



Caring for Our Coast

• • •
Gary Jones
Director

Kerry Silverstrom
Chief Deputy

Amy M. Caves
Deputy Director

August 04, 2020

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 AMENDMENT NO. 9 TO SECOND AMENDED AND RESTATED LEASE NO.
55624
PARCEL 125I – MARINA CITY CLUB - MARINA DEL REY
(FOURTH DISTRICT) (4 VOTES)**

SUBJECT

This Board Letter requests approval of Amendment No. 9 to Marina del Rey Second Amended and Restated Lease No. 55624 for Parcel 125I (Marina City Club) to modify the insurance requirements and to memorialize an unexecuted amendment, setting the County's determination of Fair Rental Value for Category B Unit Prepaid Subleases and Short-Term Subleases at 14.5% effective as of January 1, 2016.

IT IS RECOMMENDED THAT THE BOARD:

1. Find that the proposed Lease Amendment No. 9 is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines and Section 15301 of the State CEQA Guidelines (Existing Facilities).
2. Approve and authorize the Chair of the Board to execute the attached Amendment No. 9 to the Lease pertaining to the readjustment of the insurance requirements for a five-year period ending December 16, 2023, and memorializing the County's determination of Fair Rental Value for Category B Unit Prepaid Subleases and Short-Term Subleases at 14.5% effective as of January 1, 2016.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the proposed Amendment No. 9 will a) incorporate changes to the Lease's indemnity clause, insurance requirements, and miscellaneous insurance provisions to conform to the Chief Executive Office Risk Management Branch's current and more stringent requirements; and b) memorialize an unexecuted amendment, setting the County's determination of Fair Rental Value for Category B Unit Prepaid Subleases and Short-Term Subleases at 14.5% effective as of January 1, 2016.

Ground leases of County-owned property in Marina del Rey generally provide for the periodic review of liability insurance coverage to ensure that the amount of general liability insurance is adequate to protect the County's interests.

Section 11.6 of the Lease provides the amounts of liability insurance required by said Section shall be subject to renegotiation each fifth anniversary of Lease Amendment No. 5 dated as of December 16, 2008.

On March 31, 2015, the County provided Lessee notice, via a letter and an unexecuted amendment, setting the County's determination of Fair Rental Value for Category B Unit Prepaid Subleases and Short-Term Subleases at 14.5% pursuant to Lease section 5.10.D. Pursuant to Lease section 5.10.E, the Percentage Rent of 14.5% for Category B Unit Prepaid Subleases and Short-Term Subleases became binding and effective as of January 1, 2016.

Implementation of Strategic Plan Goals

The recommended action will incorporate new insurance provisions in fulfillment of County Strategy III.3 - Pursue Operational Effectiveness, Fiscal Responsibility and Accountability, and County Strategy III.3.2 by managing and maximizing County assets.

FISCAL IMPACT/FINANCING

The proposed Amendment No. 9 reflects the County's current market rate percentage rents. As of January 1, 2016, the County has received percentage rent from the Lessee at the current market rate of 14.5%. The approval of Amendment No. 9 will produce no fiscal impact.

Upon your Board's approval of proposed Amendment No. 9, Department of Beaches and Harbors does not anticipate any impact on the operating budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Commonly known as the Marina City Club, Parcel 125I (Improved Parcel) consists of 101 apartment units, 303 boat slips marina, three high-rise towers containing 600 condo units, a club facility, a free-standing low-rise building, several commercial unit spaces, promenade, and a covered parking structure. The Lease term is expiring on July 29, 2067.

The County and MARINA CITY CLUB, L.P., a California limited partnership (f/k/a J. H. SNYDER COMPANY, a California Limited Partnership) entered into that certain Second Amended and Restated Lease on October 27, 1987 ("Lease") to provide an 80-year term for the purposes to establish a subleasehold condominium regime for the high-rise apartment units on a long-term

prepaid basis, and to consolidate into a single document all of the terms and conditions of the Lease. The Lease was later assigned to ESSEX MARINA CITY CLUB, L.P., a California limited partnership.

This proposed Amendment No. 9 has been approved as to form by County Counsel.

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

ENVIRONMENTAL DOCUMENTATION

The proposed Amendment No. 9 is categorically exempt from CEQA pursuant to Class 1(r) of the County's Environmental Document Reporting Procedures and Section 15301 of the CEQA Guidelines (Existing Facilities), as the proposed actions involve negligible or no expansion of existing or former use and will not have a significant effect on the environment. In addition, it will comply with all applicable regulations, and there are no cumulative impacts, unusual circumstances, damage to scenic highways, listing on hazardous waste site lists compiled pursuant to Government Code section 65962.5, or indications that it may cause a substantial adverse change in the significance of a historical resource that would make the exemption inapplicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current services or projects from your Board's approval of Amendment No. 9.

CONCLUSION

Please have the Chair of the Board of Supervisors sign all three copies of Amendment No. 9 and have the Executive Officer of the Board return two executed copies, as well as an adopted-stamped copy of this letter to the Department of Beaches and Harbors, retaining a copy for your records. Should you have any questions, please contact Natasha Robinson at (424) 526-7742 or NRobinson@bh.lacounty.gov.

