA MONICA YACHT CLUB, a California corporation, dba Santa Monica Windjammers Yacht Club (**"Tenant"**), as tenant.

RECITALS

A. Landlord owns fee title to certain land and improvements located in the Marina del Rey Small Craft Harbor and referred to herein as the Premises.

B. Landlord desires to lease to Tenant, and Tenant desire to lease from Landlord, the Premises, on and subject to the terms and conditions set forth in this Lease.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. BACKGROUND AND GENERAL.

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

1.1.1 **"ACCESS AREAS"** shall have the meaning set forth in Section 1.2.3.

1.1.2 **"ADA"** shall have the meaning set forth in Section 1.2.1.

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

1.1.4 **"ANCHORAGE"** shall mean the boat slips depicted on Exhibit C attached to this Lease.

1.1.5 **"ANNUAL ESTIMATE STATEMENT"** shall have the meaning set forth in Section 4.4.

1.1.6 **"ANNUAL RECONCILIATION STATEMENT"** shall have the meaning set forth in Section 4.4.

1.1.7 **"APPLICABLE LAWS"** shall have the meaning set forth in Section 1.2.1.

1.1.8 **"APPLICABLE RATE"** shall mean an annually compounded rate of interest equal to the (a) the Prime Rate plus three percent (3%) per annum; or (b) the maximum rate of interest which may be charged pursuant to Applicable Laws.

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

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

1.1.11 **"BOATER RESTROOMS"** shall mean the restroom, showers and laundry building owned by County and located adjacent to the Premises, and which is used as restrooms, showers and laundry facilities that serve the Anchorage.

1.1.12 **"BUILDING"** shall have the meaning for such term set forth in the definition of Premises in this Section 1.1.

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

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

1.1.15 **"CPI"** 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 Landlord and Tenant.

1.1.16 **"COUNTY"** shall mean Los Angeles County, California.

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

1.1.18 **"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.

1.1.19 **"DRY STORAGE FACILITIES"** shall mean the portion of the Premises located in the Parking Lot that are used for the dry storage of boats, as depicted in Exhibits A and B attached to this Lease.

1.1.20 **"DRY STORAGE GROSS RECEIPTS"** shall have the meaning set forth in Section 4.2.

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

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

1.1.23 **"GROSS RECEIPTS"** shall have the meaning set forth in Section 4.3.

1.1.24 **"GROSS RECEIPTS REPORT"** shall have the meaning set forth in Section 4.3.2.

1.1.25 **"HOIST"** shall have the meaning for such term set forth in the definition of Premises in this Section 1.1.

1.1.26 **"IMPROVEMENTS"** means all buildings, structures, fixtures, fences, walls, paving, driveways, walkways, plazas, landscaping, permanently affixed utility systems and other improvements now or hereafter located on the Premises.

1.1.27 **"LANDLORD"** shall have the meaning set forth in the first paragraph of this Lease.

1.1.28 **"LATE FEE"** shall have the meaning set forth in Section 4.6.

1.1.29 **"LEASE"** shall mean this Lease Agreement.

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

1.1.31 **"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 in Marina del Rey.

1.1.32 **"MONTHLY BASE RENT"** shall have the meaning set forth in Section 4.1.

1.1.33 **"PARKING LOT"** shall have the meaning set forth in Section 1.2.4.

1.1.34 **"PERCENTAGE RENT"** shall have the meaning set forth in Section 4.2.

1.1.35 **"PERMITTED USE"** shall have the meaning set forth in Section 3.1.

1.1.36 **"PREMISES"** shall mean the land and water depicted on Exhibit A attached to this Lease and all Improvements located thereon, except any portions thereof expressly excluded from the Premises pursuant to this paragraph. For purposes of clarification, the Premises shall include the following land, water and improvements within the outline of the Premises shown on Exhibit A (the **"Premises Outline"**): (a) Tenant's existing clubhouse building (the **"Building"**) and all fixtures and utility systems and equipment located therein; (b) the sidewalks and landscaped areas included within Premises Outline; (c) the exterior patio areas located at the back of the Building and the patio/deck located on top of the Boater Restrooms (but excluding the Boater Restrooms); (d) the Dry Storage Facilities; (e) the fenced in mule storage area; (e) the boat hoist shown on Exhibit A (the **"Hoist"**) and, to the extent within the Premises Outline, the areas on which the Hoist and waterside staging area are located; and (f) the docks commonly known as G1626 and G1628. The Premises exclude the adjacent parking facilities, the Boater Restrooms, the Promenade and the Anchorage. In addition to the

Premises, Tenant has certain rights of access to other adjacent facilities in accordance with the provisions of Sections 1.2.3 and 1.2.4 of this Lease.

1.1.37 **"PREMISES OUTLINE"** shall have the meaning for such term set forth in the definition of Premises in this Section 1.1.

1.1.38 **"PRIMARY GROSS RECEIPTS"** shall have the meaning set forth in Section 4.2.

1.1.39 **"PRIME RATE"** shall mean the prime or reference rate of interest announced from time to time by Bank of America, N.A. or its successor, or if Bank of America, N.A. or its successor ceases to exist, then the prime or reference rate of interest announced from time to time by the largest California chartered bank in terms of deposits.

1.1.40 **"PROMENADE"** shall mean the waterfront boardwalk and promenade located adjacent or substantially adjacent to the Premises and between the Premises and the adjacent water area, including without limitation, all landscaping and improvements thereon.

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

1.1.42 **"RELOCATION FACILITY"** shall have the meaning set forth in Section 2.4.

1.1.43 **"REPLACEMENT FACILITY"** shall have the meaning set forth in Section 2.2.

1.1.44 **"SECTION"** shall mean a section of this Lease.

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

1.1.46 **"STATE"** shall mean the State of California.

1.1.47 **"TENANT"** shall have the meaning set forth in the first paragraph of this Lease.

1.1.48 **"TENANT PARTY"** shall mean any agent, officer, employee, licensee, concessionaire, permittee, subtenant, contractor, vendor, member, invitee or guest of Tenant.

1.1.49 **"TENANT'S OPERATING EXPENSES"** shall have the meaning set forth in Section 4.4.4.

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

1.1.51 **"TERM COMMENCEMENT DATE"** shall have the meaning set forth in Section 2.1.

1.1.52 **"TERM EXPIRATION DATE"** shall have the meaning set forth in Section 2.1.

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

1.2 **Lease**. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases and hires from Landlord, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined), upon the terms and conditions and subject to the requirements set forth herein.

1.2.1 **As-Is**. Tenant acknowledges that it is currently in possession of and has previously occupied the Premises pursuant to a pre-existing lease and thus is fully aware and apprised of the condition of the Premises. Tenant 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 Tenant hereby represents that it has performed all investigations necessary in connection with its acceptance of the Premises "AS IS WITH ALL FAULTS". Tenant hereby accepts the Premises on an "AS IS WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Tenant is not relying on any representation or warranty of any kind whatsoever, express or implied, from Landlord or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises and the Improvements included therewith, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises, 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, (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, including all Improvements, (iv) the use, habitability, merchantability or fitness, or the suitability, value or adequacy of the Premises and/or Improvements for any particular purpose, (v) the zoning or other legal status of the Premises or any public or private restrictions on use of the Premises, (vi) the compliance of the Premises and/or Improvements with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions of the City, 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, as amended from time to time (**"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 Section 1.2.2 below, the condition of title to the Premises, and (x) the economics of the operation of the Premises and/or the Improvements included therewith.

1.2.2 **Title**. Landlord represents that Landlord owns fee title to the Premises and that Landlord has authority to enter into this Lease. Tenant hereby acknowledges the title of Landlord 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 Tenant may occupy the Premises pursuant to the terms and conditions of this Lease.

1.2.3 **Additional Access Rights**. In addition to possession of the Premises, Tenant shall have non-exclusive rights of access to the following improvements and/or areas located adjacent to the Premises (collectively, the "**Access Areas**"): (a) the electrical panel located in the Boater Restrooms as necessary for access to the circuit breaker for the Hoist; (b) the Boater Restrooms for use by subtenants of the Dry Storage Facilities; (c) those portions of the Parking Lot that are not included in the Premises, subject to and in accordance with terms and provisions of Section 1.2.4 below; and (d) any sidewalks, walkways and driveways located adjacent to the Premises for pedestrian access to the extent such access is both consistent with the current use of the Premises and necessary for ingress and egress to, from, among and between the Premises and the Access Areas described in clauses (a) through (c) above. Tenant's rights of access to and use of the Access Areas shall be subject to and in accordance with the following provisions: (i) Tenant's access to and use of the Access Areas shall be subject to compliance with the reasonable rules and regulations for such access and use promulgated from time to time by Landlord, including without limitation, the hours of such access and use; (ii) Tenant shall not exercise its rights under this Section 1.2.3 in any manner that interferes with, obstructs or impairs the access to, use and enjoyment of the Access Areas by Landlord or any other persons or entities to which Landlord grants rights of access or use; (iii) Tenant shall maintain liability insurance with respect to the exercise of its rights under this Section 1.2.3 in accordance with the terms of this Lease as if the Access Areas were a part of the Premises; (iv) Tenant shall have no right to make any Improvements or Alterations to the Access Areas or to place any furniture, fixtures or equipment in the Access Areas; (v) Tenant shall be solely responsible for all costs and expenses incurred by County in connection with any damage to the Access Areas or any Improvements or equipment located therein or adjacent to the Access Areas, to the extent caused by or incurred in connection with any access to or use of the Access Areas by Tenant or any Tenant Party; and (v) Tenant agrees to indemnify, defend and hold Landlord harmless from and against all liabilities, losses, damages, claims, costs and/or expenses (including reasonable attorneys' fees) incurred by Landlord as a result of or in connection with access to or use of the Access Areas by Tenant or any Tenant Party.

