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September 03, 2019

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:

**APPROVAL OF AMENDED AND RESTATED LEASE NO.76494 SANTA MONICA YACHT CLUB
LOCATED ON PARCEL 47 AT 13589 MINDANAO WAY – MARINA DEL REY
(FOURTH DISTRICT) (4 VOTES)**

SUBJECT

Request for approval of an amended and restated lease agreement for Santa Monica Yacht Club, a California corporation doing business as “Santa Monica Windjammers Yacht Club,” operating out of a portion of Parcel 47 in Marina del Rey, to extend the lease term, reduce rent, and revise other provisions of the existing lease.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that the proposed Amended and Restated Lease is categorically exempt under the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15301 and Class 1(r) of the County’s Environmental Document Reporting Procedures and Guidelines (Existing Facilities); and
2. Approve and authorize the Chair of the Board to sign the attached Amended and Restated Lease.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On March 11, 2008, your Board approved the current Lease (2008 Lease) for the premises on Parcel 47, including its clubhouse and a portion of its parking lot, to the Santa Monica Yacht Club for the operation of a yacht club and a thirty-two mast-up dry boat storage facility. Santa Monica Yacht Club (dba Santa Monica Windjammers Yacht Club) is a not-for-profit, volunteer-run, 503(c)(7) organization

whose mission is to support recreational boating activities and environmental protection in Marina del Rey and the Santa Monica Bay, as well as teaching sailing fundamentals to adult members and youth sailors, whether or not they are Club members. The 2008 Lease allowed the Lessee to continue to operate out of Parcel 47's clubhouse, which it has occupied since 1985 as a subtenant of the then-existing ground lessee. In addition to the yacht club and dry boat storage and boat launch operations, the Lessee also operates an established and highly regarded youth sailing program that is open to the public.

On August 30, 2011, your Board approved Amendment No. 1 to the 2008 Lease that adjusted the Lease term from five years to eight years, ending March 24, 2016, and which authorized the Department's Director to extend the Lease term for up to three additional one-year periods.

In April 2014, Lessee approached the Department requesting rent relief for the remaining two years of the Lease term ending March 24, 2016, stating that it could not remain an economically viable and on-going enterprise under the current rent regime. The Lessee contended that adverse economic conditions after the 2008 Lease's execution (namely, the 2008 recession) had greatly reduced Lessee's ability to maintain existing members and attract new ones, and as such, revenue projections did not materialize.

In the best interest of the County, and in line with the Department's strategic goal of maximizing public and community access to waterfront activities, the Department began negotiations with Lessee for early lease renewal with the objective of maximizing utility and County revenue from the premises, including beyond the current Lease term, while preserving the operational continuity of the Lessee's yacht club, youth sailing program, and dry boat storage facility.

The proposed Amended and Restated Lease (Lease) provides monetary relief to the Santa Monica Yacht Club by reducing the County rent for the two year period ended March 24, 2016. Said relief affords the volunteer-run not-for-profit yacht club to maintain an economically viable operation on the premises that includes a well- recognized youth sailing program open to the public and a thirty-two mast-up dry boat storage and boat launch crane facility. Due to the location of certain overhead electrical wires the public boat launch is not accessible to the mast-up boats stored on the premises. These boats must be launched by means of the crane located on the premises. Should club operations cease, the youth sailing program and the dry boat storage facility would most likely cease. Furthermore, due to a recent zoning change that places certain restrictions on the type of commercial operations permitted on the premises, any potential tenant, except for the existing Lessee, must apply for a Conditional Use Permit (CUP) from the Department of Regional Planning to run a commercial operation on the property. Attaining a CUP is expensive and time consuming, taking up to a year to process. Accordingly, the Department of Beaches and Harbors believes it is in the County's and the public's interest to ensure Lessee's continued operation at this site.

The proposed Amended and Restated Lease reduces the monthly minimum rent for the two-year period April 2014 to March 2016 to \$2,831 from \$10,915, by setting rental rates at fair market rental values for commercial activity in Marina del Rey. The resulting rent relief amounts to \$194,038. Thereafter, rents remain at fair market rental value until expiration of the Lease, encompassing the initial six-year extension period to March 2022, and the two optional five-year extensions to March 2032.

As of March 25, 2016, the Santa Monica Yacht Club occupies the premises on a month-to-month tenancy pursuant to the holdover provision in the 2008 Lease. The proposed Amended and Restated Lease extends the lease term six years to March 31, 2022, and provides two five-year options to potentially extend the term to March 31, 2032. The two five-year options are contingent on County's

affirmative determination that continued occupancy of the premises by the Lessee will not unreasonably interfere with any other County-approved use of the leased premises, for example, the contemplated enlargement of Burton Chace Park. The relative short duration of the lease extension and five-year options are less than ideal for the club and even less appealing to any other potential tenant. Nevertheless, the short durations are required by County in order to best plan the future development of the premises and surrounding area.

Furthermore, the proposed Amended and Restated Lease updates the insurance and indemnity provisions to current CEO Risk Management standards, and amends the 2008 Lease so that the County will no longer be required to pursue a replacement facility for the Santa Monica Yacht Club upon expiration or termination of the Lease. Finally, the proposed Amended and Restated Lease clarifies the respective responsibilities of County and Lessee regarding maintenance and repairs of the premises.

Implementation of Strategic Plan Goals

In furtherance of County Goal #2, "Foster Vibrant and Resilient Communities," Strategy 11.2.2, "Expand Access to Recreational and Cultural Opportunities," the proposed extension of the Lease term will allow the Santa Monica Yacht Club to continue operating its yacht club, youth sailing programs, and dry storage and haul-out facility.

FISCAL IMPACT/FINANCING

The rental income received by the County from the Lease is deposited into a special trust fund to be used for the annual operation, repair, maintenance and replacement of the Anchorage 47 docks and premises.

Upon your Board's approval of the proposed Amended and Restated Lease, the Department does not anticipate any significant impact on the operating budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Leases of County-owned property in Marina del Rey are authorized by Government Codes 25536 and 25907.

The proposed Lease has been approved as to form by County Counsel. The Small Craft Harbor Commission unanimously endorsed the Director's recommendation that your Board approve and execute the proposed Lease at its September 12, 2018, meeting.

ENVIRONMENTAL DOCUMENTATION

Approval of the recommended actions is categorically exempt under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 and Class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines (Existing Facilities). Approval of the proposed Lease does not authorize construction or reconstruction of any improvements on the property and will not result in any expansion of the existing use of the property.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the proposed Amended and Restated Lease will not significantly impact County services or projects.

CONCLUSION

Please have the Chair sign all three copies of the Amended and Restated Lease and have the Executive Officer of the Board return two executed copies, as well as a copy of the adopted Board letter, to the Department of Beaches and Harbors. Should you have any questions, please contact Jules Trefler at (424) 526-7733 or jtrefler@bh.lacounty.gov.

Respectfully submitted,



GARY JONES

Director

GJ:kg

Enclosures

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

AMENDED AND RESTATED LEASE AGREEMENT

BY AND BETWEEN

COUNTY OF LOS ANGELES

AND

SANTA MONICA YACHT CLUB

(LEASE NO. 76494)

DATED AS OF _____, __, 2018



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AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT (“Lease”) is made and entered into by and between the COUNTY OF LOS ANGELES in its proprietary capacity as landlord (“County”), and SANTA MONICA YACHT CLUB, a California not-for-profit corporation, doing business as “Santa Monica Windjammers Yacht Club” (“Lessee”), as lessee, to be effective as of _____, __, 2018 (“Effective Date”).

RECITALS

A. County and Lessee entered into that certain Lease Agreement (Lease No. 76494) dated as of March 11, 2008, and that certain Amendment No. 1 to Lease No. 76494, dated as of August 30, 2011 (collectively, the “Existing Lease”), relating to certain land and improvements located in the Marina del Rey Small Craft Harbor.

B. Effective as of the Effective Date, County and Lessee wish to amend and restate the Existing Lease in its entirety and, in connection therewith, County will lease to Lessee, and Lessee will lease from County, the “Premises” (as defined herein), 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 sufficiency of which is hereby acknowledged, County and Lessee agree as follows:

1. DEFINITIONS.

- 1.1 “ACCESS AREAS” shall have the meaning set forth in Section 2.4.
- 1.2 “ADA” shall have the meaning set forth in Section 2.1.
- 1.3 “ALLOWED USE” shall have the meaning set forth in Section 4.
- 1.4 “ALTERATIONS” shall have the meaning set forth in Section 6.2.
- 1.5 “ANCHORAGE” shall mean the boat slips depicted on Exhibit A attached to this Lease.
- 1.6 “APPLICABLE LAWS” shall have the meaning set forth in Section 2.1.
- 1.7 “APPLICABLE RATE” shall mean an annually compounded rate of interest equal to the lower of: (a) the Prime Rate plus three percent (3%) per annum; or (b) the maximum rate of interest that may be charged pursuant to Applicable Laws.
- 1.8 “AUDITOR-CONTROLLER” shall mean the Auditor-Controller of the County of Los Angeles, California.
- 1.9 “BOARD” shall mean the Board of Supervisors of the County of Los Angeles, California.