The Honorable Board of Supervisors

8/4/2020

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Jones", with a large, stylized initial "G" that loops back.

GARY JONES

Director

GJ:AC:SP:SVG:nr

Enclosures

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

**AMENDMENT NO. 9 TO SECOND AMENDED AND RESTATED LEASE
(IMPROVED PARCEL) NO. 55624
PARCEL NO. 125I – MARINA DEL REY SMALL CRAFT HARBOR**

THIS LEASE AMENDMENT NO. 9 TO THE SECOND AMENDED AND RESTATED LEASE (IMPROVED PARCEL) NO. 55624 – MARINA DEL REY SMALL CRAFT HARBOR ("Amendment" or "Amendment No. 9") is made and entered into this _____ day of _____, 2020 (the "Effective Date").

BY AND BETWEEN

**COUNTY OF LOS ANGELES,
Hereinafter referred to as "County",**

AND

**ESSEX MARINA CITY CLUB, L.P.
a California limited partnership, as
successor in interest to
MARINA CITY CLUB, L.P.
a California limited partnership
(f/k/a J. H. Snyder Company),
hereinafter referred to as "Lessee."**

RECITALS:

WHEREAS, on October 27, 1987, County and Lessee's predecessor in interest, entered into the Second Amended and Restated Lease Agreement No. 55624 under the terms of which County leased to Lessee's predecessor in interest that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, formerly known as Parcel P125R but now known as Parcel 125I, which leasehold premises (the "Premises") are more particularly and legally described in Exhibit "A" attached to and incorporated in said Lease, as amended by (i) that certain First Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R, Marina del Rey dated November 4, 1988, (ii) that certain Second Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R, Marina del Rey dated August 1, 1992, (iii) that certain Amendment No. 3 to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R, Marina del Rey dated December 3, 2002, (iv) that certain Amendment No. 4 to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R, Marina del Rey dated June 22, 2004, (v) that certain Amendment No. 5 to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R, Marina del Rey dated

December 16, 2008, (vi) that certain Amendment No. 6 to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R, Marina del Rey dated June 3, 2010, (vii) that certain Amendment No. 7 to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R, Marina del Rey dated March 31, 2015, and (viii) that certain Amendment No. 8 to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R, Marina del Rey dated March 11, 2020 (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, on March 31, 2015, the County provided Lessee notice, via a letter and an unexecuted amendment, setting the County's determination of Fair Rental Value (FRV) for Category B Unit Prepaid Subleases and Short-Term Subleases at 14.5% pursuant to Lease section 5.10.D; and

WHEREAS, pursuant to Lease section 5.10.E, the Percentage Rent of 14.5% for Category B Unit Prepaid Subleases and Short-Term Subleases became binding and effective as of January 1, 2016; and

WHEREAS, Article 11 of said Lease provides that the amounts of liability insurance required by said article shall be subject to renegotiation as of each fifth anniversary of Lease Amendment No. 5 dated as of December 16, 2008; and

WHEREAS, the parties hereto have reached agreement with respect to the required insurance adjustments and wish to amend the Lease as set forth herein, effective as of December 16, 2018 (2018 Insurance Renegotiation Date); and

WHEREAS, the parties hereto wish to amend the Lease with respect to the FRV and insurance adjustments as set forth herein; and

WHEREAS, all capitalized terms used but not otherwise defined herein shall have the same meanings given such terms in the Lease; and

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby deemed a contractual part hereof, and the mutual agreements, covenants and conditions contained herein, the parties agree as follows:

1. Percentage Rent.

Effective as of January 1, 2016, Section 5.08.B(1)(d) of the Lease is deleted and replaced with the following:

"(d) Commencing on January 1, 2016, and extending through the Lease term, fourteen and one-half percent (14.5%) per year for each Category B Unit; and commencing on January 1, 2019, and extending through the end of the Lease term, for each Category A Unit, the percentage rate, which is the apartment percentage component of the Fair Rental Value of the land and water comprising the Premises, determined in accordance with Section 5.10 of the Lease. In no

event, however, shall the percentage actually determined for each Category A Unit be less than twelve and one-half percent (12.5%) per year, nor greater than fifteen percent (15%) per year.”

Effective as of January 1, 2016, Section 5.08.C(4) of the Lease is deleted and replaced with the following:

“(4) Commencing on January 1, 2016, and extending through the end of the Lease term, fourteen and one-half percent (14.5%) per year.”

2. **INSURANCE.** The terms and provisions of Article 11 of the Lease are hereby deleted and replaced with the following:

I. INDEMNIFICATION

The Lessee shall indemnify, defend and hold harmless the Lessor, which is the County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively Lessor and its Agents), from and against any and all liability, loss, injury or damage including (but not limited to) demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with the Lessee’s repair, maintenance and other acts and omissions arising from and/or relating to the Lessee’s use of the Premises.

Each Sublease shall contain a provision obligating the Sublessee to indemnify and defend Lessee and Lessor and its Agents from all claims, loss and liability arising out of the Sublessee’s use of the Premises.