1.2.4 **Parking Lot**. Exhibit B attached to this Lease is a depiction of the surface parking lot located adjacent to the Building (the "**Parking Lot**"). The Parking Lot currently contains one hundred seventy-nine (179) parking spaces. Twenty-seven (27) of such spaces are used for the Dry Storage Facilities and are included in the

Premises. Use of an additional one hundred forty-five (145) of the parking spaces in the Parking Lot are reserved to Landlord to serve Anchorage users or for such other purposes as determined by Landlord. In addition to the Dry Storage Facilities, Landlord hereby grants Tenant a right of access to and use of the seven (7) parking spaces specifically marked for Tenant's use on Exhibit B.

The current striping plan for the Parking Lot is different than the striping plan that was originally in effect for the Parking Lot, and results in a reduction from the number of parking spaces originally contained in the Parking Lot. If the Department determines that the number of parking spaces in the Parking Lot is inadequate for the Anchorage or Premises, or if another governmental agency requires the number of parking spaces to be increased (up to and including the number of parking spaces that were originally contained in the Parking Lot), then Landlord shall re-stripe the Parking Lot in a manner acceptable to Department and/or any such governmental agency (as applicable) and Tenant shall pay to Landlord within thirty (30) days after written demand, twenty percent (20%) of the cost of such re-striping; provided, however, that no re-striping required by the Department shall restrict Tenant's ability to provide functionally equivalent dry boat storage facilities immediately adjacent to the Hoist. If Tenant desires to re-stripe the Parking Lot, then such re-striping shall be at Tenant's cost and shall be conditioned upon Landlord's prior written approval and subject to any subsequent re-striping pursuant to the preceding provisions of this paragraph. If as a result of any re-striping there is an adjustment to the location and/or number of spaces used for dry boat storage purposes, Anchorage tenants and/or the Building, then the parties shall enter into an amendment to this Lease to reflect such adjustment.

The Parking Lot shall be operated and maintained by Landlord, including the management of non-permit temporary or overnight parking and abandoned vehicles. Access to the Parking Lot shall continue to be generally controlled via a key card access system, as necessary in Landlord's judgment to limit use of the Parking Lot to Tenant's yacht club members, Anchorage tenants and as otherwise permitted hereunder. Tenant shall have the right to raise the gate arms for deliveries to the Building. Use of the parking spaces that are not included in the Premises for dry boat storage purposes shall be on a non-reserved first-come, first-served basis (subject to the limitation on the total number of spaces allocated to each party under this Section 1.2.4), except that (a) Tenant shall have the right to designate and mark (in a manner acceptable to Landlord) for exclusive yacht club use Tenant's seven (7) parking spaces described in the first paragraph of this Section 1.2.4; and (b) Landlord reserves the right to designate specific spaces for Anchorage tenants if necessary in the Landlord's judgment. Tenant shall in all cases have the right to use the Parking Lot for yacht club event purposes for up to six (6) yacht club events per year. Tenant shall use its best efforts to provide Landlord with sixty (60) days prior written notice of the date of such yacht club events to permit Landlord to notify Anchorage tenants. In no case shall Tenant provide Landlord less than forty-five (45) days' prior written notice of the date of any such yacht club event. Landlord shall have the right to use the Parking Lot for other parking purposes during non-peak times on weekdays, including evening meetings (e.g., by raising the gate arms

at Landlord's option), as long as such use does not interfere with Tenant's use of its parking rights under this Section 1.2.4.

1.2.5 **Anchorage**. The Anchorage shall be owned and operated (at Landlord's discretion) by Landlord (or its successor or designee) and Tenant shall have no rights with respect to the Anchorage, except as set forth in this Section 1.2.5. Landlord shall have the right to establish and modify from time to time the rents and any other charges (including without limitation, surcharges or additional fees for liveaboards) for use and occupancy of boat slips in the Anchorage. The remaining terms and provisions of this Section 1.2.5 shall be applicable only during such periods as the Anchorage continues to be operated and rented to individual boat slip users. Tenant shall have a first right to have its yacht club members rent vacant slips in accordance with the terms of this Section 1.2.5. Landlord shall have the right to limit the number of liveaboard boat slip tenants in the Anchorage to that number that were in legal occupancy and in good standing as of March 8, 2007.

Landlord agrees to notify Tenant in writing of all boat slip vacancies (a "**Vacancy Notice**") prior to the lease of a vacant slip to another user. Landlord shall have the right to deliver the Vacancy Notice during the termination notice period for the previous tenant. Tenant must exercise its first right under this Section 1.2.5, if at all, by delivery to Landlord within ten (10) days after the Vacancy Notice of a written referral of a qualified member (or members) of Tenant's yacht club for the rental of the vacant slip (or slips) referenced in the Vacancy Notice and a completed application (along with all associated forms) and rental agreement signed by such member. The application/forms and rental agreement shall be in such form as required by Landlord from time to time. Landlord and Tenant shall cooperate to agree on a procedure (a) for the preparation of a waiting list of Tenant's members (organized by slip size) who desire to rent slips, (b) the pre-qualification of such members, and (c) the delivery to County of completed applications/forms and signed rental agreements for consideration by County. All applications and prospective slip renters must satisfy the Landlord's standard conditions and qualifications for renting a slip. If County does not receive the above-required application/forms and executed rental agreement for a vacant slip from a qualified member within the foregoing ten (10) day period, then Landlord shall be free to rent such slip to any person or entity and on such terms that Landlord desires. The terms and provisions of this Section 1.2.5 shall inure only to the benefit of Tenant, and no members of Tenant shall have any rights under this Section 1.2.5 (including without limitation, as third party beneficiaries) nor shall Landlord have any obligation or liability to such members.

Tenant shall have the right to directly lease from Landlord (as opposed to having its individual members lease from Landlord) up to two (2) boat slips in the Anchorage pursuant to the right of offer set forth in this Section 1.2.5. Tenant shall have the right to sublease such two (2) boat slips to its individual yacht club members, provided that any such sublease shall be subject to Landlord's approval of the subtenant and the sublease, and Tenant shall not charge rent or other amounts in connection with such sublease that

exceed the rent and charges payable by Tenant to Landlord in connection with Tenant's direct lease of the boat slip from Landlord.

Any member of Tenant's club that rents a boat slip in the Anchorage shall have the right to permit the use of such slip on a temporary basis by a visitor to Tenant's club that is a member of another yacht club that shares reciprocal yacht club privileges with Tenant's club, without additional charge to Tenant or the visitor.

2. **LEASE TERM.**

2.1 **Term**. The term of the Lease ("**Term**") shall commence on _____ [INSERT THE DAY FOLLOWING THE EFFECTIVE TERMINATION DATE OF THE EXISTING LEASE] (the "**Term Commencement Date**") and, unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on the day preceding the fifth (5th) anniversary of the Term Commencement Date (the "**Term Expiration Date**"). For purposes of this Lease, "**Lease Year**" shall mean each year during the Term of this Lease commencing on the Term Commencement Date and each successive anniversary thereof.

2.2 **Early Termination or Extension of Term in Connection with Replacement Facility**. Landlord intends to pursue consideration of the development of a replacement facility for the future occupancy of Tenant (and potentially other users) (a "**Replacement Facility**"). Landlord shall take into consideration input from Tenant as to the scope, size and programmatic requirements for such Replacement Facility. The development and lease to Tenant of a Replacement Facility shall be subject to compliance with any request for proposal ("**RFP**") process implemented by Landlord for such Replacement Facility. Subject to such RFP process, Landlord and Tenant shall negotiate in good faith to attempt to agree upon mutually acceptable terms for the lease to Tenant of space in the Replacement Facility. If Landlord develops a Replacement Facility and the parties reach agreement upon mutually acceptable terms for the lease to Tenant of space in the Replacement Facility, then this Lease shall terminate effective as of the commencement of the term of the new lease to Tenant for the Replacement Facility. If Landlord develops a Replacement Facility and the parties reach agreement upon mutually acceptable terms for the lease to Tenant of space in the Replacement Facility, but the Replacement Facility is not completed for Tenant's occupancy of the Replacement Facility by the Term Expiration Date, then upon the mutual agreement of Landlord and Tenant the Term of this Lease shall be subject to extension for up to three (3) periods of one (1) year each.

2.3 **Early Termination for Failure to Meet Dues Threshold**. If during any Lease Year the aggregate amount of dues paid to Tenant by its members is less than One Hundred Seventy Five Thousand Dollars ($175,000.00), then Tenant shall have the right to terminate the Lease upon not less than six (6) months prior written notice to Landlord.

2.4 **Relocation of Premises During Term**. If during the Term Landlord requires use of the Premises for another purpose (including without limitation, park or development purposes) County shall have the right during the Term to relocate the Premises to another facility of comparable size and facility improvements, and with comparable access to parking, boat slips and dry storage (a "**Relocation Facility**"). If County elects to relocate the Premises pursuant to

this Section 2.4, the Premises shall be relocated to the Relocation Facility on not less than sixty (60) days prior written notice to Tenant and the parties shall execute an amendment to this Lease to document the change in location of the Premises to the Relocation Facility. Landlord shall be responsible for the cost to relocate and install in the Relocation Facility Tenant's furniture, fixtures, equipment and other property.

3. **USE OF PREMISES**.

3.1 **Permitted Use**. The Premises shall be used by Tenant only for the operation of the Santa Monica Windjammers Yacht Club (or its successor pursuant to Article 14 below) and for no other purpose (the "**Permitted Use**"). Tenant shall also have the right on an ancillary basis to permit other organizations (e.g., the Coast Guard Auxiliary) to hold meetings at the Premises in a manner and frequency consistent with Tenant's past practices.

3.2 **Prohibited Uses**. Notwithstanding the foregoing:

3.2.1 **Nuisance**. Tenant 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.

