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Caring for Your Coast

Gary Jones
Director

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Chief Deputy

John Kelly
Deputy Director

Brock Ladewig
Deputy Director

March 15, 2016

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:

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

23 March 15, 2016

LORI GLASGOW
EXECUTIVE OFFICER

**DEPARTMENT OF BEACHES AND HARBORS: APPROVAL OF OPTION TO AMEND LEASE
AGREEMENT TO FACILITATE REDEVELOPMENT (Parcel 53 at 13555 Fiji Way) MARINA DEL
REY
(4th DISTRICT) (4 VOTES)**

SUBJECT

Request for approval of granting an option to extend the term of the existing Parcel 53 lease for the renovation of the boatyard and the complete redevelopment of the marina with 101 slips and 5 end ties. Exercise of the option is contingent upon Lessee's receipt of entitlements and fulfillment of other conditions required therein.

IT IS RECOMMENDED THAT THE BOARD:

1. Consider the Mitigated Negative Declaration for the Parcel 53 lease extension and renovation project together with any comments received during the public review period; find that the Mitigated Negative Declaration reflects the independent judgment and analysis of the Board; find that the Mitigation Monitoring and Reporting Program (MMRP) is adequately designed to ensure compliance with the mitigation measures during project implementation; find on the basis of the whole record before the Board that there is no substantial evidence the project will have a significant effect on the environment; adopt the MMRP; and adopt the Mitigated Negative Declaration.
2. Approve and authorize the Chair of the Board to sign the Option to Amend Lease Agreement in substantially the form attached as Attachment A (Option Agreement) for the Amended and Restated Lease Agreement, granting to the lessee, upon fulfillment of stated conditions, the right to extend the term of its existing ground lease on Parcel 53 by 39 years.

3. Approve and authorize the Chair of the Board to execute, upon confirmation by the Director of the Department of Beaches and Harbors (Department) that the lessee has fulfilled the option conditions, three copies of each of the following: (a) Amended and Restated Lease in substantially similar form to Exhibit A attached to the Option Agreement; and (b) a Memorandum of Lease as referenced in the Amended and Restated Lease Agreement, in form approved by County Counsel and County's outside counsel.

4. Authorize the Director of the Department to execute and deliver other ancillary documentation, including without limitation a ground lease estoppel certificate and consent to lease assignment to an affiliated entity, as required to facilitate the financing of the redevelopment work under the Amended and Restated Lease Agreement.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On September 13, 1999, your Board approved the assignment of the Parcel 53 lease to Harbor Real Estate Limited Partnership, a Delaware limited partnership (Lessee). More recently, Lessee entered into negotiations with the County to extend the lease for 39 years, from its current February 28, 2022, expiration date to February 28, 2061.

The proposed extension of the current lease would ensure the continued availability of a boat repair operation in Marina del Rey and allow for a redevelopment and renovation of the parcel that would result in an enhanced level of visitor-serving facilities, including a larger, more modern haul out facility.

Lessee will also pay an option fee of \$100,000 upon grant of the Option.

Upon exercise of the extension option, Lessee is required to spend no less than \$7.5 million for the entire project (Landside Improvements and Waterside Improvements). Lessee will commence construction of the Landside Improvements within 12 months after the effective date of the amended and restated lease (Effective Date) and commence construction of the Waterside Improvements within 18 months after the Effective Date. All of the redevelopment work will be substantially completed (Completion Date) on or before 36 months after the effective Date (Required Completion Date).

Lessee will have the right to extend the construction commencement date for both the Landside Improvements and the Waterside Improvements for two six (6)-month periods each. Lessee will pay \$15,000 for the first extension and \$25,000 for the second extension. Lessee will have the right to extend the Completion Date for two six (6)-month periods for both the Landside Improvements and the Waterside Improvements, paying \$25,000 for the first extension and \$35,000 for the second extension.

The following chart details the proposed terms of the 39-year lease extension for Parcel 53, as they relate to your Board's existing lease extension policy:

BOARD POLICY ITEM TERMS

REDEVELOPMENT

- The Redevelopment Work shall consist of the following
 - (a) Waterside Improvements:

- (i) demolition and replacement of existing dock structures to result in 101 newly-renovated slips;
- (ii) replacement of two restroom buildings with a single larger facility to include enclosed laundry rooms, heated washrooms, private lockers, and showers;
- (iii) travel lift ways to be widened to accommodate larger vessels and an additional 75-100 ton travel lift; and

(iv) replacement of engineer specified concrete areas in yard to accommodate higher loads produced by larger travel lift.