1.10 **"BOATER RESTROOMS"** shall mean the restrooms and laundry room owned by County and located adjacent to the Premises, and which are used as restrooms and laundry facilities for the Anchorage.

1.11 **"BUILDING"** shall have the meaning set forth in the definition of Premises in this Section 1.1.

1.12 **"BUSINESS DAY"** shall have the meaning set forth in Section 18.3.

1.13 **"CERTIFICATES"** shall have the meaning set forth in Section 10.1.

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

1.15 **"COUNTY"** shall have the meaning set forth in the preamble to this Lease.

1.16 **"COUNTY PARTY"** shall have the meaning set forth in Section 9.

1.17 **"DEPARTMENT"** shall mean the Department of Beaches and Harbors of the County of Los Angeles, California.

1.18 **"DIRECTOR"** shall mean the Director of the Department or any successor County officer responsible for the administration of this Lease.

1.19 **"DRY STORAGE FACILITIES"** shall mean the area consisting of parking spaces within the fifty-six (56)-foot-long area along the eastern boundary of the Parking Lot, and the area consisting of parking spaces within the two hundred eighty two (282) foot-long area along the southern boundary of the Parking Lot, and used for the dry storage of boats, as depicted in Exhibit A attached to this Lease.

1.20 **"EFFECTIVE DATE"** shall mean the date set forth in the preamble to this Lease.

1.21 **"EVENT FACILITIES"** shall have the meaning set forth in Section 4.7.

1.22 **"EVENTS OF DEFAULT"** shall have the meaning set forth in Section 14.1.

1.23 **"GROSS RECEIPTS"** shall have the meaning set forth in Section 5.4.5.

1.24 **"HOIST"** shall have the meaning set forth in the definition of Premises in this Section 1.1.

1.25 **"IMPROVEMENTS"** shall mean all buildings, structures, fixtures, fences, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently-affixed utility systems, and other improvements now or hereafter located on the Premises.

1.26 **"LATE FEE"** shall have the meaning set forth in Section 5.5.1.

1.27 **"LEASE"** shall have the meaning set forth in the preamble to this Lease.

1.28 **"LEASE YEAR"** shall have the meaning set forth in Section 3.1.

1.29 **"LESSEE"** shall have the meaning set forth in the preamble to this Lease.

1.30 **"LESSEE PARTY"** shall mean any agent, officer, employee, licensee, concessionaire, permittee, sublessee, contractor, vendor, member, invitee, or guest of Lessee.

1.31 **"MINIMUM STANDARDS"** shall mean the requirements of the Department Director's *Policy Statement No. 25* and the *Specifications and Minimum Standards of Architectural Treatment and Construction for Marina del Rey* approved in 1989, as may be 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.

1.32 **"MINIMUM MONTHLY RENT"** shall have the meaning set forth in Section 4.1.

1.33 **"PARKING LOT"** shall have the meaning set forth in Section 2.5.

1.34 **"PERCENTAGE RENT"** shall have the meaning set forth in Section 5.4.2.

1.35 **"PREMISES"** shall mean the land and water depicted on Exhibit A attached to this Lease, except any portions thereof expressly excluded from the Premises pursuant to this paragraph. The Premises shall include the land, water, and Improvements within the outline of the Premises shown on Exhibit A (the **"Premises Outline"**), which include: (a) the existing clubhouse building (the **"Building"**) and all fixtures and utility systems and equipment located therein; (b) the sidewalks and landscaped areas included within the Premises Outline; (c) the exterior patio area 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; (f) the boat hoist shown on Exhibit A (the **"Hoist"**) and, to the extent within the Premises Outline, the area on which the Hoist is located; and (g) the boat slip commonly known as G1624. The Premises exclude the adjacent parking facilities, and the Boater Restrooms. In addition to the Premises, Lessee has certain access rights over and across certain adjacent facilities, in accordance with the provisions of Sections 1.2.3 and 1.2.4 of this Lease.

1.36 **"PREMISES OUTLINE"** shall have the meaning set forth in the definition of Premises in this Section 1.

1.37 **"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.

1.38 **"PROMENADE"** shall mean the pedestrian promenade that runs adjacent to the Anchorage, including without limitation all landscaping and improvements thereon.

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

1.40 **"SECURITY DEPOSIT"** shall have the meaning set forth in Section 8.

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

1.42 “**SUBSEQUENT EXTENSION PERIOD**” shall have the meaning set forth in Section 3.2.

1.43 “**TERM**” shall have the meaning set forth in Section 3.

1.44 “**TERM EXPIRATION DATE**” shall have the meaning set forth in Section 3.

2. **LEASE.** County hereby leases the Premises to Lessee, and Lessee hereby leases the Premises from County for the Term and upon the terms and conditions and subject to the rights and obligations set forth in this Lease. Effective as of the Effective Date, this Lease fully amends, restates, replaces, and supersedes the Existing Lease.

2.1 **Premises Accepted As-Is** . Lessee acknowledges that it is currently in possession of and has previously occupied the Premises pursuant to pre-existing leases and is fully aware and apprised of the condition of the Premises. 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 on the Effective Date, and Lessee hereby represents that it has performed all investigations necessary in connection with its acceptance of the Premises “**AS-IS WITH ALL FAULTS.**” Lessee hereby accepts the Premises “**AS-IS WITH ALL FAULTS,**” unless otherwise 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 the Improvements included therewith, including without limitation: (a) the quality, nature, adequacy, and physical condition and aspects of the Premises, including without limitation 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, the square footage of the land, and the all Improvements; (b) the quality, nature, adequacy, and physical condition of soils, geology, and any groundwater; (c) the existence, quality, nature, adequacy, and physical condition of utilities serving the Premises and all Improvements; (d) the use, habitability, merchantability, or fitness, or the suitability, value, or adequacy of the Premises and/or Improvements for any particular purpose; (e) the zoning or other legal status of the Premises or any public or private restrictions on use of the Premises; (f) the compliance of the Premises and/or Improvements with any applicable codes, laws, rules, regulations, statutes, resolutions, ordinances, covenants, conditions, or 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**”)); (g) the presence of any underground storage tank or hazardous materials on, under, or about the Premises or the adjoining or neighboring property; (h) the quality of any labor or materials used in any Improvements; (i) subject to Section 2.3 below, the condition of title to the Premises; and (j) the economics of the operation of the Premises and/or the Improvements.

2.2 **No Relocation of Premises.** County shall have no obligation to relocate Lessee to any other premises at any time, for any reason whatsoever.

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

2.4 **Additional Access Rights.** In addition to possession of the Premises, Lessee 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, electrical circuit breakers and telephone panel located in the Boater Restrooms; (b) the Boater Restrooms for use by sublessees 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 2.5, 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. Lessee's rights of access to and use of the Access Areas shall be subject to and in accordance with the following provisions: (1) Lessee'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 and promulgated from time to time by County, including without limitation the hours of such access and use; (2) Lessee shall not exercise its rights hereunder in any manner that interferes with, obstructs, or impairs access to or use and enjoyment of the Access Areas by County or any other person or entity to which County grants rights of access or use; (3) Lessee shall maintain liability insurance with respect to the exercise of its rights hereunder in accordance with the terms of this Lease as if the Access Areas were a part of the Premises; (4) Lessee shall have no right to make any Improvement or Alteration to the Access Areas or to place any furniture, fixtures, or equipment in the Access Areas; (5) Lessee 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 Lessee or any Lessee Party; and (6) Lessee shall indemnify, defend, and hold County, its elected officials, officers, employees, and agents harmless from and against all liabilities, losses, damages, claims, costs, and/or expenses (including reasonable attorneys' fees) incurred by County as a result of or in connection with access to or use of the Access Areas by Lessee or any Lessee Party.

2.5 **Parking Lot.** Exhibit A attached to this Lease includes a depiction of the surface parking lot located adjacent to the Building (the "Parking Lot"). In addition to the Dry Storage Facilities, County hereby grants Lessee a right of access to and exclusive use of the seven (7) parking spaces specifically marked for Lessee's use on Exhibit A.

2.5.1 County may change the current striping plan for the Parking Lot in the future. If the Department determines that the number of parking spaces in the Parking Lot is inadequate for the Anchorage or the Premises, or if another governmental agency requires the number of parking spaces to be increased, then County may restripe the Parking Lot (including the Exclusive Parking Spaces and the Dry Boat Storage) in a manner acceptable to the Department and/or any such governmental agency, as applicable. Lessee shall thereafter be responsible for the maintenance and repair of the Exclusive Parking Spaces and the Dry Storage Facilities.

Notwithstanding anything to the contrary herein, the area of the Dry Storage Facilities shall not be increased or reduced as a result of any restriping.

2.5.2 County shall operate and maintain the Parking Lot. Access to the Parking Lot shall be generally controlled via a key-card number pad access system, as necessary in County's judgment to limit use of the Parking Lot to Lessee's yacht club members, Anchorage permittees, and as otherwise permitted by County.