3.2.2 **Restrictions and Prohibited Uses**. Without expanding upon or enlarging the Permitted Use 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 in any way in a manner inconsistent with the Permitted Use; 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 condition shall be permitted to exist upon the Premises which shall induce, breed or harbor infectious plant diseases, rodents, or noxious insects and Tenant 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;

3.2.2.4 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 Tenant outdoors above ground on any portion of the Premises, whether attached to an Improvement or otherwise; Landlord hereby approves Tenant's continued use of the existing antennae installed on the Premises as of the date of this Lease in the manner in which such antennae have been used prior to the date of this Lease, as long as such use does not violate any other provision of this Lease;

3.2.2.5 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, 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 the Permitted Use, and (b) conducted in compliance with all Applicable Laws.

3.3 **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 in writing by Director (and to the extent required under then Applicable Law, the Design Control Board).

3.4 **Compliance with Regulations**. Tenant 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. Tenant shall be responsible for making all Alterations to the Premises required to comply with Applicable Laws to the extent pertaining to those portions of the Premises required to be maintained and repaired by Tenant pursuant to Section 10.1 below. Landlord shall be responsible for making all Alterations to the Premises required to comply with Applicable Laws to the extent pertaining to those portions of the Premises required to be maintained and repaired by Landlord pursuant to Section 10.1 below; provided, however, that to the extent that the requirement to make an Alteration to comply with Applicable Laws is triggered by (a) any Alterations made to the Premises by Tenant, or (b) any change in the use of the Premises by Tenant, then Tenant shall be responsible for the costs and expenses incurred by Landlord for such Alteration.

3.5 **Rules and Regulations**. Tenant agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Premises as may be promulgated by Landlord from time to time and delivered in writing to Tenant. Any dispute as to whether Landlord has acted unreasonably in connection with the matters described in this Section 3.5 shall be submitted to arbitration pursuant to Article 16 of this Lease.

3.6 **Reservations**. County hereby reserves an easement and right of access to and use of the exterior portions of the Premises as necessary or appropriate in the reasonable judgment of County for ingress and egress to, from, among and between the land and improvements located adjacent to the Premises, including without limitation, the Parking Facilities, Boater Restrooms,

Promenade and Anchorage. Tenant also 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 as of the Effective Date, (b) otherwise referenced in this Lease in, to, over or affecting the Premises, or (c) consented to by Tenant.

Without limiting the foregoing, Tenant expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record and the right of the City or County 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 the City or County to convey such easements and transfer such rights to others.

4. RENT AND OTHER PAYMENTS.

4.1 **Base Rent**. Tenant shall pay Landlord base rent ("**Monthly Base Rent**") during the Term. The Monthly Base Rent for the first Lease Year shall be Eight Thousand Dollars ($8,000.00) per month. The Monthly Base Rent shall be subject to adjustment effective as of the first day of the second and each successive Lease Year during the Term to an amount equal to the product of (a) the Monthly Base Rent in effective for the first Lease Year, multiplied by (b) a fraction the numerator of which is the CPI for the month that is three (3) months prior to the month during which the Monthly Base Rent adjustment is to take effect, and the denominator of which is the CPI for the month that is three (3) months prior to the month during which the Term Commencement Date occurs. Notwithstanding the foregoing, (i) in no event shall the Monthly Base Rent for any Lease Year be less than the Monthly Base Rent in effect for the immediately preceding Lease Year; and (ii) in no event shall the Monthly Base Rent for any Lease Year exceed the Monthly Base Rent in effect for the first Lease Year increased at a cumulative and compounded annual rate of three percent (3%) per year during the Term.

4.2 **Percentage Rent**. In addition to Monthly Base Rent, Tenant shall pay to Landlord percentage rent ("**Percentage Rent**") equal to the sum of (a) seven and 35/100 percent (7.35%) of the first Three Hundred Ninety Thousand Dollars ($390,000.00) of Primary Gross Receipts (as defined below) for each Lease Year, plus (b) seventeen and 50/100 percent (17.5%) of all Primary Gross Receipts for each Lease Year in excess of Three Hundred Ninety Thousand Dollars ($390,000.00), plus (c) twenty-five percent (25%) of Dry Storage Gross Receipts (as defined below). For purposes of this Lease, (a) "**Primary Gross Receipts**" shall mean all Gross Receipts generated in connection with the use or operation of the Premises, including without limitation, yacht club dues, meeting room rentals, parking charges (if any), restaurant/bar receipts, telephone/vending receipts, mail box charges, locker rentals and production/filming receipts, but excluding Dry Storage Gross Receipts; and (b) "**Dry Storage Gross Receipts**" shall mean all Gross Receipts generated in connection with the use or operation of the Dry Storage Facilities or storage lockers.

4.3 **Gross Receipts**. For purposes of this Lease, "**Gross Receipts**" means the gross amount of all money, receipts, dues, commissions, charges, fees, payments, reimbursements,

compensation, accounts or notes receivable or other things of value, received by or payable to Tenant (and/or any assignee, subtenant, licensee, permittee or concessionaire, although this section shall not be interpreted to permit any use, occupancy or operation of the Premises by any person or entity other than Tenant) from or in connection with the use, occupation or operation of any activity or business on the Premises or in any Access Areas, calculated in accordance with the accounting method described in the last sentence of Section 14.1.

4.3.1 **Calculation of Gross Receipts**. In the calculation of Gross Receipts, the following shall be applicable:

(1) 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, utilities, credit card fees, insurance premiums and taxes.

(2) Gross Receipts shall not include and retail sales tax imposed upon the consumer, collected by Tenant and remitted by Tenant to the applicable governmental agency.

(3) Gross Receipts must include the usual charges for any services, goods, rentals or facilities. Bona fide bad debts actually accrued by Tenant for delinquent payables owed to Tenant 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 excluded from Gross Receipts shall be included in Gross Receipts in the Lease Year in which they are collected.

(4) Gross Receipts shall not include any of the following items:

a. refunds to members or customers on merchandise sold to such members or customers and returned to Tenant;

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

c. receipts from insurance claims other than proceeds related to the replacement of Gross Receipts; and

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

(5) Interest, service or late charges collected in conjunction with a transaction, sale or activity shall be included in Gross Receipts in the same percentage category as the underlying transaction, sale or activity is required to be reported.

(6) Although Tenant has no right to sublease the Premises or any portion thereof, or to permit any licensee, concessionaire or other person or entity to occupy, use or conduct any business or activity on the Premises or Access Areas, if any person or entity other than Tenant occupies, uses or conducts any business or activity on or from the Premises or Access Areas, the Gross Receipts of such subtenant, licensee, concessionaire or other person or entity from such business or activity shall be included in Gross Receipts.

(7) Gross Receipts shall not include receipts from charity events held on the Premises provided that (a) such events are conducted only on an ancillary basis and are consistent in scope and frequency with Tenant's past practices; (b) the recipient of the receipts from the event is a bona fide charitable organization (based on federal income tax status) that is not affiliated with Tenant or any subtenant and whose operation and mission are not related to boating, sailing or other marina activities; and (c) all receipts from the event (after offset of bona fide out-of-pocket expenses, without compensation to Tenant) are donated to a qualified recipient under clause (b) above. Tenant shall provide Landlord with such information and materials as requested by Landlord to permit Landlord to verify the application of this subsection (7).

(8) Director, by Policy Statement and with the approval of Auditor-Controller and County Counsel may further interpret the definition of Gross Receipts, with such interpretations to be a guideline in implementing the calculation of Percentage Rent.

4.3.2 **Reporting of Gross Receipts and Payment of Percentage Rent**. Within fifteen (15) days after the end of each calendar month (or partial calendar month) during the Term, (a) Tenant shall deliver to Landlord a written report ("**Gross Receipts Report**") that sets forth the Primary Gross Receipts and Dry Storage Gross Receipts for such immediately preceding month and the aggregate Primary Gross Receipts and Dry Storage Gross Receipts to date for the then current Lease Year, in such form and detail as reasonably acceptable to Landlord, and (b) pay to Landlord Percentage Rent payable for the Primary Gross Receipts and Dry Storage Gross Receipts for the immediately preceding month. The monthly payments of Percentage Rent for Primary Gross Receipts shall be equal to seven and 35/100 percent of Primary Gross Receipts until the aggregate Primary Gross Receipts for such Lease Year exceed Three Hundred Ninety Thousand Dollars ($390,000.00), following which Percentage Rent for Primary Gross Receipt shall be payable at the rate of seventeen and 50/100 percent (17.5%) of such Primary Gross Receipts for the remainder of such Lease Year. Tenant shall comply with all recordkeeping and accounting procedures, as well as the inspection and audit rights granted to Landlord, set forth in Article 14 of this Lease.

4.4 **Net Lease**. All references to "rent" under this Lease shall mean the Monthly Base Rent, Percentage Rent or other amounts payable by Tenant to Landlord under this Lease. The parties acknowledge that the rent to be paid by Tenant under this Lease is intended to be

absolutely net to Landlord. The rent and other sums to be paid to Landlord hereunder are not subject to any credit, demand, set-off or other withholding.

4.4.1 **Utilities**. In addition to rent, Tenant shall pay, or cause to be paid, to County or the utility provider (as applicable), all utility and service charges for water, electricity or other power, gas, sewage disposal, telephone service, cable service, garbage and trash collection and other utilities and services to the Premises. If any utilities are not separately metered or submetered, Tenant shall pay to County the cost of the utilities reasonably allocated to the Premises.

4.4.2 **Insurance**. Tenant shall pay to County the cost of all insurance maintained by County with respect to the Premises. The cost of any insurance that pertains to the Premises and other property owned by County shall be apportioned between the Premises and such other property on a reasonable basis.

4.4.3 **Taxes and Assessments**. Tenant shall prior to delinquency all taxes, assessments, fees, or charges which at any time may be levied by the State, County, City or other levying body upon any interest in this Lease or any possessory right which Tenant may have in or to the Premises allocable to the Term of this Lease, 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. Tenant shall have the right to contest the amount of any assessment imposed against the Premises or its possessory interest therein; provided, however, all costs and expenses of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Tenant.

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 Tenant. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. The possessory interest taxes and any other taxes applicable to the Premises or Tenant's interest in this Lease shall be pro-rated for any partial tax years included in the Term.