(b) Landside Improvements:

(i) creation of a public promenade along the Fiji Way frontage of the width set forth in the approved Final Plans and Specifications;

(ii) upgraded landscaping;

(iii) addition of fencing and partitions between the slips and yard areas;

(iv) pave and re-stripe parking areas; and

(v) installation of new signage on existing pylon along Fiji Way.

- Minimum Development Cost of not less than \$7.5 million.

- Commencing with the month following the month during which the earliest of the date of the substantial completion of the Landside Improvements, the date of the substantial completion of the Waterside Improvements, or the Required Completion Date occurs, and continuing during the remaining Term of the Lease, a Capital Improvement Fund to be funded monthly by Lessee in the amount of 0.5% of Lessee's total gross revenues derived from the leasehold will be maintained. The Capital Improvement Fund must be fully expended for Permitted Capital Expenditures by 5 years prior to the expiration date of the lease. All Permitted Capital Expenditures are subject to prior approval by the Director, not to be unreasonably withheld.

- Commencing with the month during which the first (1st) anniversary of the earlier of the Completion Date or the Required Completion Date occurs, and continuing each month thereafter until the completion of the Subsequent Renovation, a Subsequent Renovation Fund to be funded monthly by Lessee in the amount of 0.25% of Lessee's total gross revenues derived from the leasehold, will be maintained. The completion of the Subsequent Renovation must commence not earlier than January 1, 2035 and be completed not later than December 31, 2039. The Renovation Fund must be fully expended to physically reposition the project to then current market requirements. All Renovation Fund expenditures are subject to prior approval by the Director, not to be unreasonably withheld.

EXTENSION/LEASE TERM

- Option to extend lease term by 39 years, from 2/28/2022 to 2/28/2061.

- Option fee of \$100,000, payable immediately prior to Board approval of the option. The option fee payment is non-refundable.

EXTENSION FEE

- Extension fee of \$100,000, provided that the option fee is credited against and satisfies the extension fee.

MARKET RATE RENTS

- Minimum Rent:

- During the period from the Effective Date through the earlier of the Completion Date or the Required Completion Date, the Annual Minimum Rent shall be Two Hundred Sixty-Four Thousand Nine Hundred Eighty-Four Dollars (\$264,984.00) per year.

- For the period commencing on the earlier of the Completion Date or the Required Completion Date and continuing until the last day of first February that is at least 3 years thereafter, the Annual Minimum Rent per year shall be the greater of (a) Two Hundred Sixty-Four Thousand Nine Hundred Eighty-Four Dollars (\$264,984.00) per year; or (b) seventy-five percent (75%) of the annual average

total of the annual square foot rental payable under Section 12 of the Existing Lease and the annual percentage rental payable under Section 13 of the Existing Lease, for the five (5) full Lease Years preceding the Effective Date.

- Effective every three (3) years after the period described in the paragraph directly above, and thereafter effective each third (3rd), sixth (6th) and ninth (9th) anniversaries of each Renegotiation Date, the Annual Minimum Rent shall be adjusted to the greater of (a) the amount equal to seventy five percent (75%) of the average total Annual Minimum Rent and Percentage Rent payable by Lessee during the five (5) Lease Years immediately preceding the Adjustment Date; or (b) the Annual Minimum Rent in effect for the period immediately preceding the Adjustment Period.

- Percentage rents:

Boat Slips: 25% of gross receipts.

Dry Storage: 10% of gross receipts

Boat Brokers, Dealers, and Repair Businesses: 16% of all revenues received by Lessee from sublessees including any pass through expenses.

Parking: 20% of gross receipts.

Cable/internet/satellite/telecommunications: 5% of gross receipts/20% of commissions from operator
Charter boat, bareboat charters and sportfishing boats: 6% of gross receipts/20% of commissions from operator

Restaurant: 3% of gross sales

Telephone/vending: 5% of gross receipts/ 25% commissions from operator

Sale of Gasoline: 6% of gross receipts

Sightseeing boats, touring boats, water taxis: 5% of gross receipts

Boat yard repairs: 4% of gross receipts

Hauling, launching: 4% of gross receipts

Ship chandlery sales (retail); 2%

Ship chandlery sales (wholesale): 1%

Misc.: 5.0% of gross receipts.