2.5.3 Lessee may temporarily raise the gate arms to accept deliveries to the Building and for Lessee events, provided, that Lessee shall obtain County's advance written approval if Lessee reasonably anticipates leaving the gate arms open for a period of more than a total of three (3) hours for any such delivery or Lessee event.

2.5.4 Use of the parking spaces that are not included in the Dry Storage Facilities shall be on a non-reserved, first-come, first-served basis, except that: (a) Lessee may designate (in a manner acceptable to County) for Lessee's exclusive use the seven (7) parking spaces described in this Section 2.5 above; and (b) County reserves the right to designate specific spaces for Anchorage permittees as County deems necessary or appropriate.

2.5.5 Subject to County's prior written approval, which may not be unreasonably withheld, Lessee may use a portion of the Parking Lot as reasonably designated by County for Lessee's event purposes for up to six (6) events per year. Lessee shall use its best efforts to provide County with sixty (60)-days' prior written notice of the date of each such event. In no case may Lessee provide County less than forty-five (45)-days' prior written notice of the date of any such event.

2.5.6 County may use the Parking Lot for any other parking purpose during non-peak times on weekdays, including evenings (e.g., by raising the gate arms at County's option), provided such use does not interfere with Lessee's rights under this Lease.

3. **TERM.** The term of this Lease ("Term") shall commence on the Effective Date, and shall expire at 11:59 p.m. on March 31, 2022 (the "Term Expiration Date"), unless terminated earlier in accordance with the provisions of this Lease.

3.1 **Lease Year.** For purposes of this Lease, "Lease Year" shall mean each year during the Term of this Lease, commencing on the Effective Date.

3.2 **Options to Extend.** Subject to the terms of this Section 3.2, Lessee shall have two (2) options to extend the Term for five (5) years each (each, a "Subsequent Extension Period"). Provided Lessee is not then in breach or default of this Lease, each such option may be exercised no earlier than twelve (12) months prior to the then-existing expiration date of this Lease, and no later than six (6) months prior to the then-existing expiration date of this Lease, unless, as promptly as possible but not more than sixty (60) days after an option is exercised, County provides Lessee with a reasonable determination ("Reasonable Determination") setting forth the manner in which Lessee's continued occupancy and use of the Premises will unreasonably interfere with another use of the Premises or with one or more uses of any part of the County-owned property within Marina del Rey, which use or uses shall have been approved prior to the exercise of the option by

the Los Angeles County Board of Supervisors or other governmental body of competent jurisdiction.

3.2.1 If County does not respond to Lessee's exercise of any option within sixty (60) days after such option is exercised, Lessee's option shall be considered granted and the Subsequent Extension Period confirmed. However, notwithstanding the foregoing statement, if County makes a Reasonable Determination but determines that a shorter Subsequent Extension Period will ameliorate the Reasonable Determination to be made, then County may offer and Lessee may accept such shorter Subsequent Extension Period (including a month-to-month tenancy which will not be considered a holding over under Section 16.4 of this Lease), upon which the option shall be automatically amended to allow the shorter Subsequent Extension Period, and the remaining option, if any, shall be null and void.

4. **USE OF PREMISES.** Lessee shall use the Premises only for the operation of a yacht club and meeting facility as existing on the Premises on the Effective Date, and for no other purpose whatsoever (the "Allowed Use").

4.1 **No 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 allowed to be operated or maintained in a manner that renders the Premises a fire hazard or unsanitary, unsightly, offensive, or a risk to public health and safety, nor shall Lessee cause any similar activity to be allowed on any adjacent property.

4.2 **Restrictions and Prohibited Uses.** Without expanding upon or enlarging the Allowed Use, the following uses of the Premises are expressly prohibited:

4.2.1 The Premises shall not be used or developed in any manner that violates Applicable Laws.

4.2.2 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.

4.2.3 No condition shall exist upon the Premises which induces, breeds, or harbors infectious plant diseases, rodents, or noxious insects.

4.2.4 No condition shall exist on the Premises that creates a danger to the health or safety of any person on or about the Premises.

4.2.5 Without the written reasonable approval of the Director, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation (collectively, "antennae") shall be erected, used, or maintained on any portion of the Premises, whether attached to an Improvement or otherwise; provided that the foregoing requirement to obtain the Director's approval as to any antennae shall be inapplicable to the extent that such requirement violates Applicable Laws. County hereby approves all known

antennae on the Premises but only as used and existing on the Effective Date, provided same does not violate any other provision of this Lease.

4.2.6 No adverse environmental condition in violation of Applicable Laws shall be allowed 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, provided such storage and use is: (a) ancillary to the ordinary course of the Allowed Use; and (b) conducted in compliance with all Applicable Laws.

4.2.7 Lessee shall not discriminate in violation of Applicable Laws in the selection and retention of its members.

4.3 **Signs and Awnings.** Lessee shall obtain the written reasonable approval of the Director (or other competent authority, such as the Marina del Rey Design Control Board) prior to installing any and all art, displays, identifications, monuments, awnings, advertising signs, or banners on or visible from the exterior of the Premises.

4.4 **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.

4.4.1 Lessee shall be responsible for making all repairs 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 Lessee pursuant to this Lease.

4.4.2 County shall be responsible for making all repairs 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 County pursuant to this Lease; provided, however, that to the extent the requirement to make a repair to comply with Applicable Laws is triggered by: (a) any Alterations made to the Premises by Lessee; or (b) any change in the use of the Premises by Lessee, then Lessee shall be responsible for the costs and expenses incurred by County for such repair; and provided further that County's obligations shall be subject to the limitations otherwise set forth in this Lease.

4.5 **Rules and Regulations.** Lessee shall 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 and delivered in writing to Lessee.

4.6 **County's 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 the improvements located adjacent to the Premises, including without limitation the Parking Lot, Boater Restrooms, Promenade, and Anchorage.

4.6.1 This Lease and all rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements, and rights of way: (a) existing on the Effective

Date; (b) otherwise referenced in this Lease in, to, on, over, or affecting the Premises; or (c) consented to by Lessee.

4.6.2 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.

4.7 **County's Free Use of Event Facilities.** County shall have the right to use the Event Facilities for meetings and events for up to six (6) dates per year, during normal business hours and subject to availability. County shall use its best efforts to provide Lessee with sixty (60)-days' prior written notice of the date of such meeting or event. In no event shall County provide Lessee less than forth-five (45)-days' prior written notice of the date of any such meeting or event. Such use of the Event Facilities by County shall be without charge, except that County shall pay Lessee's standard charges for setup, cleaning, and other services related to County's use of the applicable Event Facilities. "Event Facilities" shall mean the following portions of the Building: the first-floor entry and stairs, the second-floor dining room (excluding the kitchen), the balconies, the exterior patio areas located at the back of the Building, the patio deck located on top of the Boater Restrooms, the second-floor restrooms, and the exterior stairways.

5. PAYMENTS TO COUNTY.

5.1 **Net Lease.** All references to "rent" under this Lease shall mean the Annual Minimum Rent, the Percentage Rent, and all other amounts payable by Lessee to County under this Lease. The parties acknowledge that the rent to be paid by Lessee under this Lease is intended to be absolutely net to County. The rent and other sums to be paid to County hereunder are not subject to any credit, demand, set-off, or other withholding.

5.2 **Utilities.** Lessee shall pay, or cause to be paid, to utility and service providers, all installations and service charges for separately metered and sub-metered utilities 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. Lessee shall pay to County, concurrently with its Monthly Minimum Rent, a monthly fee ("**Monthly Utility Fee**") in the amount of FIVE HUNDRED DOLLARS (\$500) to cover the reasonable cost to County of such utilities and services allocated to the Premises but not separately metered or sub-metered. The Monthly Utility Fee shall be adjusted annually on each anniversary of the Effective Date to reflect percentage increases, if any, in the applicable utility and service rates charged to County.

5.3 **Taxes and Assessments.** Lessee shall pay 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 Lessee 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. Lessee may contest the amount of any assessment imposed against the Premises or its possessory interest therein; provided, however, Lessee shall pay all costs and

expenses of any such contest (including interest and penalties which may accrue in respect of such taxes).

5.3.1 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. The possessory interest taxes and any other taxes applicable to the Premises or Lessee's interest in this Lease shall be prorated for any partial tax years included in the Term.

5.4 **Rental Payments.** Lessee shall pay County Annual Minimum Rent and Percentage Rent, as such amounts are adjusted pursuant to this Lease. "Annual Rent" shall mean the aggregate of the Annual Minimum Rent and Percentage Rent.

5.4.1 **Annual Minimum Rent.** Lessee shall pay to County annual minimum rent subject to adjustment as defined herein, below ("Annual Minimum Rent"). The parties agree that the Annual Minimum Rent defined herein, below, shall be effective as of April 1, 2014. Lessee shall pay Annual Minimum Rent on a monthly basis in advance on the first day of each month during the Term in equal installments of one-twelfth (1/12) of the Annual Minimum Rent ("Monthly Minimum Rent"); the payment for any partial month shall be prorated on a 365-day-year basis.