4.4.4 **Expenses Relating to Access Areas and Promenade**. Tenant shall pay to County twenty percent (20%) of all direct variable expenses incurred by Landlord for insurance, utilities, trash removal, maintenance, repair, landscaping and other common area services or costs attributable to the Access Areas, the Promenade, any other exterior common areas and the Common Water Heater (the "**Tenant's Operating Expenses**"). If expenses are incurred with respect to both the areas described in the immediately preceding sentence and other areas owned by County, such expenses shall be apportioned between the areas described in the immediately preceding sentence and such other areas on a reasonable basis. Prior to the commencement of each Lease Year, Landlord shall deliver to Tenant a statement setting forth Landlord's good faith estimate of Tenant's Operating Expenses projected to be incurred for the ensuing Lease Year (the "**Annual Estimate Statement**"). On or before the first day of each month during each Lease Year, Tenant shall pay to Landlord Tenant's Operating Expenses on an estimated basis in an amount equal to one-twelfth (1/12) of the estimated amount set forth in the

Annual Estimate Statement for such Lease Year. No delay of failure of Landlord to deliver the Annual Estimate Statement shall relieve Tenant of its obligations under this Section 4.4.4, except that until Landlord has delivered the Annual Estimate Statement for a Lease Year Tenant shall continue to pay monthly estimated installments of Tenant's Operating Expenses based on the estimate set forth in the Annual Estimate Statement for the preceding Lease Year. Within ninety (90) days after the end of each Lease Year, Landlord shall deliver to Tenant a statement (the "**Annual Reconciliation Statement**") setting for the actual amount of Tenant's Operating Expenses for the preceding Lease Year. In the event that the monthly estimated amounts of Tenant's Operating Expenses paid by Tenant for such Lease Year are less than the actual Tenant's Operating Expenses for such Lease Year, then Tenant shall pay the difference to Landlord within thirty (30) days after receipt by Tenant of the Annual Reconciliation Statement. In the event that the monthly estimated amounts paid by Tenant for such Lease Year exceed the actual Tenant's Operating Expenses for such Lease Year, then Tenant shall be entitled to credit the difference against the next rent payable to Landlord under this Lease, or, in the case of the final Lease Year, any such overpayment shall be returned to Tenant concurrent with the delivery by Landlord of the Annual Reconciliation Statement. Landlord shall not be in default or liable to Tenant for a delay in the delivery of the Annual Reconciliation Statement, but any overpayments by Tenant on an estimated basis shall bear interest at the Prime Rate during any period of delay in the delivery by Landlord of the Annual Reconciliation Statement.

4.5 **Rent Payments**. Monthly Base Rent and Tenant's Operating Expenses shall be paid by Tenant in advance on or before the first (1st) day of each calendar month of the Term. If the Term Commencement Date does not occur on the first day of a calendar month, then the first payment of Monthly Base Rent and Tenant's Operating Expenses shall be paid by Tenant on or before the Term Commencement Date, and the Monthly Base Rent and Tenant's Operating Expenses for the first and last partial months during the Term shall be calculated on a pro rata basis based on the number of days in each such partial month as compared to the total number of days in the applicable calendar month during which such partial month occurs.

Percentage Rent for each month (or partial month) during the Term shall be paid by Tenant in arrears on or before the fifteenth (15th) day of the following month in accordance with Section 4.3.2 above.

All payments under this Lease shall be by check or draft issued and payable to the County of Los Angeles, delivered to the Department of Beaches and Harbors, Los Angeles, California, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, or such other address as may be provided to Tenant by Landlord from time to time. Tenant acknowledges that Landlord 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 Tenant has received no such statement, invoice or demand.

4.5 **Late Fees**. If any payment under this Lease is not received by Landlord by the date due, Tenant acknowledges that Landlord 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 payable with respect to any amount that remains unpaid five (5) days after such amount was due and payable; provided, however, that Tenant shall not be required to pay a Late Fee in the case of the first instance in any calendar year that a payment is not made by Tenant within the foregoing five (5) day period, so long as such delinquency is cured within one (1) business day after written notice from Landlord. In addition to any Late Fee, any unpaid amounts shall additionally bear interest at the Applicable Rate, computed from the date such amount was due and payable, compounded monthly, until paid. Tenant acknowledges that such Late Fee and interest shall be applicable to all monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on any unpaid 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 Landlord).

5. IMPROVEMENTS; ALTERATIONS; SURRENDER AT TERMINATION OF LEASE.

5.1 **Ownership of Improvements**. All Improvements included in the Premises and all Alterations (as defined below) thereto shall be owned by Landlord, and Tenant shall have only a leasehold interest therein pursuant to this Lease; provided, however, during the Term Tenant shall be considered as the owner of the Hoist and shall be fully and solely responsible for the operation, maintenance, repair and/or replacement (as necessary) of the Hoist. Tenant shall have no right to remove the Hoist from the Premises, except if Tenant replaces the Hoist with a new replacement hoist acceptable to County. At the expiration or earlier termination of the Term, ownership of the Hoist shall automatically transfer to County.

5.2 **No Alterations Without Approval of Landlord**. Tenant shall not make any additional improvements, modifications, installations or other alterations (collectively, "**Alterations**") of, on or to the Premises or any utility or other systems serving the Premises, without the prior written consent of Landlord, which consent may be withheld or conditioned by Landlord in its sole and absolute discretion. Notwithstanding the foregoing, on prior written notice to Landlord, but without requiring Landlord's consent, Tenant shall have the right to make cosmetic alterations to the interior of the Building (such as paint and carpet) as long as such alterations do not reduce the value of the Building, affect the utility systems serving the Building, or cost in excess of an aggregate of Ten Thousand Dollars ($10,000.00).

5.3 **Protection of Landlord**. Nothing in this Lease shall be construed as constituting the consent of Landlord, express or implied, to the performance of any labor or the furnishing of any materials to the Premises by any contractor, subcontractor, laborer or materialman, in such manner as would give rise to the filing of mechanics' liens or other claims against Landlord or Landlord's interest in the Premises.

5.3.1 **Posting Notices**. Landlord shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which Landlord may deem necessary for the protection of Landlord's interest in the Premises from mechanics' liens or other claims.

5.3.2 **Liens; Indemnity**. Tenant shall keep the Premises free and clear of all mechanics' liens and other liens arising out of or in connection with work done for Tenant and/or any parties claiming through Tenant. Tenant agrees to and shall indemnify, defend and hold Landlord harmless from and against any claims, liability, losses, damages, costs, expenses (including without limitation, attorneys' fees) incurred in connection with any claims of liens of laborers or materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under it. In the event any lien is recorded, Tenant shall, within five (5) business days after demand, satisfy or otherwise cause such lien to be removed of record, whether by bonding or otherwise.

5.4 **Surrender of Possession at Termination of Lease**. At the expiration of the Term or sooner termination of this Lease, (a) Tenant shall surrender possession of the Premises to Landlord in the condition that such Premises was required to be maintained and repaired by Tenant under this Lease, and (b) Tenant shall remove from the Premises all unaffixed furniture, equipment and other personal property owned by Tenant, and repair any damage to the Premises incurred in connection with such removal. If Tenant fail to remove its personal property from the Premises as required under this Section 5.4, then Tenant shall lose all right, title and interest in and to such personal property, and Landlord may elect to keep the same upon the Premises or to sell, remove, or destroy the same, in event of which sale, removal, or destruction Tenant shall reimburse Landlord for its costs incurred in connection with such sale, removal or destruction in excess of the consideration, if any, received by Landlord as a result of the sale of any such personal property.

6. **CONDEMNATION**. In the event that more than ten percent (10%) of the floor area of the Building, or such portion of any other areas of the Premises or Parking Lot that prevents the occupancy or operation of the remaining portion of the Premises, is taken by eminent domain or condemnation, then either Landlord or Tenant shall have the option of terminating this Lease upon giving written notice of such election to the other within thirty (30) days after receipt of written notice of such taking. If the Lease is not terminated, then Monthly Base Rent shall be equitably reduced on a reasonable basis to reflect the relative value to Tenant of the portion of the Premises that is taken. The entire condemnation award shall belong to Landlord, except that Tenant shall be entitled to the portion of any award, if any, allocated by the condemning authority to the taking of or damage to Tenant's personal property or relocation expenses.

7. **SECURITY DEPOSIT**.

7.1 **Amount and Use**. Tenant shall deliver to and maintain with Landlord a security deposit (the "**Security Deposit**") in an initial amount equal to Thirteen Thousand Dollars ($13,000.00). Effective as of each date that the Monthly Base Rent is increased under Section 4.1 of this Lease, the amount of the Security Deposit shall be increased by the same percentage

increase as the percentage increase in the Monthly Base Rent. The Security Deposit shall secure Tenant's obligations pursuant to this Lease, and may be drawn on by Landlord, in whole or in part, to cover (a) delinquent rent not paid by Tenant within any applicable notice and cure period, and (b) any other Events of Default of Tenant under this Lease. The Security Deposit shall be applied at the discretion of Landlord. Tenant shall have the right to maintain the Security Deposit either in the form of cash, or in the form of a certificate of deposit, letter of credit or other approved investment instrument issued with Landlord as the sole owner or beneficiary, in each case acceptable to Landlord in form, content and issuer. As long as no Event of Default by Tenant exists under the Lease, Tenant shall be entitled to a credit for any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to Landlord in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Tenant shall not be entitled to interest). Notwithstanding any contrary provision hereof, Landlord 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 Tenant under the Lease.

7.2 **Replacement**. In the event that some or all of the Security Deposit is drawn against by Landlord and applied against any delinquent rent not paid by Tenant within any applicable notice or cure period, or against other Events of Default of Tenant hereunder, Tenant 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 Landlord, or cause the issuer of any letter of credit to reissue the letter of credit, such that Tenant once again maintains the full amount of the Security Deposit required under this Article 7. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Section 13.1.2, shall constitute an Event of Default hereunder.