- Renegotiation of Annual Minimum and Percentage Rents. Effective as of the first March 1 that follows the tenth (10th) anniversary of the Effective Date, and each ten (10) years thereafter the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value of the Premises.

PARTICIPATION IN SALE AND REFINANCE

- Sale Participation: Greater of 5% of the Gross Proceeds or 20% of Net Proceeds upon assignment or other direct or indirect transfer of leasehold (but not more than actual Net Proceeds).

- Refinance Participation: 20% of net loan proceeds not invested or reinvested in leasehold.

COUNTY ADMIN. COSTS

- Lessee agrees to reimburse County for all reasonable costs associated with lease negotiations and option and lease preparation, including all appraisal, consultant and legal costs.

COUNTY INCOME CONTINUITY

Ensure County revenue flow during development

- Minimum rent from the Effective Date through the earlier of the Completion Date or the Required Completion Date, shall be \$264,984.00 per year and percentage rent to remain in place during construction.

RIGHT TO RECAPTURE

- County has the right to purchase the leasehold interest if Lessee desires to either assign or sell the leasehold or a controlling interest in Lessee.

ARBITRATION

- Arbitration will use rent-a-judge procedure. "Baseball" type arbitration provision.

LEASE ASSIGNMENT - DISCLOSURE ISSUES

- Lease assignment and ownership disclosure requirements in accord with standard County policy.

DOCKMASTER

- Lessee to employ a dockmaster to manage waterside docks for the entirety of the lease term.

PROMENADE

- Lessee to construct promenade along Fiji Way frontage subject to County's reasonable approval of plans.

ENTITLEMENTS: SITE COVERAGE, HEIGHT & LAND USES

- Density, site coverage, open space, view corridor, building height, entitlement and land uses are subject to Lessee obtaining all planning and entitlement approvals.

Additional Matters

OTHER TERMS

- a) Maintenance standards for improvements to conform to Marina del Rey standards as set forth in the new lease document. Liquidated damages of \$100 per day (adjusted for inflation) for each cited maintenance deficiency at each parcel that remains uncured after a specified cure period, to be assessed against the security deposit.
- b) Lessee shall keep facility including all maintenance and repair infrastructure in good working order and condition at all times. If Lessee discontinues operations of the boatyard facilities, the lease may be considered in default.
- c) Lease administrative items include: a) late fee of 6% plus interest at prime plus 3% for any late payments; b) security deposit equal to three months' minimum rent; c) insurance levels set upon execution of the lease and renegotiated every five years thereafter; d) County approval rights over all construction plans and specifications; e) enhanced audit and record-keeping standards; and f) all trimming of trees in accordance with the Marina del Rey Tree Trimming Policy.

Because the Boatyard serves a recreational need and public serving purpose for the marina, a fair market value analysis is not required and no appraisal was conducted for this lease extension. The statement to the SCHC to the contrary was in error.

Implementation of Strategic Plan Goals

In furtherance of County Goal #1, "Service Excellence," and Goal #4, "Fiscal Responsibility," the recommended action will allow the Department to implement that portion of its Strategic Plan that enhances strategic partnerships with existing and prospective lessees through proactive implementation of the Marina del Rey Asset Management Strategy toward enhancing public access to and enjoyment of the Marina through property redevelopment and updated lease provisions.

FISCAL IMPACT/FINANCING

The Amended and Restated Lease for Parcel 53 will produce the following fiscal benefit to the County: (a) an option fee; and (b) revenue increases due to renovation of the boat yard and replacement of the marina. Each component is discussed in detail below.

Option Fee

Lessee shall pay an option fee of \$100,000 for the Option, payable upon County's grant of the Option.

Revenue Increase Due to Project Redevelopment

The total revenue derived from Parcel 53 during Fiscal Year 2014-2015 was \$342,651. After stabilization (projected in 2020), the new project is projected to increase annual County rent by \$63,000 to \$408,256.

Operating Budget Impact

Upon your Board's approval of the Option, the Department of Beaches and Harbors operating budget will include the one-time \$100,000 Option Fee stated above. This revenue was not included in the Fiscal Year 2015-16 Final Adopted Budget, therefore it will be accounted for as one-time over-realized revenues.