(a) The Annual Minimum Rent shall be TWENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$25,500); the Minimum Monthly Rent shall be TWO THOUSAND ONE HUNDRED TWENTY-FIVE DOLLARS (\$2,125).

(b) The Annual Minimum Rent shall be subject to adjustment effective as of the third (3rd) anniversary of the Effective Date and as of each successive third (3rd) anniversary of the Effective Date thereafter (each an "Adjustment Date"), to an amount equal to seventy-five percent (75%) of the average total rent payable to County for the immediately preceding three (3)-year period. Notwithstanding the foregoing, in no event shall the Annual Minimum Rent be less than the Annual Minimum Rent in effect immediately preceding an Adjustment Date.

5.4.2 **Percentage Rent.** Lessee shall pay Percentage Rent as defined and as required herein, below. "Percentage Rent" shall mean the sum of the percentage rents set forth in this section, below. The Parties agree that the Percentage Rent defined herein below, shall be effective as of April 1, 2014.

(a) Gross Receipts (as defined herein, below) generated from each transaction, sale, or activity on, from, or within the Premises, or by or through the Allowed Use, or otherwise by reason of Lessee's use and occupancy of the Premises, shall be reported under the applicable percentage categories set forth below.

(b) The percentage categories listed below may not all be applicable to the Allowed Use, and are in no way intended to expand or modify the Allowed Use.

(c) The Director, by Policy Statement with the approval of the Los Angeles County Auditor-Controller and the Los Angeles County Counsel, either as established on

the Effective Date or as may in the future be made applicable to this Lease with Lessee's approval of future Policy Statements, has interpreted and may further interpret the percentage categories set forth in this section.

5.4.3 Percentage Rent Categories. Within fifteen (15) days after the close of each month of the Term, Lessee shall file a report of Gross Receipts and pay to County a sum equal to the total of the applicable following percentages of Gross Receipts for the prior month, less the amount of the installment of Monthly Minimum Rent paid for such prior month.

(a) 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 retrieval of small boats, and the sale of live bait; however, Gross Receipts from recreational equipment rentals to club members shall be reported below as "the sale of miscellaneous goods and services consistent with the Allowed Use, but not specifically provided for elsewhere in this section."

(b) TWELVE PERCENT (12%) of Gross Receipts from the rental, occupancy, or use of hotel and/or motel accommodations and meeting rooms.

(c) THREE AND ONE-HALF PERCENT (3.5%) of Gross Receipts from the operation of a restaurant, restaurant/cocktail lounge combination, coffee shop, beach, theater food facility, or food catering services.

(d) TEN PERCENT (10%) 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 Director's Policy Statement: "*Criteria for Eligibility for Exemption of Special Assessments from Gross Receipts*" dated May 6, 1974.

(e) FIVE PERCENT (5%) of Gross Receipts from cover charges or other fees charged for admission to facilities featuring entertainment, excluding movie theaters, whose Gross Receipts shall be reported below as "the sale of miscellaneous goods and services consistent with the Allowed Use, but not specifically provided for elsewhere in this section."

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

(g) TWO AND ONE-HALF PERCENT (2.5%) of the Gross Receipts from sailing instruction, racquetball lessons, racquet restringing and pro shop sales.

(h) FIVE PERCENT (5%) of Gross Receipts from the sale of miscellaneous goods and services consistent with the Allowed Use, but not specifically provided for elsewhere in this section.

(i) If with the prior approval of County or the Director Lessee hereafter engages in a use of the Premises that is not an Allowed Use on the Effective Date, and as to which there is no specific percentage set forth above applicable to such use, then concurrent with such prior approval, the applicable percentage rent for the new use shall, if such new use is new or not

reasonably similar to another use in Marina del Rey, be determined by negotiation between the Director and Lessee; however, if such new use is not new or is reasonably similar to another use in Marina del Rey, then the applicable percentage rent shall be the greater of: (a) the then prevailing percentage rent for such new use, as reasonably determined by the Director, based on reasonably comparable leaseholds; and (b) the most recent agreement between County and a Marina del Rey lessee for the same or reasonably similar use.

(j) If the Director reasonably determines that a percentage of Gross Receipts is not suitable or applicable for a particular Allowed-Use activity not described above, the Director and Lessee shall mutually establish a reasonable monthly rent to County, in lieu of a percentage of Gross Receipts, as payment for the privilege of engaging in such activity, but shall be deemed Percentage Rent.

5.4.4 Payment of Percentage Rent/Accounting Records and Procedures. Within fifteen (15) days after the close of each month of the Term, Lessee shall deliver to County a report of Gross Receipts by category for the prior month, and the amount of Percentage Rent payable. Lessee shall pay to County concurrently with such report the amount by which the Percentage Rent for such prior month exceeds the Monthly Minimum Rent paid by Lessee for such prior month. Lessee shall comply with, and shall cause each of its Sublessees to comply with, the recordkeeping and accounting procedures, as well as County's inspection and audit rights under this Lease.

5.4.5 Gross Receipts. "**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 Lessee (and/or any assignee, sublessee, 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 Lessee) from or in connection with the use, occupation, or operation of any activity or business on the Premises or in any Access Areas, (e.g., the Santa Monica Windjammers Yacht Club Junior Sailing Program) and calculated in accordance with the accounting method required by this Lease.

(a) There shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, cost of goods sold, interest, debt amortization, rent, utilities, credit card fees, insurance premiums, and taxes.

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

(c) Gross Receipts must include the usual charges for any services, goods, rentals, or facilities. Bona fide bad debts actually accrued by Lessee for delinquent payables owed to Lessee 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.

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

(1) Refunds to members or customers on merchandise sold to such members or customers and returned to Lessee;

(2) Sales of fixtures, equipment, or property that are not Lessee's stock-in-trade;

(3) Receipts from insurance claims other than proceeds related to the replacement of Gross Receipts; and

(4) Interest earned by Lessee on funds generated on or from the Premises or the use thereof, deposited or maintained by Lessee in banks or similar financial institutions.

(e) Interest, service fees, 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.

(f) Although Lessee 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 Lessee occupies, uses, or conducts any business or activity on or from the Premises or Access Areas, the Gross Receipts of such sublessee, licensee, concessionaire, or other person or entity from such business or activity shall be included in Gross Receipts.

(g) Gross Receipts shall not include receipts from charity events held on the Premises, provided that: (a) such events are conducted only on an incidental basis and are consistent in scope and frequency with Lessee'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 Lessee or any Sublessee; and (c) all receipts from the event (after offset of bona fide out-of-pocket expenses, without compensation to Lessee) are donated to a qualified recipient under clause (b) above. Lessee shall provide County with such information and materials as requested by County to permit County to verify the application of this subsection.

(h) The Director, by Policy Statement with the approval of the Los Angeles County Auditor-Controller and the Los Angeles County Counsel, either as established on the Effective Date or as may in the future be made applicable to this Lease with Lessee's approval of future Policy Statements, has interpreted and may further interpret the definition of Gross Receipts.

5.5 **Payment and Late Fees.** All payments shall be made payable to the County of Los Angeles Department of Beaches and Harbors, and delivered to:

Los Angeles County Department of Beaches and Harbors
Fiscal Services Unit, Financial Services Building
13575 Mindanao Way
Marina del Rey, California 90292

or such other address as may be provided to Lessee by County from time to time.



5.5.1 County shall have no obligation to issue monthly rental statements, invoices, or other demands for payment. The rental payments required under this Lease shall be payable notwithstanding the fact that Lessee has received no such statement, invoice, or demand. Lessee acknowledges that if any payment under this Lease is not received by County by the date due, 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 payable with respect to any amount that remains unpaid five (5) days after such amount was due and payable; provided, however, that Lessee shall not be required to pay a Late Fee in the case of the first instance of a late payment in any Lease Year, provided such delinquency is cured within one (1) business day after written notice from County. In addition to any Late Fee, any unpaid amounts shall bear interest at the Applicable Rate, computed from the date such amount was due and payable, compounded monthly until paid. Lessee 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 County).

6. IMPROVEMENTS; ALTERATIONS; SURRENDER.

6.1 **Ownership of Improvements.** All Improvements on the Premises and all Alterations (as defined below) thereto shall be owned by County, and Lessee shall have only a leasehold interest therein; provided, however, that during the Term Lessee shall own the Hoist and shall be fully and solely responsible for its operation, maintenance, repair, and/or replacement (as necessary). Neither party shall be required to replace the Hoist. If the Hoist cannot be repaired, and Lessee decides not to replace it, or if the Hoist is not fully operational at the expiration of this Lease, then Lessee shall, at its sole cost and expense remove it and restore any and all holes and other damage to the area related to the Hoist’s installation and removal. Ownership of the Hoist, if fully operational, shall automatically transfer to County at the expiration or earlier termination of this Lease.