7.3 **Renewal**. Any letter of credit procured by Tenant and delivered to Landlord shall provide for notice to Landlord 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, Tenant has not provided Landlord with satisfactory evidence of its renewal or replacement, or has not provided Landlord with adequate replacement security, Landlord may draw down upon the letter of credit and hold the funds as security for Tenant's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Tenant within any applicable notice and cure period and/or any other Event of Default of Tenant under this Lease.

8. INDEMNITY.

Except to the extent caused by the gross negligence or willful misconduct of any indemnitee, Tenant shall at all times relieve, defend, indemnify, protect, and save harmless Landlord 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 Tenant and reasonably satisfactory to Landlord, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of Landlord 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 by Tenant or any Tenant Party, (b) the acts, omissions, or negligence of Tenant or any Tenant Party, or (c) the failure of Tenant or any Tenant Party 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 Tenant to so relieve, defend, indemnify, protect, and save harmless Landlord 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 Tenant beyond the expiration of the Term or other termination of this Lease.

9. **INSURANCE**.

9.1 **Tenant's Insurance**. Without limiting Tenant's indemnification of Landlord, during the Term of this Lease Tenant 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 Landlord as an additional insured, with respect to the Premises and Access Areas, with limits of not less than the following:

General Aggregate:	$10 million
Products/Completed Operations Aggregate:	$10 million
Personal and Advertising Injury:	$5 million
Each Occurrence:	$5 million

Tenant may satisfy the above coverage limits with a combination of primary coverage and excess liability/umbrella coverage as long as (a) Tenant's primary coverage is at least One Million Dollars ($1,000,000) per occurrence, One Million Dollars ($1,000,000) annual aggregate, which limits may, at Tenant's election, be carried in the form of two separate policies, (b) the primary coverage and all excess liability/umbrella coverages are issued by the same insurer and such insurer is reasonably satisfactory to Landlord, and (c) the combination of such primary coverage and excess liability/umbrella coverage provides Landlord with at least the same protection in all respects as if Tenant had carried primary coverage for the entire limits listed above in this Section 9.1.1 and in accordance with the other terms and provisions set forth herein applicable to such coverage.

9.1.2 If any vehicles are owned or operated by or on behalf of Tenant, Tenant shall maintain Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than $1 million for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto." In all cases Tenant shall provide Garagekeeper's Legal Liability coverage, (written on ISO form CA 99 37 or its equivalent) with limits of not less than $1 million 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 Tenant is responsible, and including Employers' Liability coverage with limits of not less than the following:

Each Accident:	$1 million
Disease - policy limit:	$1 million
Disease - each employee:	$1 million

9.1.4 Commercial Property insurance covering damage to the Improvements, 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 $5,000, and also including business interruption, including loss of rent, equal to two (2) years annual rent. Landlord shall be named as insured party and loss payee of insurance proceeds for damage to the Improvements, with proceeds to be made available by Landlord for repair and restoration of the Improvements to the extent required under this Lease if this Lease is not terminated.

9.1.5 For construction projects, including any Alterations or restoration, on the Premises, Tenant or Tenant's contractor will provide the following insurance (Landlord 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 Landlord furnished materials and equipment, against loss or damage until completion and acceptance by Tenant. Landlord shall be named as insured party and loss payee

of insurance proceeds for damage to the Improvements, with proceeds to be made available by Landlord for repair and restoration of the Improvements to the extent required under this Lease if this Lease is not terminated.

9.1.5.2 General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as required by the Landlord for the Alterations. The products/completed operations coverage shall continue to be maintained for a period to be determined by the Landlord from the date the Alterations are completed and accepted by the Tenant.

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 required by the Landlord 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.) with limits as required by the Landlord for the Alterations. This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project.

9.1.5.5 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants. 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 requests. 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 required by the Landlord 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). 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 Landlord as the insured party and loss payee with respect to the coverage pertaining to the Improvements (as opposed to Tenant's personal property) and name Landlord as an additional insured with respect to loss or rent coverage.

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 Landlord, 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 Tenant 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; 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 prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Tenant and filed with Director.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Tenant may submit in a form reasonably acceptable to Landlord a certificate of insurance from the insurance company (but not from an insurance broker) that is legally binding upon such insurance company.

Any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to Landlord 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**, Tenant's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

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

(b) 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 the additional insured which might otherwise result in forfeiture of such insurance;

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

(d) 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;

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

(f) 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 Landlord or ten (10) business days in case of cancellation for failure to pay the premium;

(g) 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,

(h) 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 Tenant fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from Landlord, in addition to the other rights and remedies provided hereunder, Landlord may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by Landlord shall be repaid by Tenant, with interest thereon at the Applicable Rate, to Landlord within five (5) business days after Tenant'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 Landlord and Tenant 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**. Tenant shall report to Landlord any accident or incident on or about the Premises which involves injury or property damage which might reasonably be thought to result in the filing of a claim or lawsuit against Tenant and/or Landlord. Such report shall be made in writing within 72 hours of Tenant's knowledge of such occurrence.

10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 **Allocation of Maintenance and Repair Obligations**. Tenant shall be fully responsible for the maintenance and repair of the interior of the Building (including exterior windows and doors) and all fixtures and utility systems and equipment located therein, except for structural elements, the roof, and heating, ventilation and air conditioning, and elevator systems. Landlord shall be responsible for the maintenance and repair of the structural elements, roof, heating, ventilation and air conditioning and elevator systems and exterior of the Building (excluding exterior windows and doors). Tenant shall be responsible for the maintenance and repair of the patio and other exterior surface and landscaped areas included in the Premises, the Dry Storage Facilities, the fenced in mule storage area, the Hoist and any Hoist/waterside staging areas included in the Premises. Tenant shall be responsible for any damage or degradation to the leak-free condition of the roof membrane of the Boater Restrooms arising in connection with Tenant's use of the patio above the Boater Restrooms. Landlord shall be responsible for the maintenance and repair of the portion of the Parking Lot that is not included in the Premises and the other Access Areas (including without limitation, the Boater Restrooms).

Landlord shall also be responsible for the maintenance and repair of docks G1626 and G1628. In consideration of Landlord's maintenance and repair of docks G1626 and G1628, Tenant shall pay to Landlord on a monthly basis concurrent with its payment of Monthly Base Rent, a maintenance and repair fee equal to twenty-five percent (25%) of the monthly boat slip rental rate charged from time to time for boat slips in the Anchorage of a size comparable to G1626 and G1628. Tenant shall also be required to reimburse Landlord for the cost of any maintenance, repair or replacement of docks G1626 and G1628 necessitated by the act or omission of Tenant or any Tenant Party.

A common water heater (the "**Common Water Heater**") that serves the Premises and the Boater Restrooms is located in an exterior closet in the Building. Landlord shall be responsible for the maintenance, repair and replacement (as necessary) of the Common Water Heater. Tenant shall provide Landlord with access to the Common Water Heater (including keys to the closet). Tenant shall be required to reimburse Landlord for its share of the costs incurred by Landlord for the maintenance, repair and replacement (as necessary) of the Common Water Heater as a part of (and in accordance with the same Tenant's percentage share as) Tenant's Operating Expenses. If Landlord fails to commence the remedy of any malfunction of the Common Water Heater within five (5) business days after written notice from Tenant, then Tenant shall have the right to perform the required repair or replacement on written notice to Landlord and to offset Landlord's share of the reasonable cost incurred by Tenant for such repair or replacement (i.e., 80%) against the next rent payable under this Lease.

Tenant shall perform its maintenance and repair obligations (a) at its sole cost and expense, (b) such that the portions of the Premises and associated areas required to be maintained and repaired by Tenant are kept in a good, safe, clean and working order and condition, (c) in compliance with all Applicable Laws, and (d) in conformance with the Minimum Standards regarding the use and occupancy of commercial projects in Marina del Rey as revised from time to time by Landlord in a manner consistent with commercially reasonable maintenance standards applicable to other comparable commercial projects in Marina del Rey (the "**Maintenance Standard**"). Any dispute as to whether revisions to the Maintenance Standard adopted by the

Landlord 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. Landlord 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.

Landlord's repair and maintenance obligations under this Section 10.1 shall be at Landlord's cost, except (i) for those items included within Tenant's Operating Expenses pursuant to Section 4.4; (ii) Landlord shall not be responsible for exterior Building painting unless Tenant agrees to reimburse Landlord for the direct variable cost of such painting, provided that if the Term is extended beyond the initial five (5) year Term and in the Department's judgment the Building requires painting, then Landlord shall have the right to require Tenant to pay for the direct variable cost of such painting as part of the agreed upon terms for the extension of the Term; (iii) Tenant shall be required to varnish the exposed wood rail caps at least once every two (2) years; (iv) Tenant shall be responsible for the cost of any repair necessitate by the act or omission of Tenant or a Tenant Party; and (v) as provided above with respect to docks G1626 and G1628 and the Common Water Heater.

Landlord shall not have any direct or indirect liability to Tenant (including, without limitation, consequential damages or any right to abate, withhold or offset rent) for any malfunction or interruption in operation of the items required to be repaired and maintained by Landlord under this Lease or for any interference with Tenant's operations resulting therefrom or in connection with the performance of Landlord's maintenance and repair obligations under this Lease. Except as expressly provided to the contrary in this Lease, Tenant shall not have the right to perform any work on Landlord's behalf or to offset any costs, expenses or other amounts against rent.

10.2 **Maintenance Deficiencies**. If Landlord provides written notice to Tenant of a deficiency or other breach in the performance by Tenant of the maintenance and repair obligations of Tenant under Section 10.1 above, then Tenant shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the Landlord'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 Landlord shall have the right to immediately require Tenant to take all appropriate steps to avoid damage or injury. If Tenant fails to cure any such deficiency within the cure period set forth in Landlord'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 Landlord may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Tenant shall pay to Landlord 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 Landlord's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Tenant), then as long as during the specified cure period Tenant 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 Landlord'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 Landlord, Landlord 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. 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 Tenant the deficiency notice was erroneously issued by Landlord, then Tenant 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 Tenant. If Tenant files any such contest with Director, then Director shall have the right, in the exercise of Director's discretion, to consider such contest. If Tenant'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 Tenant in writing that either Director denies Tenant'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 CPI over the three (3) year period immediately preceding each such adjustment. If Tenant fails to pay any amounts payable by Tenant under this Section 10.2 within ten (10) days after written notice from Landlord, then Landlord shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.3 **Repairs Not Performed by Tenant**. If Tenant fails to make any repairs or replacements as required, Director may notify Tenant of said failure in writing, and if Tenant fails to cure said failure and make repairs or replacements within a reasonable time as established by Director, Landlord 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 Tenant as provided in Section 13.4.