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

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The existing 60-year lease for Parcel 53 commenced as of March 1, 1962, and expires on February 28, 2022. Parcel 53 consists of 4.23 acres of land currently improved with showrooms, offices and boat repair services facilities, and 2.98 acres of water currently improved with 103 slips and 5 end ties (excluding work docks). Parcel 53 is located on Fiji Way, south of Basin H and Burton W. Chase Park (across Basin H), west of Parcel 52, north of the Ballona Wetlands, and west of Parcel 54, another boat yard operation.

Approval of the Option is without prejudice to the County's full exercise of its regulatory authority in the consideration of the land use entitlements required for the possible exercise of the Option.

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

On January 13, 2016, the Small Craft Harbor Commission unanimously endorsed the recommendation to approve the Option and the Amended and Restated Lease for Parcel 53 in the form attached. County Counsel has approved the documents as to form.

ENVIRONMENTAL DOCUMENTATION

On March 25, 2015, the Regional Planning Commission (Commission) considered and adopted a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) for the proposed project in compliance with the California Environmental Quality Act (CEQA). The Initial Study for the project concluded that there are certain potentially significant environmental impacts associated with the project that can be reduced to less than significant with the implementation of proposed mitigation measures. There have been no substantial changes to the approved project since the adoption of the MND and MMRP by the Commission. The recommended actions do not raise any new or substantive environmental impacts.

CONTRACTING PROCESS

Lessee acquired the leasehold interest in the parcel through a leasehold assignment approved by your Board on September 13, 1999. Lessee entered into negotiations with the County to extend the lease term for Parcel 53. Upon Lessee's demonstration that it has satisfied the conditions for exercise of the Option, including the receipt of all discretionary planning and zoning land use entitlements and approvals required to be obtained from governmental authorities for construction of the development project associated with that Option, the Department will present to the Executive Officer the final confirmation that the conditions for exercise contained in the Option have been satisfied and will request execution of the Amended and Restated Lease Agreement for Parcel 53 in substantially similar form to Exhibit A attached to the Option.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

It is requested that the Executive Officer, Board of Supervisors, send two original copies of the executed Option Agreement and an adopted Board Letter to the Department. Should you have any questions please contact Don Geisinger at (310) 305-9506 or dgeisinger@bh.lacounty.gov.

The Honorable Board of Supervisors
3/15/2016
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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Jones', with a stylized, looping initial 'G'.

GARY JONES
Director

GB:BL:dlg

Enclosures

c: c: County Counsel

**OPTION TO AMEND LEASE AGREEMENT
(Parcel 53)**

THIS OPTION TO AMEND LEASE AGREEMENT (“**Agreement**”) is made and entered into as of March 15, 2016 by and between the COUNTY OF LOS ANGELES (“**County**”) and HARBOR REAL ESTATE LIMITED PARTNERSHIP, a Delaware limited partnership (“**Lessee**”).

R E C I T A L S

A. County, as lessor, and Playa Del Rey Marina Supply company, Inc., as lessee, entered into Lease No. 5691 dated June 19, 1962 (as amended prior hereto, the “**Existing Lease**”), concerning the lease of certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 53, as more particularly described in the Existing Lease (the “**Premises**”).

B. The term of the Existing Lease is currently scheduled to expire on February 28, 2022 (the “**Existing Expiration Date**”).

C. Lessee is the current owner of the leasehold interest under the Existing Lease.

D. Lessee has requested County, and County is willing, to grant Lessee an option to amend and restate the Existing Lease in its entirety upon the terms and conditions more specifically set forth in this Agreement, including, without limitation, (i) an extension of the term of the Existing Lease through February 28, 2061, and (ii) the redevelopment and renovation of the Premises in accordance with the terms and provisions hereof.

A G R E E M E N T

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

1. Grant of Option. County hereby grants to Lessee an option (the “**Option**”) to amend and restate the Existing Lease in its entirety upon the terms and conditions more specifically provided in this Agreement, including, without limitation (i) an extension of the term of the Existing Lease through February 28, 2061, and (ii) the redevelopment and renovation of the Premises and the Improvements (as defined in the form of Restated Lease) located thereon. Such amended and restated lease shall be in the form of the Amended and Restated Lease Agreement attached to this Agreement as Exhibit A (the “**Restated Lease**”).

2. Option Term. The term of the Option (the “**Option Term**”) shall commence on the date of this Agreement and expire on that date (the “**Option Expiration Date**”) that is the earlier of (i) sixty (60) days following the Conditions Satisfaction Date (as defined below), or (ii) the date that is six (6) months following the date of this Agreement (the “**Outside Expiration Date**”). For purposes hereof, the “**Conditions Satisfaction Date**” shall mean the first date upon which both of the Option Conditions set forth in Section 3 below have been satisfied.