6.2 **No Alterations without County Approval.** Lessee shall not make any improvement, modification, installation, or other alteration (collectively, “Alterations”) of, on, or to the Premises, or any utility or other system serving the Premises, without the prior written consent of County, which consent may be withheld or conditioned by County in its sole and absolute discretion. Notwithstanding the foregoing, with prior written notice to County and County’s prior written consent, which shall not be unreasonably withheld, Lessee may cosmetically upgrade the interior of the Building (such as, without limitation, painting and carpeting), provided such upgrades do not reduce the value of the Building or affect the utility systems serving the Building.

6.3 **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 to the Premises by any contractor, subcontractor, laborer, or materialman, in such manner as would give rise to the filing of a mechanic’s lien or other claim against County or County’s interest in the Premises.

6.4 **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 that County may deem necessary for the protection of County's interest in the Premises from mechanics' liens or other claims.

6.5 **Liens; Indemnity.** Lessee shall keep the Premises 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 shall protect, defend, indemnify, and hold County harmless from and against any claims, liability, losses, damages, costs, and 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 supplied or furnished to the Premises by Lessee or persons claiming under it. If any lien is recorded, Lessee shall, within five (5) business days after demand, satisfy or otherwise cause such lien to be removed of record, whether by bonding or otherwise.

6.6 **Surrender of Possession at Termination of Lease.** At the expiration or earlier termination of this Lease, Lessee shall: (a) surrender possession of the Premises to County in the condition that the Premises are required to be maintained and repaired under this Lease; and (b) remove from the Premises all un-affixed furniture, equipment, and other personal property owned by Lessee, and repair any damage to the Premises incurred in connection with such removal. If Lessee fails to remove its personal property from the Premises as required under this section, then Lessee shall lose all right, title, and interest in and to such personal property, and County 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 Lessee shall reimburse County for its costs incurred in connection with such sale, removal, or destruction.

7. **CONDEMNATION.** If 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 County or Lessee may terminate this Lease upon written notice of such election to the other party within thirty (30) days after receipt of notice of such taking. If this Lease is not terminated, then the Annual Minimum Rent shall be equitably reduced on a reasonable basis to reflect the relative value to Lessee of that portion of the Premises that is taken. The entire condemnation award shall belong to County, except that Lessee shall be entitled to the portion of any award, if any, allocated by the condemning authority to the taking of or damage to Lessee's personal property or relocation expenses.

8. **SECURITY DEPOSIT.** Lessee shall deliver to and maintain with County a security deposit ("**Security Deposit**") in an initial amount equal to SIX THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS (\$6,375), representing an amount equal to twenty-five percent (25%) of the Annual Minimum Rent. The amount of the Security Deposit shall be maintained in an amount equal to at least twenty-five percent (25%) of the Annual Minimum Rent, as the same may be adjusted from time to time. The Security Deposit shall secure Lessee's obligations under this Lease, and may be drawn on by County, in whole or in part, to satisfy those obligations. The Security Deposit shall be applied at the discretion of County. Lessee may maintain the Security Deposit in cash or with a certificate of deposit, letter of credit, or other investment instrument approved by the Director and issued with County as the sole owner or

beneficiary. Any interest or other earnings which are actually earned on any portion of the Security Deposit shall be applied to and augment the Security Deposit.

8.1 **Replacement.** Within ten (10) days after receipt of written notice that County has drawn down the Security Deposit, Lessee shall replenish the Security Deposit to its required amount. Lessee's failure to maintain and replenish the Security Deposit as required under this Lease shall be an Event of Default.

8.2 **Renewal.** Any and each letter of credit obtained 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 if the issuer thereof is not irrevocably committed to renew the term of such letter of credit. If Lessee does not provide County with satisfactory evidence of a letter of credit's renewal or replacement thirty (30) days prior to the expiration of such letter of credit, or has not provided County with adequate replacement security, County may draw down upon the letter of credit the resulting funds shall be applied to the Security Deposit.

9. **INDEMNITY.** Except to the extent caused by the gross negligence or willful misconduct of any indemnitee, Lessee shall at all times protect, relieve, defend, indemnify, and save harmless County and its respective Special Districts, elected officials, officers, employees, agents, consultants, counsel, and volunteers (each, a "County Party") from any and all claims, costs, losses, expenses, and liability, including without limitation legal costs and 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 without limitation property owned or controlled by or in the possession of County or any County Party, to the extent that such results from or is caused by: (a) the operation, maintenance, use, or occupation of the Premises by Lessee or any Lessee Party; (b) the acts, omissions, or negligence of Lessee or any Lessee Party; or (c) the failure of Lessee or any Lessee Party to observe and abide by any of the terms or conditions of this Lease or any Applicable Law. Lessee's obligation to so protect, relieve, defend, indemnify, and save harmless County and each County Party shall be a continuing obligation that shall survive the expiration or earlier termination of this Lease.

10. **INSURANCE.** Without limiting Lessee's indemnification obligations under this Lease, and until all of its obligations pursuant to this Lease have been met, Lessee shall, at its sole cost and expense, obtain and maintain insurance coverage satisfying, at a minimum, the requirements specified in this Lease. These minimum insurance coverage terms, types, and limits (the "Required Insurance") shall be in addition to and separate from any other contractual obligation imposed upon Lessee pursuant to this Lease. County in no way warrants that the Required Insurance is sufficient to protect Lessee for liabilities which may arise from or relate to this Lease.

10.1 **Evidence of Coverage and Notice to County.**

10.1.1 Lessee shall, concurrently with its execution of this Lease, deliver to County certificates of insurance coverage satisfactory to County ("Certificates"), and a copy of "Additional Insured" endorsements confirming that County and each County Party has been

given insured status under Lessee's General Liability policy, at County's address for notices under this Lease, "ATTENTION ASSET MANAGEMENT DIVISION."

10.1.2 Lessee shall deliver renewal Certificates to County not less than ten (10) days prior to policy expiration dates. County reserves the right to obtain a complete, certified copy of each required insurance policies at any time.

10.1.3 Certificates shall identify all required insurance coverage types and limits specified herein, reference this Lease by name or number, and be signed by an authorized representative of the insurer. The insured party named on the Certificate shall match the name of Lessee. Certificates shall provide the full name of each insurer providing coverage, its National Association of Insurance Commissioners (NAIC) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding twenty-five thousand (\$25,000) dollars, and list any County-required endorsement forms.

10.1.4 County's failure to obtain or receive a Certificate, or County's failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by Lessee or its insurance broker and/or insurer shall not be construed as a waiver of any of the insurance requirements under this Lease.

10.1.5 Lessee shall deliver all Certificates and copies of any required endorsements, notices of cancellation, or other insurance-related notices or documents to:

County of Los Angeles
Department of Beaches and Harbors
Asset Management Division
13837 Fiji Way
Marina del Rey, California 90292

10.1.6 Lessee shall promptly notify County of any third-party claim or suit filed against Lessee that arises from or relates to this Lease and could result in the filing of a claim or lawsuit against Lessee and/or County.

10.2 **Additional Insured Status and Scope of Coverage.** County and each County Party shall be provided additional-insured status under Lessee's General Liability policy with respect to liability resulting from or connected with Lessee's acts, errors, and omissions related to this Lease or Lessee's use and occupancy of the Premises. Such additional-insured status shall apply to liability and the defense of suits resulting from Lessee's acts or omissions, whether such liability is attributable to Lessee or to County or County Parties. The full policy limits and scope of protection shall apply to County and each County Party as an additional insured, even if they exceed County's minimum Required Insurance specifications. Use of an automatic additional-insured endorsement form shall be acceptable, provided it satisfies the Required Insurance provisions.

10.3 **Cancellation of or Changes in Insurance.** Lessee shall notify County, or Lessee's insurance policies shall contain a provision that County shall be notified of a written notice of cancellation or any change in the Required Insurance, including insurer, limits of coverage, term of coverage, or policy period. The written notice shall be provided to County at least ten (10) days

prior to a cancellation for non-payment of premium and at least thirty (30) days prior to any other cancellation or policy change. Failure to provide such notice shall be an Event of Default.

10.4 **Failure to Maintain Insurance.** Lessee's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall be an Event of Default. If Lessee fails to obtain and maintain the Required Insurance, County may purchase the Required Insurance after notice to Lessee and Lessee shall reimburse County for costs and expenses incurred to obtain the Required Insurance.

10.5 **Insurer Financial Ratings.** Insurance shall be provided by an insurance company authorized to do business in California and acceptable to County, with an A.M. Best rating of not less than A:VII, unless otherwise approved by County.

10.6 **Lessee's Insurance Shall Be Primary.** Lessee's insurance policies, with respect to any claims related to this Lease, shall be primary with respect to all other sources of coverage available to County. Any County-maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Lessee coverage.

10.7 **Waiver of Subrogation.** To the fullest extent permitted by law, Lessee hereby waives its and each of its insurer's rights of recovery against County under all Required Insurance policies for any loss arising from or related to this Lease. Lessee shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to affect such waiver.