10.4 **Damage or Destruction**. In the event of any damage to or destruction of the Improvements, Tenant shall give Landlord prompt written notice of such damage or destruction, and Landlord shall, except as otherwise expressly provided in this Section 10.4, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore the Improvements to their condition existing prior to the damage or destruction; provided, however, that (a) Landlord shall not be obligated to incur costs for such repair and/or restoration in excess of the insurance proceeds received by Landlord for such damage or destruction, and, unless Tenant elects to terminate the Lease as provided below, Tenant shall be responsible for paying to Landlord the portion of the costs not covered by insurance, with Landlord having the right to require Tenant to deposit with Landlord the reasonably expected amount of such excess costs prior to Landlord's commencement of the repair and/or restoration; and (b) Landlord shall not be responsible for the repair and/or

restoration of any Alterations made to the Premises by Tenant or for any of Tenant's furniture, fixtures, equipment or personal property. Notwithstanding the foregoing, (i) either Tenant or Landlord shall have the right to terminate this Lease by written notice to the other party within ninety (90) days after the date of the casualty if the cost to repair and/or restore the Improvements on the Premises is reasonably expected to exceed twenty-five percent (25%) of the replacement cost of such Improvements; (ii) Tenant shall have the right to terminate the Lease by written notice to Landlord within ninety (90) days after the date of the casualty if the insurance proceeds to be received by Landlord are not reasonably expected to be sufficient to pay for the repair and/or restoration of the Premises and Landlord does not agree to be responsible for the costs not reimbursed from insurance; and (iii) either party shall have the right to terminate the Lease by written notice to the other party within thirty (30) days after the date of the casualty in the event of material damage to the Improvements during the last year of the Term. In the case of damage or destruction of the Improvements, the Monthly Base Rent shall be abated on an equitable basis during the period and to the extent of the impairment of Tenant's use or occupancy of the Improvements until the substantial completion by Landlord of the repair and/or restoration thereof. The parties' rights in the case of damage or destruction shall be governed by the terms and provisions of this Lease and 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 or obligations.

11. **ASSIGNMENT AND SUBLEASE**. Tenant not be permitted to assign the Lease, sublease any portion of the Premises, or otherwise permit any other person or entity to occupy or use the Premises, without the prior written consent of Landlord, which consent may be withheld by Landlord in its sole and absolute discretion. Notwithstanding the foregoing, Landlord agrees not to unreasonably withhold its consent to a merger of Tenant with one or more other Marina del Rey yacht clubs and the assignment of the Lease to a successor entity resulting from such a merger. Any assignment of the Lease shall be in such form as reasonably required by Landlord, including without limitation, the assumption by the assignee of all of Tenant's obligations under the Lease arising from and after the date of such assignment. No assignment of the Lease shall release the assignor from its liability as Tenant under this Lease.

12. **NO ENCUMBRANCES**. Tenant shall not directly or indirectly pledge, assign, transfer, mortgage, hypothecate or otherwise grant a security interest in all or any interest of Tenant in this Lease or its leasehold interest in the Premises (or in the Improvements).

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 Tenant to pay the rents due, or make any other monetary payments required under this Lease, within ten (10) days after written notice that said payments are overdue. Tenant 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 **Failure to Maintain Security Deposit**. The failure of Tenant 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 Tenant 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 (30) days after written notice of Tenant's failure to perform from Director; provided, however, that where Tenant's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty (30) day period and Tenant has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty (30) day period, Landlord will not exercise any remedy available to it hereunder for so long as Tenant 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.

13.2 **Remedies**. Upon the occurrence of an Event of Default, Landlord shall have the following remedies, in addition to any other remedies in law or equity:

13.2.1 **Terminate Lease**. Landlord may terminate this Lease by giving Tenant written notice of termination. On the giving of the notice, all Tenant's rights in the Premises shall terminate. Promptly after notice of termination, Tenant shall surrender and vacate the Premises, and Landlord may re-enter and take possession of the Premises 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 Section shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages against Tenant as set forth in Section 13.3.

13.2.2 **Keep Lease in Effect**. Without terminating this Lease, so long as Landlord does not deprive Tenant of legal possession of the Premises and allows Tenant to assign or sublet subject only to Landlord's rights set forth herein, Landlord may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Tenant's breach of other covenants and agreements herein. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant 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.

13.2.3 **Termination Following Continuance**. Even though it may have kept this Lease in effect pursuant to Section 13.2.2, thereafter Landlord may elect to terminate this Lease and all of Tenant's rights in or to the Premises unless prior to such termination Tenant shall have cured the Event of Default.

13.3 **Damages**. If Landlord elects to terminate this Lease under the provisions of the foregoing Section 13.2, Landlord shall be entitled to recover from Tenant as damages, in

addition to its other remedies, all damages allowed by Section 1951.2 of the California Civil Code, and such other amounts as may be permitted from time to time under applicable California law, Tenant agreeing that, for purposes of determining damages under said Section 1951.2, 'rent' shall include without limitation the "worth at the time of the award" (as defined in Section 1951.2(b) of the California Civil Code) of the amount by which the unpaid rent for the balance of the Term after the time of award, exceeds the amount of such rental loss for the same period that Tenant proves could be reasonably avoided.

13.4 **Landlord's Right to Cure Tenant's Default**. Landlord at any time after Tenant's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Tenant's cost and expense.

13.5 **Default by Landlord**. Landlord shall be in default in the performance of any obligation required to be performed by Landlord under this Lease if Landlord has failed to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, Landlord shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Tenant shall have no rights as a result of any default by Landlord until Tenant gives thirty (30) days notice to any person or entity having a recorded security interest in Landlord's fee title to the Premises whose identity and address have been disclosed in writing to Tenant. Such person or entity shall then have the right to cure such default, and Landlord 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, Landlord's liability to Tenant for damages arising out of or in connection with Landlord's breach of any provision or provisions of this Lease shall not exceed the value of Landlord's equity interest in the Premises.

14. ACCOUNTING.

14.1 **Maintenance of Records and Accounting Method**. In order to determine the amount of Percentage Rent payable under this Lease, Tenant shall at all times during the Term of this Lease, and for thirty six (36) months after the expiration of the Term, 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 all Lease Years during the Term. Such records shall show all transactions relative to the conduct of operations, and to be supported by data of original entry. Gross Receipts shall be calculated in accordance with the accrual method of accounting, except that Tenant shall have the right to report Gross Receipts monthly on a cash basis, provided that the calculation of Gross Receipts is reconciled to the accrual method on an annual basis.

14.2 **Cash Registers**. To the extent sales of food, beverages, goods or services are conducted on the Premises, 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, or, with respect to those items that are not reasonably susceptible to recordation by cash register, such other reasonable means as acceptable to County. 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. Tenant 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.

14.3 **Availability of Records for Inspector's Audit**. Books of account and records for all Lease Years during the Term shall be kept or made available at the Premises. Upon at least one (1) business day advance notice, Landlord 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 Tenant is complying with the terms and conditions of this Article 14. Landlord and its authorized representatives or agents shall also have the right at any reasonable times and on reasonable prior notice to examine and audit Tenant's books and records, without restriction, for the purpose of determining the accuracy thereof and of the statements of Gross Receipts. This Section 14.3 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 **Cost of Audit**. In the event that, for any reason, Tenant does not make available the original records and books of account at the Premises, Tenant agrees to pay all expenses incurred by Landlord 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 Landlord's favor of greater than two percent (2%) of the Percentage Rent due Landlord for the period audited, then Tenant shall pay Landlord's audit costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.6.

14.5 **Annual Financial Statements**. Within six (6) months after the end of each Lease Year, Tenant shall furnish to Landlord the following prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to Landlord: (a) a set of compiled financial statements, setting forth Tenant's financial condition and the result of Tenant's operations for such Lease Year, and (b) an audited and certified statement (on an unqualified basis) of Tenant's Gross Receipts (including a breakdown by category). The foregoing statements prepared by or on behalf of Tenant shall be prepared in a manner that permits Landlord to determine the financial results of operations in connection with Tenant's activities at, from or relating to the Premises. Upon request from Landlord, Tenant shall also provide copies of its tax returns and other non-profit corporation reports filed with governmental agencies.

14.6 **Accounting Obligations of Other Parties**. If notwithstanding the terms of this Lease, any subtenant, licensee or concessionaire conducts business operations on the Premises, Tenant shall cause such person or entity to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records.

14.7 **Inadequacy of Records**. In the event that Tenant fails to keep or cause to be kept the records required by this Article 14 such that a Certified Public Accountant is able to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Lease by Tenant. In addition to the other remedies available to Landlord at law or equity as a result of such breach, Landlord may prepare a calculation of the Percentage Rent payable by Tenant 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 Landlord's determination of Percentage Rent due, if any, Tenant 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 Landlord's costs 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**. Tenant, 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 **No Right of Offset**. Tenant acknowledges that the rent provided for in this Lease has been agreed upon in light of Tenant's obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by applicable law, Tenant hereby waives any and all rights, if any, to make repairs at the expense of Landlord and to deduct or offset the cost thereof from the rent due Landlord hereunder.

15.3 **Holding Over**. If Tenant holds over after the expiration of the Term for any cause, with or without the express or implied consent of Landlord, 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 Monthly Base 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 Tenant 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 Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of

this Lease. The provisions of this Section 15.3 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided at law or in equity. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord 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 Landlord resulting therefrom.