If by the Outside Expiration Date set forth above in this Section 2 (as such Outside Expiration Date may have been previously extended as set forth herein) the Conditions Satisfaction Date has not occurred and in the reasonable judgment of the Director of the Department of Beaches and Harbors of the County (the “**Director**”) Lessee has been unable, despite Lessee’s diligent efforts, to satisfy the Option Conditions due to causes beyond the reasonable control of Lessee (including, without limitation, Unreasonable County Activity), then upon Lessee’s request Director shall extend the Outside Expiration Date for up to six (6) months to permit Lessee additional time to satisfy the Option Conditions. There shall be no extension of the Outside Expiration Date if as of the original Outside Expiration Date there is an outstanding uncured Lessee Default (as defined in Section 10.12 below) or if Lessee is in material breach or default of the Existing Lease after notice and the expiration of any applicable cure period applicable under the Existing Lease. If Lessee desires to have the Outside Expiration Date extended pursuant to this paragraph, then not later than thirty (30) days prior to the Outside Expiration Date Lessee shall deliver to Director the following: (a) Lessee’s written request for the extension (the “**Extension Request**”), and (b) a fee of Twenty-Five Thousand Dollars (\$25,000.00) (the “**Option Term Extension Fee**”). The Option Term Extension Fee shall be non-refundable and shall be in addition to the Option Fee. The Extension Request shall include a description of Lessee’s efforts to satisfy the Option Conditions and the status and Lessee’s good faith estimate of the projected date for satisfaction of the Option Conditions. Notwithstanding the foregoing, if Lessee reasonably expects to satisfy the Option Conditions prior to the original Outside Expiration Date, but during the thirty (30) day period immediately preceding the original Outside Expiration Date a condition first arises or an event first occurs that prevents Lessee from satisfying the Option Conditions by the original Outside Expiration Date, then the required date by which Lessee must deliver the Extension Request and the Option Term Extension Fee shall be extended to promptly following Lessee’s discovery of the condition or event that will delay its satisfaction of the Option Conditions beyond the original Outside Expiration Date. If Director determines not to grant the extension of the Outside Expiration Date requested by Lessee pursuant to the terms and provisions of this paragraph, then Lessee shall have the right, within thirty (30) days following Director’s denial of such extension, to submit a written request to the Board of Supervisors of County to reconsider such denial by the Director.

Notwithstanding the limitation of the extension of the Outside Expiration Date to the 6-month extension period set forth in the immediately preceding paragraph, in the case of the non-satisfaction of the Entitlements Condition (as defined in Section 3 below), if Lessee’s inability to satisfy the Entitlements Condition is caused by (I) a moratorium which prohibits the issuance of the Entitlements for the Redevelopment Work (as defined in Section 5.1 of the form of Restated Lease) and all other similar projects in Marina del Rey on land leased from the County, (II) a temporary restraining order, injunction or other court order obtained by a third party unaffiliated with Lessee that prohibits the issuance of the Entitlements for the Redevelopment Work, or (III) after the issuance of the Entitlements, the continued pendency of an appeal, proceeding or litigation (including all appeals of such litigation) brought by a third party unaffiliated with Lessee that contests the issuance of the Entitlements, then as long as there is not a Lessee Default under this Agreement and Lessee is not in material breach or default of the Existing Lease (after notice and the expiration of any applicable cure period under the Existing Lease), the Outside Expiration Date shall be extended until sixty (60) days following the cessation of such moratorium, temporary restraining order, injunction or other court order, or the denial, dismissal or other resolution in favor of the issuance of the Entitlements, of such

appeal, proceeding or litigation that contested the issuance of the Entitlements, as applicable; provided, however, that the Outside Expiration Date shall in no event be extended for more than a one (1) year period pursuant to this paragraph.