II. GENERAL INSURANCE PROVISIONS – LESSEE REQUIREMENTS

Without limiting the Lessee’s indemnification of Lessor and during the term of this Lease, and until all of its obligations pursuant to this Lease have been met, Lessee shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in this Lease. These minimum insurance coverage terms, types and limits (the “**Required Insurance**”) also are in addition to and separate from any other contractual obligation imposed upon Lessee pursuant to this Lease. The Lessor in no way warrants that the Required Insurance is sufficient to protect the Lessee for liabilities which may arise from or relate to this Lease.

A. Evidence of Coverage and Notice to Lessor

- Certificate(s) of insurance coverage (Certificate) satisfactory to Lessor, and a copy of an Additional Insured endorsement confirming Lessor and its Agents (defined below) has been given Insured status under the Lessee’s General

Liability policy, shall be delivered to Lessor at the address shown below and provided prior to the start day of this Lease Amendment.

- Renewal Certificates shall be provided to Lessor not more than 10 days after Lessee's policy expiration dates. The Lessor reserves the right to obtain complete, certified copies of any required Lessee insurance policies at any time.
- Form of Policy. Upon the occurrence of any loss, the proceeds of such insurance shall be held by Lessor in trust for the named insured as their interest appear and shall be disbursed on a monthly draw basis to pay for the restoration of the Improvements. To the extent required by an Encumbrance Holder at the time of Lessor approval of its encumbrance, such insurance shall be held and disbursed by a neutral insurance trustee selected by mutual agreement of the parties, according to procedures agreed to by the parties. Should the parties fail to agree upon an insurance trustee or disbursement procedures within thirty (30) days of the loss, the matter shall be resolved by arbitration in accordance with Section 16.16. In the event of such loss, Lessee shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment, and improvements, except as otherwise provided in Section 14.01, irrespective of the existence of insurance. Lessor shall reimburse Lessee for said rebuilding or replacement out of and to the full extent of any proceeds of said insurance held by County as payments are required for said purposes. Duplicate policy or policies evidencing such insurance coverage satisfactory to Lessor shall be filed with Director. Upon the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be filed with Director. Any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount, and content reasonably satisfactory to County so that such coverage provides the same protection as required under this Article 11 as if the insurance had been procured on an individual property basis. In lieu of submitting a copy of the policy or policies evidencing the above insurance, Lessee may submit, in a form acceptable to County, a certificate of insurance.
- 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(s). The Insured party named on the Certificate shall match the name of the Lessee identified in this Lease. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, the amounts of any policy deductibles or self-insured retentions exceeding twenty-five thousand (\$25,000.00) dollars or such other

commercially reasonable amount as approved by the Director, and list any Lessor required endorsement forms.

- Neither the Lessor's failure to obtain, nor the Lessor's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Lessee, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.
- Certificates and copies of any required endorsements, and notices of cancellation shall be delivered to:

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

Lessee also shall promptly notify Lessor of any third party claim or suit over One Hundred Fifty Thousand Dollars (\$150,000) filed against Lessee which arises from or relates to this Lease, and could result in the filing of a claim or lawsuit against Lessee and/or Lessor. Such notification shall be made in writing within 72 hours after Lessee first becomes aware of the claim or threatened claim.

- Allocation of Insurance Proceeds in case of Destruction. Notwithstanding any contrary provisions in this Lease, if a complete or partial destruction of the Premises occurs and one or more Prepaid Subleases permanently loses the use of their Prepaid Subleased apartments, and the damage or destruction is an Insured Casualty, then the proceeds therefrom shall be allocated as follows:

First: To the extent required under this Lease, to repair such damage or destruction if it can be repaired, or to protect, repair, and restore the remainder of the Premises if the Premises cannot be fully repaired;

Second: To pay any Prepaid Subleases and their Encumbrance Holder(s) as their respective interests may appear, who have permanently lost the use of an apartment subject to a Prepaid Sublease, the fair market value of such Prepaid Sublease, excluding any Prepaid Sublease Bonus Value thereof, provided, further, that if there are insufficient proceeds, the payment to each such Prepaid Sublessee and their respective Encumbrance Holders shall be reduced proportionally. As used in this Lease, "**Prepaid Sublease Bonus Value**" shall mean the then present value of the excess for the duration of such Prepaid Sublease of the fair market ground rent attributable to the apartment over the ground rent attributable thereto which is reserved by this Lease;

Third: To the Lessor in an amount sufficient to compensate it for its loss of rent and reversionary interest and, to the extent so received, Shadow Rent shall abate accordingly; and

Fourth: To the Encumbrance Holders, Lessor, and Lessee as their interests may appear.

B. Additional Insured Status and Scope of Coverage

The Lessor, which is the County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively Lessor and its Agents), shall be provided additional insured status under Lessee's General Liability policy with respect to liability arising from or connected with the Lessee's acts, errors, and omissions arising from and/or relating to the Lessee's operations on and/or its use of the premises. Lessor's additional insured status shall apply with respect to liability and defense of suits arising out of the Lessee's acts or omissions, whether such liability is attributable to the Lessee or to the Lessor. The full policy limits and scope of protection also shall apply to the Lessor as an additional insured, even if they exceed the Lessor's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

C. Cancellation of or Changes in Insurance

Lessee shall provide the Lessor with, or Lessee's insurance policies shall contain a provision that the Lessor shall receive, written notice of cancellation or any MATERIAL change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to the Lessor at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Lease only after Lessee has been provided at least thirty (30) days' notice and an opportunity to cure, in the sole discretion of the Lessor, upon which the Lessor may suspend or terminate this Lease.