15.4 **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 Landlord and Tenant. No delay, failure, or omission of Landlord 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 Tenant shall be required to restore or revive "time of the essence" after the waiver by Landlord 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.

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

15.6 **Authorized Right of Entry**. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by Landlord 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 Tenant, Tenant hereby irrevocably authorizes Landlord 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 Landlord, in storage for the account of and at the expense of Tenant.

Except to the extent arising out of or caused by the gross negligence or willful misconduct of Landlord, Tenant agrees to indemnify, defend and save harmless Landlord 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 Landlord and its agents.

15.7 **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 15.7. Written notice addressed to

Tenant at the addresses below-described, or to such other address that Tenant 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 Landlord of Los Angeles, California, or by other nationally recognized courier service. 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.

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

LANDLORD:	Director Department of Beaches and Harbors Los Angeles Landlord 13837 Fiji Way Marina del Rey, California 90292 Phone: 310/305-9522 Fax: 310/821-6345
With a Copy to:	Office of Landlord Counsel Los Angeles Landlord 500 West Temple Street Los Angeles, California 90012 Attn: Landlord Counsel Phone: 213/974-1801 Fax: 213/617-7182
TENANT:	Santa Monica Windjammers Yacht Club 13589 Mindanao Way Marina del Rey, California 90292 Attn: Commodore and Attn.: Treasurer Phone: 310/827-7692 Fax: 310/827-9144

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 15.7.

15.8 **Interest**. In any situation where Landlord has advanced sums on behalf of Tenant pursuant to this Lease, such sums shall be due and payable within five (5) days after Tenant'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 Tenant repays sums advanced by Landlord on Tenant's behalf with interest in excess of the maximum rate permitted by Applicable Law, Landlord shall either refund such excess payment or credit it against subsequent payments of rent due hereunder.

15.9 **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.

15.10 **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 Landlord is represented by County Counsel and is the prevailing party, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

15.11 **Amendments**. This Lease may only be amended in writing executed by duly authorized officials of Tenant and Landlord. 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.

15.12 **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 Tenant, Director either (a) approves such request in writing, or (b) notifies Tenant 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 Tenant in writing of the reason or reasons for such disapproval.

15.13 **Time For Landlord Action**. Notwithstanding anything to the contrary contained in this Lease, wherever Director determines that a Landlord action required hereunder necessitates approval from or a vote of one or more of Landlord's boards or commissions or Landlord's Board of Supervisors, the time period for Landlord performance of such action shall be extended as is reasonably necessary in order to secure such approval or vote, and Landlord 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.

15.14 **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, Monthly Base Rent, Percentage Rent and other material economic terms and conditions of this Lease. Prospective purchasers and lenders may rely on such statements.

15.15 **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.

15.16 **Controlled Prices**. Tenant 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. 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 Tenant is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Tenant that any of said prices are not fair and reasonable, Tenant 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 Tenant, as directed. Tenant 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 Tenant.

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**. Landlord and Tenant 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. Landlord and Tenant 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 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 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 **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 or documents (other than impeachment testimony) unless such information was previously delivered to the other party in accordance with this Article 16, or such evidence consists of a transcript of a deposition of an expert witness conducted pursuant to this Article 16. 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 this Article 16, provided such evidence is otherwise permissible hereunder.

16.7 **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 this Article 16; 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 this Article 16.

16.8 **Awards of Arbitrators**.

16.8.1 **Monetary Issues**. With respect to monetary disputes, 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. 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.

16.8.2 **Non-monetary Issues**. With respect to non-monetary 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.

16.9 **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 this

Article 16, provided that each party is afforded the right to cross-examine such expert or rebut such authority.

16.10 **Costs of Arbitration**. Tenant and Landlord 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.

16.11 **Amendment to Implement Judgment**. Within seven (7) days after the issuance of any award by the arbitrator becomes final, the Landlord 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 Tenant, Tenant 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 Landlord, which shall thereafter be executed by Landlord as soon as reasonably practicable.

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

16.12.1 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.

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

16.12.3 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.

16.13 **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 Tenant	Initials of Landlord

17. **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 Landlord and Tenant 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 **Compliance with Code**. Landlord and Tenant agree and acknowledge that this Lease satisfies the requirements of Section 25536 and 25907 of the California Government Code as a result of various provisions contained herein.

17.7 **No Recordation**. Neither this Lease nor any memorandum thereof shall be recorded.

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

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

SANTA MONICA YACHT CLUB, a California corporation

By: _____
Its: _____

By: _____
Its: _____

ATTEST:

SACHI HAMAI,
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: _____

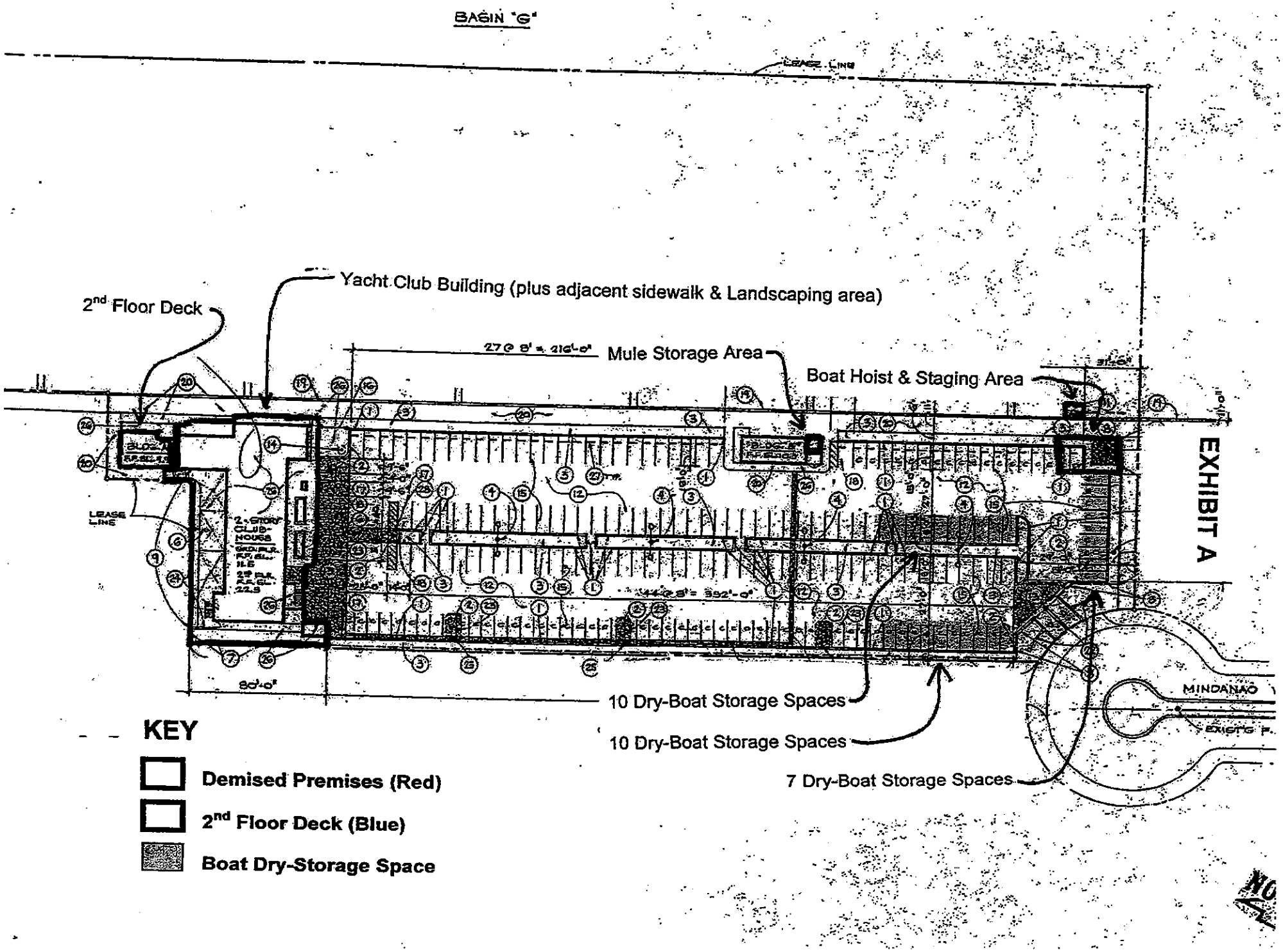

BASIN "G"
LEASE LINE
Yacht Club Building (plus adjacent sidewalk & Landscaping area)
2nd Floor Deck
Mule Storage Area
Boat Hoist & Staging Area
EXHIBIT A
LEASE LINE
2-STORY CLUB-HOUSE
MINDANAO
10 Dry-Boat Storage Spaces
10 Dry-Boat Storage Spaces
7 Dry-Boat Storage Spaces
KEY
Demised Premises (Red)
2nd Floor Deck (Blue)
Boat Dry-Storage Space