10.8 **Deductibles and Self-Insured Retentions (SIRs).** Lessee's policies shall not obligate County to pay any portion of any Lessee deductible or self-insured retentions (SIRs). County may require Lessee to reduce or eliminate policy deductibles and SIRs as respects County, or to provide a bond guaranteeing Lessee's payment of all deductibles and SIRs, including without limitation all related-claims investigation, administration, and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

10.9 **Claims Made Coverage.** If any part of the Required Insurance is written on claims-made basis, any policy retroactive date shall precede the start date of this Lease. Lessee shall maintain such coverage for a period of not less than three (3) years following the expiration or earlier termination of this Lease.

10.10 **Application of Excess Liability Coverage.** Lessee may use a combination of primary and excess insurance policies that provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

10.11 **Separation of Insureds.** All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation-of-insureds provision with no insured-versus-insured exclusions or limitations.

10.12 **County Review and Approval of Insurance Requirements.** County may review and adjust the Required Insurance provisions at any time and from time to time based upon County's determination of changes in risk exposures.



10.13 **Insurance Coverage Types and Limits.** Lessee shall obtain and maintain Required Insurance at a minimum as designated below.

10.13.1 Commercial General Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and the County Parties as additional insureds, with limits of not less than:

General Aggregate:	\$ 4 million
Products/Completed Operations Aggregate:	\$ 4 million
Personal and Advertising Injury:	\$ 3 million
Each Occurrence:	\$ 3 million

10.13.2 Automobile Liability insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Lessee's use of autos pursuant to this Lease, including owned, leased, hired, and/or non-owned autos, as each may be applicable. Any Lessee whose business includes auto garage, auto servicing, or similar operations also shall endorse its policy to provide Garage-keeper's Liability coverage (written on ISO form CA 99 37 or its equivalent) with a limit of not less than the amount as determined by CEO Risk Management requirements from time to time for the Premises.

10.13.3 Workers Compensation and Employers' Liability insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If applicable to Lessee's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

10.13.4 Commercial Property insurance for County's property and any improvements and betterments; this coverage shall be at least as broad as that provided by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake and including flood and ordinance or law coverage, and shall be written for the full replacement cost of the property, with a deductible no greater than \$250,000 or 5% of the property value, whichever is less. Insurance proceeds shall be payable to Lessee and County as their interests may appear.

10.13.5 Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) shall be obtained and maintained by Lessee if and when the manufacturing, distribution, or service of alcoholic beverages occurs on the Premises, with limits of not less than \$3 million per occurrence and \$3 million aggregate. If written on a "claims made" form, the coverage shall also provide an extended two (2) year reporting period commencing upon the expiration or earlier termination of this Lease, or replacement coverage shall be maintained until such time.

10.13.6 Lessee shall obtain and maintain Marina Operator's Liability insurance if operating a marina, berthing, docking, and/or launching boats, and/or pleasure crafts, and/or using floating docks, piers, and/or ramps, with limits of not less than \$3 million per occurrence and \$3 million aggregate. If written on a "claims made" form, the coverage shall also

provide an extended two (2) year reporting period commencing upon the expiration or earlier termination of this Lease, or replacement coverage shall be maintained until such time.

10.13.7 If major construction work is performed by Lessee during the term of this Lease (e.g., demolition of structures, construction of new structures, renovation or retrofit involving structure's frame, foundation, or supports, or more than 50% of building, etc.), then Lessee or Lessee's contractor shall provide the following insurance. County will determine the coverage limits required on a project by project basis:

(a) **Builder's Risk Course of Construction Insurance.** Such coverage shall 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 earthquake, flood, 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. Such insurance shall be extended to include boiler & machinery coverage for air conditioning, heating, and other equipment during testing. This insurance shall be written on a completed-value basis and cover the entire value of the construction project, including without limitation County-furnished materials and equipment, against loss or damage until completion and acceptance by Lessee and County if required.

(b) **General Liability Insurance.** Such coverage shall be written on ISO policy form CG 00 01 or its equivalent, naming County as an additional insured, with limits determined on a project-by-project basis. Products/Completed Operations coverage shall continue to be maintained in the amount obtained for at least two (2) years after the date the project is completed and accepted by Lessee and County if required.

(c) **Automobile Liability.** Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with limits determined on a project-by-project basis for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Such insurance shall cover liability resulting from Lessee's or Lessee's contractor's use of vehicles.

(d) **Professional Liability.** Such insurance shall cover liability resulting from the errors, omissions, negligence, or wrongful acts of Lessee's contractor and/or licensed professional (e.g., architects, engineers, surveyors, etc.) with limits determined on a project-by-project basis per claim and double the per-claim limit aggregate. The coverage shall also provide an extended two-year reporting period commencing upon expiration, termination, or cancellation of the construction project.

(e) **Workers Compensation and Employers' Liability Insurance.** Such coverage shall provide Employers' Liability coverage with limits of not less than \$1 million per accident. Such policy shall be endorsed to waive subrogation against County for injury to Lessee's or Lessee's contractor's employees. If Lessee's or Lessee's contractor's employees will be engaged in maritime employment, the coverage shall provide the benefits required by the U.S. Longshore and Harbor Workers Compensation Act, Jones Act, or any other federal law to which Lessee is subject. If Lessee or Lessee's contractor will provide leased employees, or is an employee-leasing or temporary-staffing firm or a professional employer organization (PEO),

coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision.

(f) **Asbestos Liability or Contractors Pollution Liability Insurance** is required 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 Lessee's or Lessee's contractor's Automobile Liability Insurance. Lessee or Lessee's contractor shall maintain limits determined on a project-by-project basis for this project.

11. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

11.1 **Maintenance and Repair Obligations.** Except for County's obligations, Lessee shall be solely and fully responsible for the maintenance and repair of the Premises, including without limitation landscaped areas including light fixtures, the Dry Storage Facilities, the fenced in mule storage area, the Hoist, the Building's interior (including exterior windows and doors) and all its fixtures and utility systems and equipment located therein, the patios and exterior surfaces, and for any damage or degradation to the leak-free condition of the roof membrane of the Boater Restrooms resulting in connection with Lessee's use of the patio above the Boater Restrooms. County shall be solely and fully responsible for the maintenance and repair of the Building's structural elements, major plumbing, electrical elements, elevator system, HVAC system, the roof and the exterior of the Building, excluding exterior windows and doors, and the irrigation system for the landscaped areas in the Premises.

11.1.1 A common water heater that serves the Premises and the Boater Restrooms is located in an exterior closet of the Building. County shall maintain, repair, and replace as necessary the common water heater. Lessee shall provide County access to the common water heater and keys to the closet.

11.1.2 Lessee shall perform its maintenance and repair obligations at its sole cost and expense, such that the portions of the Premises and associated areas required to be maintained and repaired by Lessee are kept in a good, safe, clean, and working-order condition in compliance with all Applicable Laws, and in conformance with the Minimum Standards regarding the use and occupancy of commercial properties in Marina del Rey, as the same may be revised from time to time by County in a manner consistent with commercially reasonable maintenance standards applicable to other comparable commercial properties in Marina del Rey. County, in its proprietary capacity, may enter upon and inspect the Premises at any reasonable time to inspect for cleanliness, safety, and compliance with this section.

11.1.3 County shall not be responsible for exterior Building painting unless Lessee agrees to reimburse County for the cost of such painting. Lessee shall varnish the exposed wood rail caps at least once every two (2) years.

11.1.4 County shall have no liability to Lessee, including without limitation consequential damages, or any right to abate, withhold, or offset rent for any malfunction or interruption in operation of items required to be maintained or repaired by County under this Lease, or for any interference with Lessee's operations resulting therefrom or in connection with the performance thereof. Unless expressly provided to the contrary in this Lease, Lessee may not perform any work on County's behalf or offset any costs, expenses, or other amounts against rent.

11.2 **Emergent Deficiencies.** Regardless of any cure period otherwise provided by this Lease for breach or default, if Lessee breaches a maintenance or repair obligation under this Lease that results or threatens to result in a condition that is a threat to health or safety, or otherwise constitutes an emergency situation, County may require Lessee to immediately take all appropriate steps to avoid, correct, or mitigate damage or injury to persons or property. If Lessee fails to promptly correct any such deficiency, County may correct the deficiency and Lessee shall promptly reimburse County for all costs and expenses incurred to make such correction.

11.3 **Repairs Not Performed by Lessee.** In addition to the remedies provided for an Event of Default under this Lease, if Lessee commits an Event of Default for a maintenance and repair obligation and fails to cure the default within the applicable cure period provided by this Lease, County may perform the maintenance or make the repair and Lessee shall promptly reimburse County for all costs and expenses incurred therefor.