D. Failure to Maintain Insurance

Lessee's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Lease, however, only upon sixty (60) days' notice to Lessee and an opportunity to cure, may the County suspend or terminate the Lease. County, at its sole discretion, may obtain damages from Lessee resulting

from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to Lessee, pursue Lessee reimbursement.

In the event that Lessee fails to obtain the insurance required by this Lease, and has not adopted an approved program of self-insurance under Section III. H., then the Five Authorized Mortgagees (as defined in Subsection 14.01.A (2)(c)), the Five Condominium Mortgagees (as defined in subsection 14.01.A (2)(d)), and the Owners Association shall have the right to place such insurance, in accordance with the provisions of this section, only after Lessee has been provided at least thirty (30) days' notice from the Owners Association and an opportunity to cure.

1. Meetings. At any time following receipt of a notice of cancellation or notice of nonrenewal from Lessee's insurance carrier, the Five Authorized Mortgagees, Five Condominium Mortgagees, and Owners Association shall each have the right to schedule a meeting of all three parties in order to determine who, if any, among them will place insurance. The Director shall also send a representative to this meeting if reasonably possible, although that representative shall attend for informational purposes only.
2. Notice. The party attempting to schedule a meeting shall send written notice of the time and place of the meeting to the other two and to Lessor no later than ten (10) days prior to the date for the meeting set forth in the notice. The meeting shall be scheduled during regular business hours.
3. Placement of Insurance. The parties shall place insurance as agreed at the meeting. Insurance so placed shall cure any default under this Lease attributable to the failure to place insurance as long as the placed insurance satisfies the requirements of this Lease.
4. Failure to Agree; Priority of Right. In the event that the parties fail to agree regarding the placement of insurance, if more than one of the parties attempts to schedule a meeting, or if more than one of the parties attempts to place insurance, then this subsection II.D.4. shall apply.
 - If only one of the parties is willing to place insurance which satisfies all of the requirements of this Lease, then that party shall place insurance.
 - If more than one party desires to place insurance which satisfies all of the requirements of this Lease, then the right to place such insurance shall belong to the parties in the following order: the Owners Association, the Five Condominium Mortgagees, and last to the Five Authorized Mortgagees.

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

F. 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 Lessor, except if such claim is related to a Sublease; in that case the Sublessee's insurance should be primary. Any Lessor maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Lessee coverage.

G. Waiver of Subrogation

To the fullest extent permitted by law, the Lessee hereby waives its and its insurer(s) rights of recovery against Lessor under required General Liability and Property insurance policies for any loss arising from or related to this Lease. The Lessee shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to affect such waiver.

H. Deductibles and Self-Insured Retentions (SIRs)

Lessee's policies shall not obligate the Lessor to pay any portion of any Lessee deductible or SIR.

I. Claims Made Coverage

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the start date of this Lease. Lessee understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Lease expiration, termination or cancellation.

J. Application of Excess Liability Coverage

Lessee may use a combination of primary and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

K. 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.

III. INSURANCE COVERAGE TYPES AND LIMITS

A. **Commercial General Liability Insurance** providing scope of coverage equivalent to ISO policy form CG 00 01, naming Lessor and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$30 million
Products/Completed Operations Aggregate:	\$30 million
Personal and Advertising Injury:	\$10 million
Each Occurrence:	\$15 million

B. **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 **Garagekeeper's Liability coverage** (written on ISO form CA 99 37 or its equivalent) with a limit of not less than \$1 million for the Leased premises. Garage Liability coverage is required for a Lessee whose businesses involve valet parking, car wash, parking lot management, and similar operations in which the Lessee takes custody or control of vehicles belonging to third parties.

C. **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 Lessee's employees will be engaged in maritime operations, coverage also shall be arranged to provide workers compensation benefits as required by the U.S. Longshore and Harbor Workers Compensation Act, Jones Act or any other federal law for which Lessee is responsible.

D. **Commercial Property Insurance.** Such coverage shall:

- Provide coverage for Lessee'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 Ordinance or Law Coverage, flood, and Business Interruption equal to two (2) years annual rent. **The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions, and such approval shall not**