3. Option Conditions. In addition to any other requirements for exercise of the Option set forth in this Agreement, the exercise by Lessee of the Option shall be subject to the satisfaction of the following two conditions (the “**Option Conditions**”):

3.1 Lessee shall have received all discretionary planning and zoning land use entitlements and approvals required to be obtained from governmental authorities (including, without limitation, the Marina del Rey Design Control Board, County Department of Regional Planning, County Board of Supervisors and California Coastal Commission, as applicable) for the construction of the Redevelopment Work (collectively, the “**Entitlements**”), and (a) such Entitlements shall remain in effect and not be scheduled to expire prior to the commencement of construction of the Redevelopment Work, (b) the Entitlements shall not be subject to further appeal, and (c) there shall be no proceeding or litigation pending to appeal the issuance of the Entitlements, or to enjoin or restrain the performance of the Redevelopment Work (not including any proceeding or litigation brought by or on behalf of Lessee or any direct or indirect partner, shareholder or member of, or any other person or entity affiliated with, or otherwise directly or indirectly having an ownership interest in, Lessee), or if such a proceeding or litigation has been pending, then a dismissal, decision or judgment shall have been issued in favor of the validity of the Entitlements, which dismissal, decision or judgment shall not be subject to further appeal (collectively, the “**Entitlements Condition**”); provided, however, that Director shall have the authority (but no obligation) to waive the building permit requirement set forth above in Director’s discretion;

3.2 Lessee shall have obtained Project Financing (as defined below) for the Redevelopment Work (the “**Project Financing Condition**”). For purposes of this Agreement, “**Project Financing**” means a construction loan from an institutional lender or lenders, at an interest rate or rates and on other terms that are commercially reasonable, in amounts that when combined with Lessee’s equity is reasonably expected to provide sufficient funds to complete the Redevelopment Work, all as approved by Director in accordance with the terms and provisions of Section 12.1 of the form of Restated Lease, which approval shall not be unreasonably withheld, conditioned or delayed. If Lessee desires to fund the cost of the Redevelopment Work entirely from Lessee equity, then upon demonstration by Lessee to the reasonable satisfaction of Director of the availability of adequate equity funds, Lessee shall be considered to have satisfied the condition of obtaining Project Financing set forth in this Section 3.2. If, prior to either the exercise of the Option or the Effective Date of the Restated Lease, this Agreement and/or the Option are assigned to an assignee, then Director shall have the right to require that, as a condition to County’s obligation to execute the Restated Lease, a completion guaranty with respect to the Redevelopment Work, in such form as is acceptable to Director in the exercise of Director’s good faith judgment, be executed as of the Effective Date of the Restated Lease by such person(s) and/or entity(ies) as are acceptable to Director in the exercise of Director’s good faith judgment.

4. Exercise of Option. The Option shall be exercisable by Lessee only by Lessee’s strict satisfaction on or before the Option Expiration Date of the following terms and conditions (the “**Exercise Requirements**”): (a) Lessee shall notify County in writing of its

exercise of the Option (“**Exercise Notice**”); (b) Lessee shall accompany the Exercise Notice with (i) Lessee’s execution and delivery to County of the Restated Lease with any additional terms provided in this Agreement and any blank or bracketed terms set forth in Exhibit A hereto completed in accordance with the terms and provisions of this Agreement; and (ii) payment of the amount, if any, by which the Security Deposit required under Article 7 of the form of Restated Lease exceeds the amount of the security deposit then maintained by Lessee with County pursuant to Section 7 of the Existing Lease; (c) as of the date of Lessee’s delivery of the Exercise Notice there shall not be a Lessee Default under this Agreement nor shall Lessee be in material breach or default under the Existing Lease after notice from County and the expiration of any applicable cure period set forth in the Existing Lease; (d) the Conditions Satisfaction Date shall have occurred and there shall be no change in circumstances after the Conditions Satisfaction Date that causes the Option Conditions to no longer continue to be satisfied; (e) Director shall have approved all plans, specifications and other materials for the Redevelopment Work required to be submitted to Director pursuant to Section 6.3 of this Agreement. Upon Lessee’s proper and timely exercise of the Option, County shall execute and deliver the Restated Lease as soon as reasonably possible thereafter, but, in any event not later than forty-five (45) days following the date of Lessee’s exercise of the Option. The Effective Date of the Restated Lease (as defined in the form of Restated Lease) shall be the date the Restated Lease is executed and delivered by County, which date shall be inserted into page 1 of the Restated Lease concurrent with County’s execution and delivery thereof. If Lessee’s Project Financing is in a position to close within the above forty-five (45) day period, County agrees to cooperate with Lessee to effectuate a concurrent closing of the Project Financing and County’s delivery of the Restated Lease such that the Effective Date of the Restated Lease is the same as the date of the close of Lessee’s Project Financing; provided, however, in no event shall such agreement to cooperate be interpreted to require County to delay the execution and delivery of the Restated Lease beyond such forty-five (45) day period; and provided, further, that County shall not be required to execute and deliver the Restated Lease unless within such forty-five (45) day period Lessee continues to satisfy the Option Conditions and Lessee’s Project Financing is in a position to close on or before the execution and delivery by County of the Restated Lease. Notwithstanding the foregoing, Director shall have the authority in the exercise of Director’s good faith judgment, but not the obligation, to extend the forty-five (45) day period in which Lessee is required to close Lessee’s Project Financing for up to an additional thirty (30) days.