11.4 **Spending Limit on County's Obligation.** Notwithstanding anything to the contrary in this Lease, County shall not be obligated to incur any cost or expense for maintenance and repair to the extent the aggregate of such costs and expenses during the initial Term exceeds the greater of (a) Ninety Thousand Dollars (\$90,000.00), and (b) an amount equal to the Monthly Minimum Rent multiplied by the total number of whole months already expired in the initial Term (the "Cap"). At the start of each Subsequent Extension Period and shorter Subsequent Extension Period, such formula shall be reinstated, so that for such Subsequent Extension Period or shorter Subsequent Extension Period, the Cap shall equal the greater of (i) Ninety Thousand Dollars (\$90,000.00), and (b) an amount equal to the Monthly Minimum Rent multiplied by the total number of whole months already expired in such Subsequent Extension Period or shorter Subsequent Extension Period, as the case may be; provided, however, that in any shorter Subsequent Extension Period the first element of the Cap formula (*i.e.*, Ninety Thousand Dollars (\$90,000.00)) shall be reduced pro-rata to reflect the shorter period; and provided, further, that in no event shall any unused portion of the Cap carry over from one term or period to any other term or period. At its election, Lessee may pay, at its sole cost and expense, the amount of such costs and expenses that exceed County's spending limit, in each instance. If Lessee chooses not to pay such excess cost, it may immediately terminate this Lease and thereupon vacate and quit the Premises. If the cost of maintenance and repair would exceed the County's spending limit, and Lessee opts to not fund the excess cost, and County's decision to not perform the maintenance or repair would result in the Building being uninhabitable under applicable County code standards, County may immediately terminate this Lease and Lessee shall thereupon vacate and quit the Premises.

11.5 **Damage or Destruction.** If all or any portion of the Improvements are damaged or destroyed, Lessee shall promptly notify County. If the Improvements are completely destroyed or damaged beyond practicable use, as determined by County, County shall not be obligated to

replace the Improvements, and this Lease shall terminate as of the date of such destruction or damage.

11.5.1 If Improvements are partially damaged or destroyed, but such damage or destruction does not substantially negatively impact Lessee's business (in Lessee's reasonable judgment), and such damage is not repaired by either party, this Lease shall be terminated as to that portion of the Premises rendered unusable and the Annual Minimum Rent shall be reduced proportionately on a square-footage basis.

11.5.2 Notwithstanding anything to the contrary herein, either party may terminate this Lease in the event of material damage to the Improvements during the last year of the Term that renders the Premises partially unusable.

11.5.3 If any damage or destruction renders the Premises unsafe in any way, as reasonably determined by County either in its proprietary capacity or its governmental capacity, or both, and such damage is not repaired as provided by this Lease, County may terminate this Lease.

11.5.4 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.

12. **ASSIGNMENT AND SUBLEASE.** Lessee may not assign the Lease by operation of law or otherwise, 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 County, which consent may be conditioned or withheld by County in its sole and absolute discretion. No assignment of the Lease shall release Lessee from its obligations under this Lease.

13. **NO ENCUMBRANCES.** Lessee shall not directly or indirectly pledge, assign, transfer, mortgage, hypothecate, or otherwise grant a security interest in all or any of its interest in this Lease or its leasehold interest in the Premises or any Improvement.

14. **DEFAULT.**

14.1 **Events of Default.** Each of the following shall be an "Event of Default" under this Lease:

14.1.1 **Monetary Defaults.** Lessee's failure to perform a monetary obligation under this Lease shall be an Event of Default. Lessee may cure such default by paying the delinquent amount together with the applicable Late Fee and interest within ten (10) days after the respective due date.

14.1.2 **Failure to Maintain Security Deposit.** Lessee's failure to establish and/or replenish the Security Deposit as required by this Lease shall be an Event of Default. Lessee may cure the default by establishing or replenishing the Security Deposit within five (5) days after notice of the default from County.

14.1.3 **Other Obligations.** Lessee's failure to perform a material non-monetary Lease obligation shall be an Event of Default. Lessee may cure the default either by performing the obligation within thirty (30) days after notice of the breach from County, or if the breach cannot be corrected within said thirty-day period, by initiating performance of the obligation and diligently pursuing it to completion as soon as reasonably practicable, but in no event longer than ninety (90) days after notice of default.

14.2 **Remedies.** Upon the occurrence of an Event of Default, County shall have the following remedies, in addition to any other remedies at law or in equity:

14.2.1 **Terminate Lease.** County may terminate this Lease by giving Lessee written notice of termination, upon which all of Lessee's rights in and to the Premises shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises, and County may re-enter and take possession of the Premises, and unless 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 Lessee of its obligations to pay all amounts then due to County, or from any claim for damages against Lessee.

14.2.3 **Keep Lease in Effect.** County may continue this Lease in effect and bring suit at any time and from time to time to enforce Lessee's Lease obligations. 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 into this Lease by this reference.

14.2.4 **Termination Following Continuance.** Even though County elects not to terminate this Lease after a Lessee default, County may thereafter elect to terminate this Lease for the same or any other default.

14.3 **Damages.** If County elects to terminate this Lease after a Lessee default, County may recover from Lessee, in addition to its other remedies, any and all damages allowed by California Civil Code Section 1951.2, and such other amounts as may be permitted from time to time under applicable California law. In determining damages under said Section 1951.2, "rent" shall include without limitation the "worth at the time of the award" (as defined in California Civil Code Section 1951.2(b)) 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 Lessee proves could be reasonably avoided.

14.4 **County's Right to Cure Lessee's Default.** County may, at Lessee's sole cost and expense, cure a Lessee default at any time after the applicable cure period.

14.5 **Default by County.** County's failure to perform a Lease obligation shall be an Event of Default. County may cure the default either by performing the obligation within thirty (30) days after notice of the breach from Lessee, or if the breach cannot be corrected within said thirty-day period, by initiating performance of the obligation and diligently pursuing it to completion as soon as reasonably practicable.

14.5.1 Lessee shall have no rights related to and resulting from a County default until Lessee delivers thirty (30) days' prior notice to any person or entity having a recorded security



interest in County's fee title to the Premises. Such person or entity shall then have the right to cure such default, and County shall not be deemed in default if such person or entity either cures such default within said thirty-day period or if such cure cannot be completed within thirty (30) days, initiates a cure and diligently pursues it to completion as soon as reasonably practicable.

14.5.2 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.

15. ACCOUNTING.

15.1 **Maintenance of Records and Accounting Method.** To determine the amount of Percentage Rent payable under this Lease, Lessee shall at all times during the Term, and for thirty-six (36) months after the expiration or earlier termination of this Lease, keep or cause to be kept locally and to the reasonable satisfaction of the 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 related to the conduct of operations, and shall be supported by data of original entry. Gross Receipts shall be calculated in accordance with the accrual method of accounting, except that Lessee may report Gross Receipts monthly on a cash basis, provided the calculation of Gross Receipts is reconciled to the accrual method on an annual basis.

15.2 **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 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. Lessee shall implement point-of-sale systems that 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 approval, which approval or disapproval shall not be unreasonably withheld or delayed.

15.3 **Availability of Records for Inspector's Audit.** Books of account and records for all Lease Years shall be kept or made available at the Premises. Upon at least one (1) business day advance notice, County and its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times for the purpose of determining whether Lessee is complying with the accounting terms and conditions of this Lease. County and its authorized representatives or agents may also, at any reasonable time upon reasonable prior notice, examine and audit Lessee's books and records without restriction for the purpose of determining the accuracy thereof and of the statements of Gross Receipts. This provision shall survive the expiration or earlier termination of this Lease for thirty six (36) months.

15.4 **Cost of Audit.** If for any reason Lessee fails to make available the original records and books of account at the Premises, Lessee shall pay all costs and expenses incurred by County in conducting audits at the location where said records and books of account are maintained. If an



audit discloses a discrepancy in County's favor of greater than two percent (2%) of the Percentage Rent due County for the period audited, then Lessee shall pay County's audit costs, together with the amount of the identified deficiency and the applicable Late Fee with interest as provided by this Lease.

15.5 **Annual Financial Statements.** Within six (6) months after the end of each Lease Year, Lessee shall deliver to County the following certified as accurate by Lessee's Board of Directors or by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is otherwise satisfactory to County: (a) a set of compiled financial statements setting forth Lessee's financial condition and the result of Lessee's operations for such Lease Year; and (b) a statement (on an unqualified basis) of Lessee's Gross Receipts (including a breakdown by category). Such statements shall be prepared in a manner that allows County to determine the financial results of operations in connection with Lessee's activities on, from, or relating to the Premises. Concurrently, Lessee shall deliver to County copies of its tax returns and other not-for-profit corporation reports filed with governmental agencies.

15.6 **Accounting Obligations of Other Parties.** If a sublessee, licensee, or concessionaire conducts business operations on the Premises, Lessee shall cause such person or entity to comply with all of the terms and conditions of this Lease with respect to the maintenance, form, availability, and methodology of accounting records.

15.7 **Inadequacy of Records.** If Lessee fails to keep or cause to be kept the records required by this Lease in a manner that allows a Certified Public Accountant to be able to issue an unqualified opinion as to Gross Receipts, such failure shall be an Event of Default. In addition to the other remedies available to County at law or in equity as a result of such default, 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 Lessees of comparable leaseholds in Marina del Rey with comparable business operations, or any other method as reasonably determined by the Director, and shall utilize such methodology as the 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 and applicable interest as required by this Lease from the date upon which each unpaid installment of Percentage Rent was due until paid, together with reimbursement of County's costs and expenses 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.