be unreasonably withheld. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

- 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 the Lessee and Lessor as their interests may appear and be utilized for repair and restoration of the Premises.
 - Any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount, and content reasonably satisfactory to County so that such coverage provides the same protection as required under this Article 11 as if the insurance had been procured on an individual property basis.
- E. **Liquor Liability insurance** (written on ISO policy form CG 00 33 or 34 or their equivalent) shall be provided and maintained by the Lessee if and when the **manufacturing, distribution or service of alcoholic beverages occurs in the Premises**, with limits of not less than \$5 million per occurrence and \$10 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 Agreement, or replacement coverage shall be maintained until such time.
- F. **Marina Operator's Liability insurance** shall be provided and maintained by the Lessee if **operating a marina, berthing, docking, and/or launching of boats and/or pleasure crafts, and/or use of floating docks, piers and/or ramps**, with limits of not less than \$5 million per occurrence and \$10 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.
- G. **Construction Insurance.** For any construction projects, including any alterations or restorations of the Improvements on the Premises, Lessee or Lessee's contractor or subcontractors will provide the following insurance (Lessor will determine the coverage limits required on a project by project basis.):
- **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 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 Lessor furnished materials and equipment, against loss or damage until completion and acceptance by the Lessee and the Lessor if required. **The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions, and such approval shall not be unreasonably withheld. The County and its Agents shall be designated as an Additional Covered Party under any approved program.**

- **General Liability Insurance.** Such coverage shall be written on ISO policy form CG 00 01 or its equivalent, naming Lessor as an additional insured, with limits of not less than \$(determined on a project by project basis):

General Aggregate
Products/Completed Operations Aggregate
Personal and Advertising Injury
Each Occurrence

The Products/Completed Operations coverage shall continue to be maintained in the amount indicated above for at least two (2) years from the date the Project is completed and accepted by the Lessee and the Lessor if required.

- **Automobile Liability.** Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with limits of not less than \$(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 arising out of Lessee's or Lessee's contractor use of autos pursuant to this Lease, including owned, leased, hired, and/or non-owned autos, as each may be applicable.
- **Professional Liability.** Such insurance shall cover liability arising from any error, omission, negligent, or wrongful act of the Lessee's contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.) with limits of not less than \$(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.

- **Workers Compensation and Employers' Liability Insurance** or qualified self-insurance satisfying statutory requirements. 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 the Lessor for injury to the Lessee's or Lessee's contractor employees. If the Lessee's or Lessee's contractor 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 the 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 the Lessor as the Alternate Employer, and the endorsement form shall be modified to provide that Lessor will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision.
- **Asbestos Liability or Contractors Pollution Liability Insurance** is needed if construction requires remediation of asbestos or pollutants. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal, or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring, and treatment of asbestos in compliance with governmental mandate or requests. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the Lessee's or Lessee's contractor Automobile Liability Insurance **if available to obtain**. Lessee or Lessee's contractor shall maintain limits of not less than \$5 million for the project.

H. Self - Insurance. If it is no longer prudent to obtain the insurance required hereunder in light of the costs payable for the benefits obtained and Lessee adopts a program of self-insurance that is approved by the County, and such approval not to be unreasonably withheld, then Lessee shall not be in breach thereof if it fails to obtain such insurance. Self-insurance shall be deemed to be full insurance coverage in the amounts required by this Lease.

1. Notice of Intent. Not less than ninety (90) days prior to the expiration date of the existing insurance, Lessee shall notify the County of its desire to self-insure.
2. Submission of Program. Not less than seventy (70) days prior to the expiration of the date of the existing insurance, Lessee shall submit to the County a complete description of its proposed self-insurance program and sufficient supporting data to enable the County to make an informed evaluation and decision on Lessee's program.

3. County's Right to Challenge. The County shall have the right to challenge Lessee's decision to self-insure by written notice given within forty (40) days after County's receipt of the data required subsection III. H. 2., or at any time thereafter.
4. Right to Place Insurance. If the County challenges the decision to self-insure or the program of self-insurance, County shall have the right to place the insurance otherwise required by this Lease if Lessee does not otherwise obtain the insurance required under this Lease.
5. Arbitration. Any challenge under this Section III.H. shall be resolved by binding arbitration in accordance with Section 16.16. Should Lessor prevail, it shall be entitled to recover the cost of any insurance placed by Lessor, as well as all other fees and costs.

IV. ADJUSTMENT TO INSURANCE PROVISIONS

Adjustment to Amount of Liability Coverage. The amounts of liability coverage required under Sections III. A., III. B., III. C., and III. G. above shall be subject to renegotiation as of each fifth (5th) anniversary of Amendment No. 5, dated as of December 16, 2008, to the Lease (each, as "Insurance Renegotiation Date").

The Lessor reserves the right to review and adjust the Required Insurance provisions, conditioned upon Lessor's determination of changes in risk exposures, at the time of each Insurance Renegotiation.

If Lessor and Lessee cannot agree upon the amount of insurance by the sixtieth (60th) day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with Section 16.16 of the Lease. **The amounts of liability insurance shall only be decreased in the event that Lessor and Lessee specifically agree in writing to such reduction.** Following such negotiation or arbitration, the parties shall execute an amendment to this Lease setting forth the renegotiated insurance provisions or the arbitration judgment, as appropriate.

3. Counterparts. This Amendment may be signed in counterparts. Each counterpart represents an original of this Amendment and all such counterparts shall collectively constitute one fully-executed document.
4. Miscellaneous. Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and re-acknowledges its respective obligations under the Lease as amended hereby. In the event of a conflict between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall control.

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment No. 9 to Lease No. 55624 to be executed by the Chairman of said Board and attested by the Executive Officer thereof, and the Lessee or its duly authorized representative, has executed the same on the date first above written.