EXHIBIT B

PARKING LOT

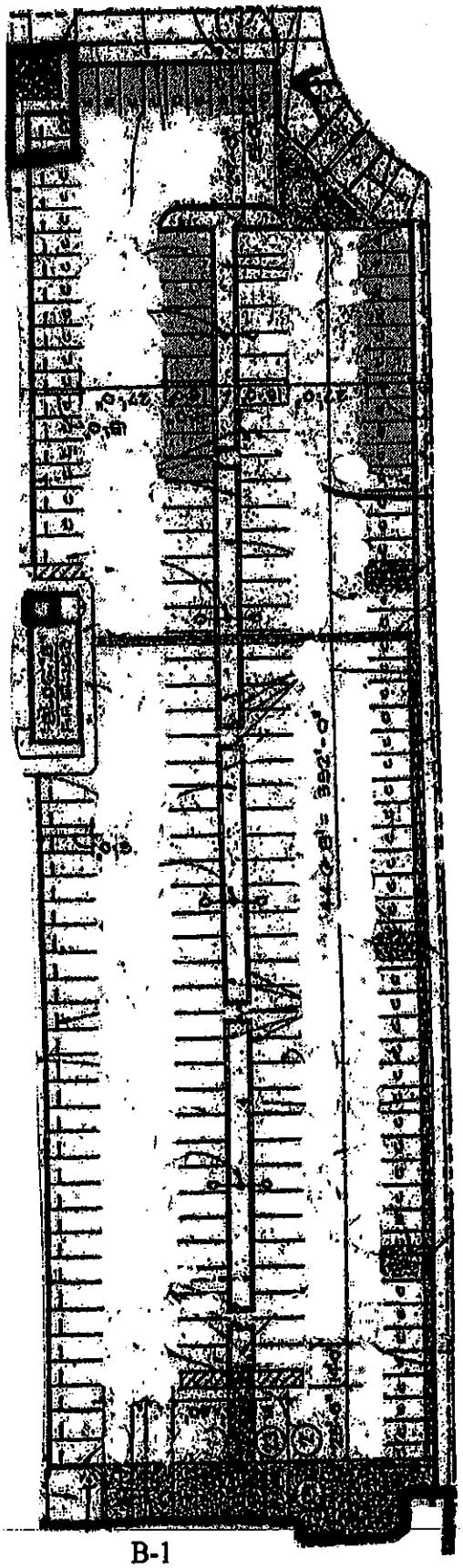
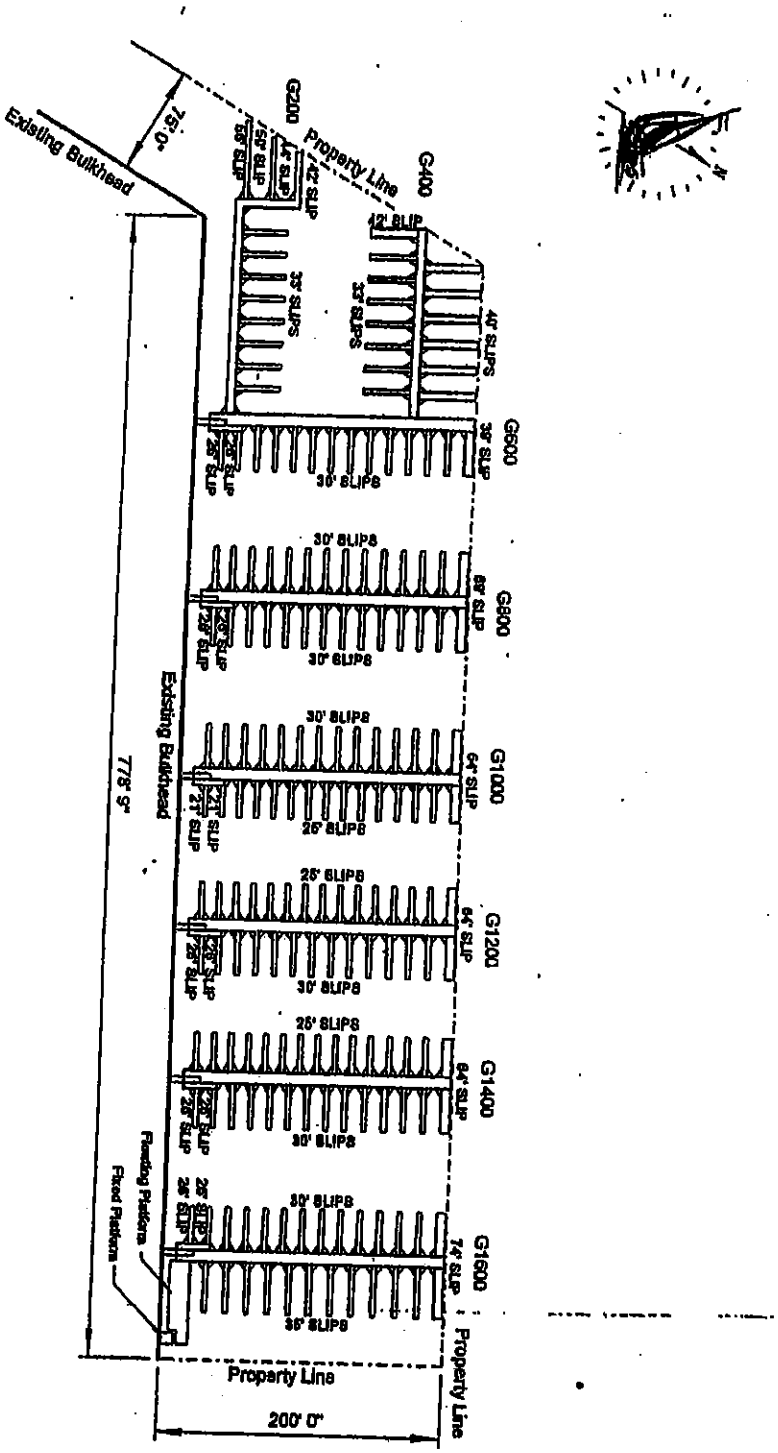


EXHIBIT C

ANCHORAGE



To enrich lives through effective and caring service

LOS ANGELES COUNTY
Department of Beaches & Harbors

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

February 7, 2008

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan Wisniewski

SUBJECT: **AGENDA ITEM 5b – 15 MINUTE VIDEO PRESENTATION REGARDING JANUARY 2008 COASTAL COMMISSION MEETING**

At the last Small Craft Harbor Commission meeting, your Commission directed the Department of Beaches and Harbors staff to arrange the viewing of a 15 minute video by John Nahhas.

SW:rf

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6315 • internet: http://marinadelrey.lacounty.gov

To enrich lives through effective and caring service

February 7, 2008

LOS ANGELES COUNTY
Department of Beaches & Harbors

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director Stan Wisniewski

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

BOARD ACTIONS ON ITEMS RELATING TO MARINA DEL REY

At its February 6, 2008 meeting, the Board of Supervisors approved a motion directing the Chief Executive Office (CEO) and County Counsel (CC) to negotiate a settlement agreement with the Housing Advocates to include a 15% inclusionary affordable housing goal into the policy with 1/3 reserved for very low, 1/3 for low, and 1/3 for moderate income persons and families. The percentage goal is to be calculated based on the net new units and is subject to a determination of feasibility on a case-by-case basis.

In addition, the draft policy is to be revised to include reasonable notice and priority on affordable unit waiting lists for former occupants; a definition of "substantial rehabilitation"; and inclusion of studios in the "unit" definition. The CEO and CC are to return to the Board within 30 days with the settlement agreement, the revised policy, and any revisions to the environmental document.

In consultation with the housing advocates and lessees, the original motion also requires the County to prepare a handbook for implementing the affordable housing policy that addresses such issues as rental rules and regulations, income surveys, waiting lists, and other appropriate landlord/tenant issues and report back to the Board within 90 days.

An amendment to the original motion was also unanimously approved that directed the CEO and Department of Beaches and Harbors (DBH) to renegotiate within 45 days the affordable housing component for impacted developments with the cost of providing the units to be covered by the County based on rent and cost projections, assumptions and methodologies established during the previous negotiations for each project. Finally, the amendment requires the County is to pay its own consultant and legal fees for revising the documents so as not to pass on the costs to the lessees.

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LOCAL COASTAL PROGRAM PERIODIC REVIEW—UPDATE

Once the California Coastal Commission adopts its report on the periodic review of the Marina del Rey Local Coastal Program (LCP), the County will have one year to respond to the report's findings and recommendations. The County's Department of Regional Planning will be the lead in conducting public meetings to consider these findings and recommendations and will develop the County's response thereto for consideration by the Regional Planning Commission and the Board of Supervisors. Regional Planning representatives will appear before your Commission in the near future to explain the proposed process.

REGIONAL PLANNING COMMISSION'S CALENDAR

Currently, there are no Marina del Rey matters scheduled for consideration by the Regional Planning Commission.

DISCUSS FOUNDATION ALLEGATION REGARDING PARCEL 12 (ESPRIT I)

As you requested at last month's meeting, there will be a Department of Public Works representative present at your meeting to discuss the allegations that the Esprit I buildings are sinking and water is flooding the subterranean garages during high tide. We have previously been informed that there is no truth to the allegations and there is no evidence of the water intrusion within the garage.

REPORT ON BOAT SLIPS COMING ONLINE AND OFFLINE

As previously reported, the Esprit I development is expected to open for business in April 2008 and place 227 new concrete docks online, thus increasing the slip count in the Marina from 4,737 to 4,964 boat slips. In January 2009, the Esprit II development is scheduled to begin construction, which will place offline 215 existing slips, reducing available docks in the marina to 4,749 boat slips. The construction of the 212 new concrete docks is expected to be completed in November 2010, at which time 4,961 boat slips will be available in the Marina. When slips are scheduled to go offline, we will report to your Commission on the efforts to address impacts on slip tenants. Our first report will be on the measures to address impacts on those Esprit II slip tenants where slips will be going offline in January 2009.

REPORT ON MINIMUM RENT PAYMENT FOR PARCEL 12

This is in response to several inquiries on the part of the public regarding the abatement of minimum rent for Parcel 12. Although the lessee will be obligated to pay both minimum and percentage rent upon construction completion, during

construction, when both the apartments and slips are out of service, the lease provides for the rent to be fully abated. If only a portion of the improvements are out of service, then only the applicable portion of the minimum rent shall be abated.

Each deal negotiated by the County has intricacies that are different from all others. In this instance, in exchange for abatement of rent during the construction period, the County negotiated for full percentage rent participation on the first day the units are occupied, as opposed to the ramp-up of rent levels over multiple years. This immediate rent on the larger number of units in the newly constructed project was determined by our economic consultant to substantially benefit the County.

We have invited our economic consultant to appear at your meeting to answer any questions.

DESIGN CONTROL BOARD MINUTES

The minutes from the Design Control Board meetings for December 2007 and January 2008 have not been finalized.

SW:SHK:PW:jg