16. MISCELLANEOUS.

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

16.2 **Time is of the Essence.** Time is of the essence of the performance of each and every obligation under this Lease.

16.3 **No Right of Offset.** Notwithstanding anything to the contrary 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 rent due County under this Lease.

16.4 **Holding Over.** If Lessee holds over after the expiration or earlier termination of this Lease for any reason with or without County's express or implied consent, 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.

16.4.1 During any such holdover period, the Monthly Minimum Rent and Percentage Rent rates in effect at the end of the time of holding over may be increased at the Director's sole discretion up to one hundred twenty five percent (125%) of such then effective amounts.

16.4.2 Such holdover shall otherwise be subject to the same terms and conditions of this Lease.

16.4.3 Such holding over shall include any time employed by Lessee to remove personal property and otherwise vacate the Premises.

16.4.4 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 earlier termination of this Lease. The provisions hereof shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity.

16.4.5 If Lessee fails to surrender the Premises upon the expiration or earlier termination of this Lease, in addition to any other obligations to County accruing therefrom, Lessee shall protect, defend, indemnify, and hold County and the County Parties harmless from all losses, costs (including reasonable legal costs and attorneys' fees), damages, claims, and liabilities resulting from such failure, including without limitation any claims made by any succeeding Lessee resulting from such failure to surrender, and any lost profits to County resulting therefrom.

16.5 **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, 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, resulting 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. Unless 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.

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

16.7 **Authorized Right of Entry.** In any and all cases in which provision is made herein for termination of this Lease, or for County's exercise of right of entry or re-entry upon the Premises in the case of an Event of Default, or in case of abandonment or vacation of the Premises by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Premises and remove any and all persons and property whatsoever situated upon the Premises and place all or any portion of said property, except such property as may be forfeited to County, in storage for the account of and at the sole cost and expense of Lessee. Except to the extent resulting from or caused by County's gross negligence or willful misconduct, Lessee shall protect, defend, indemnify, and save harmless County from any cost, expense, loss, or damage resulting from or caused by any such entry or re-entry upon the Premises, including without limitation the removal of persons and property and storage of such property by County and its agents.

16.8 **Service of Written Notice or Process.** Written notice addressed to Lessee at the addresses set forth below, or to such other address that Lessee may in writing file with the Director, shall be deemed sufficient if said notice is delivered personally or by United States Postal Service or by nationally recognized courier service, provided in all cases there is a return receipt requested (or other similar evidence of delivery) and postage or other delivery charges prepaid.

16.8.1 Each notice shall be deemed delivered upon actual receipt.

16.8.2 Addresses for notices shall be as follows, unless otherwise noticed in writing:

COUNTY: Director
Department of Beaches and Harbors
Los Angeles County
13837 Fiji Way
Marina del Rey, California 90292
Phone: 424-526-7737

Copy to: Office of Los Angeles County Counsel
Los Angeles County
500 West Temple Street
Los Angeles, California 90012
Phone: 213-974-1801

LESSEE: Santa Monica Yacht Club
13589 Mindanao Way
Marina del Rey, California 90292
Attn: Commodore and Attn: Treasurer

Phone: 310-827-7692

16.9 **Interest.** In any situation where County has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable within five (5) days after Lessee's receipt of written demand, together with interest at the Applicable Rate from the date such sums were first advanced until the time payment is received.

16.10 **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.

16.11 **Attorneys' Fees.** If any action, proceeding, or arbitration resulting from or in connection with this Lease is brought, 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 Los Angeles County Counsel's services, and also including all fees, costs, and expenses incurred in executing, perfecting, enforcing, and collecting any judgment.

16.12 **Amendments.** This Lease may only be amended by a writing executed by duly authorized officials of Lessee and County. Notwithstanding the foregoing, the 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.

16.13 **Time for Director Approvals.** Whenever in this Lease the consent or approval by the Director or County is required, such approval or consent shall be made by the Director, and shall be deemed not given unless delivered to Lessee in writing. Any failure to provide such consent or approval shall not be construed as consent or approval, but shall be deemed a denial of consent or disapproval in each instance.

16.14 **Time for County Action.** Notwithstanding anything to the contrary contained in this Lease, whenever the Director determines that performance of a County Lease obligation not specifically delegated to Director herein requires action by one or more Los Angeles County board or commission or the Los Angeles County Board of Supervisors, the time period for County's performance of such obligation shall be extended as is reasonably necessary to have such action taken.

16.15 **Estoppel Certificates.** Each party shall execute, within ten (10) business days after the receipt of a written request therefor from the other party, a certificate stating: (a) that this Lease is in full force and effect and is unmodified (or stating otherwise, as the case may be); (b) that to the best knowledge of such party, the other party is not then in default of this Lease (or stating the grounds for default if such be the case); and (c) if requested, the amount of the Security Deposit, Annual Minimum Rent, Percentage Rent, and other material economic terms and conditions of this Lease. Each party acknowledges that prospective purchasers, lenders, or other validly-interested parties may rely on such statements.

16.16 **Indemnity Obligations.** Whenever in this Lease there is an obligation to protect, defend, indemnify, and/or hold harmless, such obligation shall include an obligation to defend and pay legal costs, reasonable attorneys' fees, reasonable expert fees, and court costs.

16.17 **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. Said prices shall be fair and reasonable, based upon the following considerations: first, that the Premises is intended to serve a public purpose and provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon its investment pursuant to this Lease. If the Director notifies Lessee that any of said prices are not fair and reasonable, Lessee may confer with the Director to justify said prices. If, after reasonable conference and consultation, the Director determines that any of said prices are unfair or unreasonable, the same shall be modified by Lessee, as directed. Lessee may appeal the determination of the 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.

17. **ARBITRATION.** Except as otherwise provided herein, 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.

17.1 **Initiating Party.** 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 the Responding Party. If the Responding Party has any “**Additional Disputes**” it shall follow the format described for the Initiating Party. The Initiating Party shall 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. Notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the following provisions shall apply to any and all arbitration proceedings conducted pursuant to this Lease:

17.1.1 **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 after 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.

17.1.2 **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 California, and who has agreed to resolve civil disputes.

17.1.3 **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: (a) those presented to the arbitrator by the Initiating Party, provided those disputes are arbitrable disputes pursuant to this Lease; (b) Additional Disputes presented to the arbitrator by the Responding Party, provided that any such Additional Disputes constitute arbitrable disputes pursuant to this Lease; and (c) such related

preliminary or procedural issues as are necessary to resolve (a) and/or (b) 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.

17.1.4 **Immunity.** The arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Lease.

17.1.5 **Section 1282. 2.** The provisions of California 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 California 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 such documents; and

(4) 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 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 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

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

(d) 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.

17.2 **Evidence.** The provisions of California 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 these arbitration provisions, or such evidence consists of a transcript of a deposition of an expert witness conducted pursuant to these arbitration provisions. 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 these arbitration provisions, provided such evidence is otherwise permissible hereunder.

17.3 **Discovery.** The provisions of California 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 these arbitration provisions; 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 these arbitration provisions.

17.4 Awards of Arbitrators.

17.4.1 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 these arbitration provisions, 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.

17.4.2 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.

17.5 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 these arbitration provisions, provided that each party is afforded the right to cross-examine such expert or rebut such authority.

17.6 Costs of Arbitration. Lessee and County shall share equally 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 shall be an Event of Default.

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

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

17.8.1 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**"). If a Disqualification Judgment is made, the arbitration process shall begin over immediately in accordance with these arbitration provisions, which arbitration shall be conducted (with a different arbitrator) as expeditiously as reasonably possible.

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


17.8.3 For the purposes of these arbitration provisions, 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.

17.9 **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 OWING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

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



Initials of Lessee



Initials of County

18. **INTERPRETATION.**

18.1 **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 as defined herein, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

18.2 **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.

18.3 **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.

18.4 **Parties Represented by Consultants, Counsel.** Both County and Lessee have entered this Lease following advice from independent financial consultants and legal counsel of



their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsperson shall not apply to this Lease.

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

18.6 **Compliance with Code.** County and Lessee 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.

18.7 **No Recordation.** Neither this Lease nor any memorandum thereof shall be recorded.

18.8 **County's Consent, Approval.** Whenever required under this Lease, County's consent or approval shall mean the written consent or approval of the Director of County's Department of Beaches and Harbors, or his or her designee (or in the absence of such, such other person or governmental body with requisite authority).



[Signatures on following page.]

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

THE COUNTY OF LOS ANGELES

SANTA MONICA YACHT CLUB, a
California not-for-profit corporation

By: _____
Chair, Board of Supervisors

By: 
Its: 


ATTEST:

CELIA ZAVALA,
Executive Officer - Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

MARY C. WICKHAM,
County Counsel

By: 
Deputy

APPROVED AS TO FORM:
GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

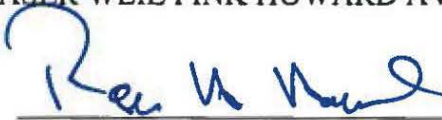
By: 

EXHIBIT A PREMISES OUTLINE