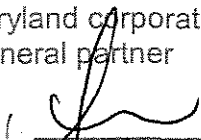
LESSEE

ESSEX MARINA CITY CLUB, L.P.,
A California limited partnership

By: Essex MCC, LLC,
A Delaware limited liability company,
Its general partner

By: Essex Portfolio, L.P.,
A California limited partnership,
Its sole member

By: Essex Property Trust, Inc.,
A Maryland corporation,
Its general partner

By: 
Name: Anne Morrison
Title: General Counsel, SVP

ATTEST:

THE COUNTY OF LOS ANGELES

CELIA ZAVALA,
Executive Officer
of the Board of Supervisors

By: _____
Deputy

By: _____
KATHRYN BARGER
Chair, Board of Supervisors

APPROVED AS TO FORM:

MARY C. WICKHAM,
County Counsel

By: 
Deputy

EXHIBIT A

LEGAL DESCRIPTION OF THE IMPROVED PARCEL

Parcels 527 to 537 inclusive, 540 to 580 inclusive, and 590 to 631 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, filed in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said County.

Together with a right of way for utility purposes in and across said Parcels 590 and 591, within the following described boundaries:

Beginning at the intersection of the northerly boundary of said Parcel 590 with a line parallel with and 5 feet westerly, measured at right angles, from the easterly line of said last mentioned parcel; thence South along said parallel line to the northerly line of the southerly 20 feet of said Parcel 591; thence North $77^{\circ}07'44''$ West along said northerly line to the westerly line of the easterly 90 feet of said last mentioned parcel; thence North along said westerly line to the northerly line of the southerly 31 feet of said last mentioned parcel; thence South $77^{\circ}07'44''$ East along said last mentioned northerly line to the westerly line of the easterly 15 feet of said last mentioned parcel; thence northerly along said last mentioned westerly line and its northerly prolongation to said northerly boundary; thence easterly along said northerly boundary to the point of beginning.

Also together with a non-exclusive right of way for pedestrian and vehicular ingress and egress purposes in and across said Parcel 603, 608 and 617, within a strip of land 20 feet wide, lying 10 feet on each side on the following described center line:

Beginning at the westerly terminus of that certain course of North $72^{\circ}24'01''$ West 75.86 feet in the northerly boundary of Parcel 605, as shown on said map; thence South $72^{\circ}24'01''$ East along said last mentioned certain course and its easterly prolongation 195.23 feet to the true point of beginning; thence South $4^{\circ}00'28''$ East 201.00 feet to the beginning of a tangent curve concave to the East and having a radius of 111.95 feet; thence southerly along said curve through a central angle of $44^{\circ}03'43''$ an arc distance of 86.09 feet to the beginning of a reverse curve concave to

the West and having a radius of 35 feet; thence southerly along said reverse curve through a central angle of $44^{\circ}03'43''$ a distance of 26.92 feet; thence South $4^{\circ}00'28''$ East tangent to said reverse curve 114.22 feet, more or less, to the southerly line of said Parcel 617;

The side lines of said 20 foot strip of land shall be prolonged or shortened at the beginning thereof so as to terminate in said easterly prolongation and shall be prolonged or shortened at the end thereof so as to terminate in said last mentioned southerly line.

Also together with a non-exclusive right of way for pedestrian and vehicular ingress and egress purposes in and across the northerly 5.5 feet of the southerly 11.0 feet of said parcels 613 to 617 inclusive, 591, 593, 595, 597 and 599.

Excepting from said northerly 5.5 feet that portion thereof which lies westerly of the easterly boundary of the above described 20 foot strip of land and that portion thereof which lies within the easterly 90 feet of said parcel 591.

Excepting therefrom that portion thereof within the following described boundaries:

Beginning at the southwesterly corner of said Parcel 541; thence North $85^{\circ}59'32''$ East along the southerly line of said last mentioned parcel a distance of 145.00 feet; thence North $4^{\circ}00'28''$ West 179.90 feet to the northwesterly line of said last mentioned parcel; thence North $34^{\circ}51'37''$ East along said northwesterly line 25.81 feet to the northerly line of said last mentioned parcel; thence North $85^{\circ}59'32''$ East along said northerly line 15.00 feet to the center line of that certain 20 foot easement for fire access, storm drain and harbor utility purposes, in said Parcels 537 and 540, as said center line is shown on said map; thence North $4^{\circ}32'55''$ West along said center line 173.94 feet to the northwesterly line of said Parcel 537; thence southwesterly and southeasterly along said last mentioned northwesterly line and the southwesterly line of said last mentioned parcel to the most westerly corner of said Parcel 540; thence southeasterly along the southwesterly line of said last mentioned parcel to said northwesterly line of Parcel 541; thence southwesterly along said last mentioned northwesterly line to the point of beginning.

Also excepting therefrom that portion thereof within the following described boundaries:

Beginning at the northeasterly corner of said Parcel 590; thence westerly along the northerly boundary of said last mentioned parcel to a line parallel with and 90 feet westerly, measured at right angles, from the easterly line of said last mentioned parcel; thence South along said parallel line 205.31 feet to the southerly line of said Parcel 591; thence North $77^{\circ}07'44''$ West along said southerly line to a point distant North $77^{\circ}07'44''$ West thereon 100.00 feet from the southeasterly corner of said last mentioned parcel; thence South $12^{\circ}52'16''$ West to a line parallel with and 80 feet southerly, measured at right angles, from said southerly line; thence South $77^{\circ}07'44''$ East along said last mentioned parallel line 56.73 feet to a line parallel with and 60 feet westerly, measured at right angles, from the easterly line of said Parcel 631; thence South along said last mentioned parallel line 123.09 feet to the southerly line of said last mentioned parcel; thence South $77^{\circ}07'44''$ East along said last mentioned southerly line to the southeasterly corner of said last mentioned parcel; thence North along the easterly lines of said Parcels 631, 591 and 590 a distance of 407.24 feet to the point of beginning.

Excepting further therefrom that portion thereof within the following described boundaries:

All of Parcels 592, 594, 596, 598, 600, 601, 602, 609 through 612 inclusive and those portions of Parcels 590, 591, 593, 595, 597, 599, 603, 608, 613, 614, 615, 616, and 617, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessors Map No. 88, filed in Book 1, Pages 53 to 70 inclusive, of Assessor's Maps, in the Office of the Registrar-Recorder of said County, described as a whole as follows:

Beginning at the westerly terminus of that certain course of North $72^{\circ}24'01''$ West 75.86 feet in the northerly boundary of Parcel 605, as shown on said map; thence South $72^{\circ}24'01''$ East along said last mentioned certain course and its easterly prolongation 195.23 feet to the true point of beginning; thence South $4^{\circ}00'28''$ East 201.00 feet to the beginning of a tangent curve concave to the East and having a radius of 111.95 feet; thence southerly along said curve through a central angle of $44^{\circ}03'43''$ an arc distance of 86.09 feet to the beginning of a reverse curve concave to the West and having a radius of 35 feet; thence southerly along said reverse curve through a central angle of

44°03'43" a distance of 26.92 feet; thence South 4°00'28" East tangent to said reverse curve 108.72 feet to a line parallel with and distant northerly 5.50 feet, measured at right angles, from the southerly line of said Parcel 617; thence easterly along said parallel line and its easterly prolongation East 516.80 feet to a line parallel with and distant northerly 5.50 feet, measured at right angles, from the southerly line of said Parcel 597; thence easterly along said last mentioned parallel line and its easterly prolongation South 77°07'44" East 317.35 feet to the westerly line of the easterly 90.00 feet of said Parcel 591; thence northerly along said westerly line and its northerly prolongation North 199.68 feet to a point on a curve concave northerly having a radius of 5964.65 feet a radial of said last mentioned curve at said last mentioned point bears South 15°15'08" West, said last mentioned curve also being the southerly line of Admiralty Way, 80 feet wide, as shown on said map; thence northwesterly along said last mentioned curve through a central angle of 2°20'51" an arc distance of 244.38 feet; thence continuing along said southerly line of Admiralty Way North 72°24'01" West 694.32 feet to said true point of beginning.

Reserving and excepting unto the County of Los Angeles a right of way for fire access, storm drain and harbor utility purposes in and across the above described parcel of land, within the following described boundaries:

Beginning at the intersection of the northerly line of said Parcel 541 with the center line of that certain 20 foot easement for fire access, storm drain and harbor utility purposes, in said Parcels 537 and 540, as said center line is shown on said map; thence North 4°32'55" West along said center line 173.94 feet to the northwesterly line of said Parcel 537; thence North 52°40'22" East along said northwesterly line to a line parallel with and 10 feet easterly, measured at right angles, from said center line; thence South 4°32'55" East along said parallel line to said northerly line; thence South 85°59'32" West along said northerly line to the point of beginning.

Reserving and excepting unto the County of Los Angeles a right of way for storm drain purposes in and across the above described parcel of land, within the following described boundaries:

Beginning at the intersection of a line parallel with and 10 feet easterly, measured at right angles, from the center line of that certain 20 foot easement for fire

access, storm drain and harbor utility purposes, in said Parcels 537 and 540, as said center line is shown on said map, with the northwesterly line of said Parcel 537; thence North $52^{\circ}40'22''$ East along said northwesterly line to a line parallel with and 26 feet easterly, measured at right angles, from said center line; thence South $4^{\circ}32'55''$ East along said last mentioned parallel line to the southerly line of the northerly 17 feet of said Parcel 541; thence South $85^{\circ}59'32''$ West along said southerly line 36.00 feet; thence North $4^{\circ}00'28''$ West 17.00 feet to the northerly line of said last mentioned parcel; thence North $85^{\circ}59'32''$ East along said northerly line to a line which bears North $4^{\circ}32'55''$ West and which passes through the point of beginning; thence North $4^{\circ}32'55''$ West to said point of beginning.

Also reserving and excepting unto the County of Los Angeles a right of way for fire access, sanitary sewer and harbor utility purposes in and across the above described parcel of land, within a strip of land 20 feet wide, lying 10 feet on each side of the following described center line:

Beginning at the westerly terminus of that certain course of North $72^{\circ}24'01''$ West 75.86 feet in the northerly boundary of Parcel 605, as shown on said map; thence South $72^{\circ}24'01''$ East along said last mentioned certain course and its easterly prolongation 195.23 feet to the true point of beginning; thence South $4^{\circ}00'28''$ East 201.00 feet to the beginning of a tangent curve concave to the East and having a radius of 111.95 feet; thence southerly along said curve through a central angle of $44^{\circ}03'43''$ an arc distance of 86.09 feet to the beginning of a reverse curve concave to the West and having a radius of 35 feet; thence southerly along said reverse curve through a central angle of $44^{\circ}03'43''$ a distance of 26.92 feet; thence South $4^{\circ}00'28''$ East tangent to said reverse curve 114.22 feet, more or less, to the southerly line of said Parcel 617;

The side lines of said 20 foot strip of land shall be prolonged or shortened at the beginning thereof so as to terminate in said easterly prolongation and shall be prolonged or shortened at the end thereof so as to terminate in said last mentioned southerly line.

Also reserving and excepting unto the County of Los Angeles a right of way for sanitary sewer purposes in and across the above described parcel of land, within a strip of land 6 feet wide, lying 3 feet on each side of the following described center line:

Beginning at the intersection of a line parallel with and 7 feet westerly, measured at right angles, from the center line of that certain 20 foot easement for fire access, storm drain and harbor utility purposes, in said Parcels 537 and 540, as said center line is shown on said map, with a line parallel with and 21 feet northerly, measured at right angles, from the northerly line of said Parcel 541; thence North $85^{\circ}59'32''$ East along said last mentioned parallel line 148.60 feet; thence North $4^{\circ}00'28''$ West to a line parallel with and 33 feet northerly, measured at right angles, from the northerly line of said Parcel 547; thence North $85^{\circ}59'32''$ East along said last mentioned parallel line 1272.43 feet.

The side lines of said 6 foot strip of land shall be prolonged or shortened so as to terminate at their points of intersection.

Excepting from said 6 foot strip of land that portion thereof which lies southerly of a line parallel with and 21 feet northerly, measured at right angles, from the northerly line of said Parcel 541.

Also excepting from said 6 foot strip of land that portion thereof which lies within the above described 20 foot strip of land for fire access, sanitary sewer and harbor utility purposes.

Also reserving and excepting unto the County of Los Angeles a right of way for sanitary sewer and harbor utility purposes in and across the above described parcel of land, within the following described boundaries:

Beginning at the intersection of the northerly line of said Parcel 541 with the center line of that certain 20 foot easement for fire access, storm drain and harbor utility purposes, in said Parcels 537 and 540, as said center line is shown on said map; thence North $4^{\circ}32'55''$ West along said center line to a line parallel with and 21 feet northerly, measured at right angles, from said northerly line; thence North $85^{\circ}59'32''$ East along said parallel line to a line parallel with and 11 feet northerly, measured at right angles, from the northerly line of said Parcel 621; thence East along said last mentioned parallel line to a line parallel with and 11 feet northerly, measured at right angles, from the northerly line of said Parcel 630; thence South $77^{\circ}07'44''$ East along said last mentioned parallel line to the westerly line of the easterly 90 feet of said parcel 591; thence South along said westerly line to the southerly

line of said last mentioned parcel; thence westerly along the southerly lines of said Parcels 591, 593, 595, 597, 599, 613 to 619 inclusive, 578, 575, 570, 567, 562, 559, 555, 552, 549, 546, 543 and 540 to the point of beginning.

Also reserving and excepting unto the County of Los Angeles a right of way for fire alarm purposes in and across the above described parcel of land, within a strip of land 3 feet wide, the northerly boundary of which is described as follows:

Commencing at the easterly terminus of that certain 960 foot radius curve in the northerly boundary of said Parcel 605; thence westerly along said curve and its westerly continuation 30.42 feet to the true point of beginning; thence easterly along said westerly continuation and said certain curve 30.42 feet to said easterly terminus; thence South $72^{\circ}24'01''$ East along the straight line in said northerly boundary and its easterly prolongation 195.23 feet.

Excepting from said 3 foot strip of land that portion thereof which lies within the above described 20 foot strip of land for fire access, sanitary sewer and harbor utility purposes.

Subject to non-exclusive rights of way for pedestrian and vehicular ingress and egress purposes in and across the above described parcel of land within the westerly 10 feet of the first above described 20 foot strip of land and within the southerly 5.5 feet of said parcels 613 to 617 inclusive, 591, 593, 595, 597 and 599, excepting from said southerly 5.5 feet that portion thereof which lies westerly of the easterly boundary of the above described 20 foot strip of land and that portion thereof which lies within the easterly 90 feet of said parcel 591, as set forth in the Amended and Restated Lease (Hotel Parcel) being entered into concurrently herewith covering property adjacent to the above described parcel.

DESCRIPTION APPROVED
NOV 12 1959

GEORGE Y. TICE, DIRECTOR
FACILITIES MANAGEMENT DEPARTMENT

BY *Richard Smith* DEPUTY