The failure of Lessee’s Project Financing to close or Lessee’s continuing satisfaction of the conditions to County’s required execution and delivery of the Restated Lease during the above forty-five (45) day period (as such period may be extended by Director pursuant to the last sentence of the immediately preceding paragraph) shall not in and of itself cause a termination of the Option, and, as long as the Option Term has not expired, Lessee shall have the continuing right to subsequently re-exercise the Option during the remainder of the Option Term if Lessee once again satisfies all conditions to such exercise, subject to Lessee causing the closing of the Project Financing and the continued satisfaction of the conditions to County’s execution and delivery of the Restated Lease during the forty-five (45) day period (as such period may be extended by Director pursuant to the last sentence of the immediately preceding paragraph) following such subsequent re-exercise of the Option, in accordance with the terms and provisions of this Section 4.

5. Option Fee. In consideration of County's grant of the Option to Lessee, Lessee shall pay to County concurrent with Lessee's execution of this Agreement the sum of One Hundred Thousand Dollars (\$100,000.00) (the "**Option Fee**"). The Option Fee shall be non-refundable. If Lessee exercises the Option, then the Option fee shall be credited against and satisfy the payment of the Extension Fee referenced in the Restated Lease.

6. Entitlements and Plan Preparation During Option Term.

6.1 Obtaining Entitlements. During the Option Term, Lessee shall use its diligent efforts to satisfy the Option Conditions as soon as possible. Such efforts shall include Lessee's expenditure of such funds, including, without limitation, application fees, travel costs, architectural fees and consulting and lobbying fees, as reasonably necessary to expedite the permit, license and other approval processes.

6.2 County Cooperation. In its proprietary capacity, the Department of Beaches and Harbors of the County of Los Angeles (the "**Department**") shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the Entitlements. Such cooperative efforts may include the Department's joinder in any application for the Entitlements, where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Costs (as defined in the form of Restated Lease) incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding any contrary provision of this Agreement, Lessee and County acknowledge that the approvals given by County under this Agreement and/or the Restated Lease shall be approvals pursuant to its authority under Section 25536 or 25907 of the California Government Code and given in its proprietary capacity; that approvals given under this Agreement and/or the Restated Lease in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of the Redevelopment Work and operation and other use of the Premises and Improvements; and that the Department's duty to cooperate and County's approvals under this Agreement and/or the Restated Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Agreement and/or the Restated Lease.

For the purposes of this Agreement, "**Unreasonable County Activity**" means any of the following actions (or inactions) that occur after the date of this Agreement and prior to the expiration of the Option Term: (i) the Department's failure to provide required County joinder, if any, as fee title owner of the Premises, in Lessee's submittal to the applicable governmental agency of the Final Plans and Specifications (as defined in Section 5.3 of the form of Restated Lease) for the Redevelopment Work that are approved by the Department; or (ii) the Department's failure to take such other actions, at no cost or expense to County, in its proprietary capacity, that are reasonably requested by Lessee and which are necessary for Lessee to proceed with the permitting and approval process, or the taking by the Department of actions in its proprietary capacity, without Lessee's consent, which are in conflict with Lessee's rights and obligations under this Agreement and actually delay the receipt of the Entitlements; or (iii) the Department's failure to comply with the time periods imposed upon the Department under Section 6.3 below, except in the case (if any) where a failure of the Department to notify Lessee of its approval or disapproval of a matter constitutes County's deemed approval of such matter, or constitutes County's deemed disapproval of such matter and County's disapproval of such

matter is authorized under the circumstances. Nothing contained in this Section 6.2 or the other provisions of this Agreement shall be construed as obliging the Department or the County to support proposals, issue permits, or otherwise act in a manner inconsistent with County's actions under its regulatory powers. It shall not be Unreasonable County Activity if County fails to accelerate the County's customary regulatory permit or approval process. No action or inaction shall constitute Unreasonable County Activity unless and until all of the following procedures and requirements have been satisfied:

(a) Within a reasonable time under the circumstances, Lessee must notify Director in writing of the specific conduct comprising the alleged Unreasonable County Activity, and the next opportunity, if any, for County to rectify such alleged conduct. If Lessee fails to notify Director in writing as specified in the immediately preceding sentence within five (5) days following Lessee's discovery of the alleged Unreasonable County Activity, then notwithstanding any contrary provision of this Section 6.2, in no event shall Lessee be entitled to any extension of the Option Term for any period of the delay under this Section 6.2 that occurred prior to the date of Lessee's notice described in this paragraph (a).

(b) Within seven (7) days following receipt of the notice alleging Unreasonable County Activity, Director shall meet with Lessee or its authorized representative in order to determine whether Unreasonable County Activity has occurred and, if so, how such Unreasonable County Activity can be rectified and the duration of the delay caused by such Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred and that County can and will take rectifying action, then the amount of delay under this Section 6.2 for the Unreasonable County Activity shall equal the actual amount of delay in the receipt of the Entitlements directly caused by the Unreasonable County Activity. If Director determines that Unreasonable County Activity has occurred, but that County cannot take rectifying action (or if the proposed rectifying action will not produce the results desired by Lessee), then Lessee and Director shall establish the length of the delay in the receipt of the Entitlements likely to be caused by the Unreasonable County Activity.

(c) If, within fourteen (14) days following receipt of Lessee's notice alleging Unreasonable County Activity, Director and Lessee have not agreed in writing as to whether delay in the receipt of the Entitlements due to Unreasonable County Activity has occurred or the length of such delay, then the matter shall be referred to the Board of Supervisors of the County for such determination.

6.3 Plans and Specifications for Redevelopment Work. The Redevelopment Work shall be constructed by Lessee in accordance with and subject to the terms and provisions of Article 5 of the form of Restated Lease. The requirements of Article 5 of the form of Restated Lease include, without limitation, the obligation of Lessee to prepare and submit to the Director for the Director's approval certain plans, specifications, construction cost estimates and other materials pertaining to the Redevelopment Work (which shall not be unreasonably conditioned, withheld or delayed), as set forth in more detail in Section 5.3 of the form of Restated Lease. The procedure for the preparation, submittal and approval of the plans, specifications, construction cost estimates and other materials shall generally proceed in accordance with the terms and provisions of the form of the Restated Lease, except that during the period

commencing on the date of this Agreement and expiring on the earlier of Lessee's exercise of the Option or the Option Expiration Date, Lessee shall prepare and submit to Director for Director's approval (which shall not be unreasonably conditioned, withheld or delayed), any portions of the plans, specifications and other materials described in Section 5.3 of the form of Restated Lease that are required to be submitted to governmental authorities (including the County, the Marina del Rey Design Control Board, the County Department of Regional Planning and the California Coastal Commission, as applicable) in connection with Lessee's applications for or receipt of the Entitlements for the Redevelopment Work. Lessee shall accompany such plans, specifications and other materials with the construction cost estimates described in Section 5.3 of the form of Restated Lease, as applicable. The standards and time periods for Director's review and approval of the materials submitted by Lessee pursuant to this Section 6.3 shall be in accordance with the terms and provisions of Section 5.3 of the form of Restated Lease, which terms and provisions are hereby incorporated into this Agreement by reference. Such plans, specifications and other materials shall be prepared and submitted to Director by Lessee in accordance with a schedule which shall facilitate Lessee's satisfaction of all conditions precedent to the exercise of the Option on or before the Option Expiration Date. In addition to the plans, specifications and materials required to be submitted by Lessee to Director pursuant to this Section 6.3, Lessee shall have the right, at its election, but not the obligation, to deliver to Director, for Director's approval, additional plans, specifications and materials pertaining to the Redevelopment Work. Director shall notify Lessee of its approval or disapproval of such additional plans, specifications and materials within the time frames and in accordance with the requirements of Section 5.3 of the form of Restated Lease. Notwithstanding the foregoing, County acknowledges that prior to the date of this Agreement Director has reviewed and approved the schematic plans and narrative description of the Redevelopment Work required under Subsection 5.3.1 of the form of Restated Lease. Such approved schematic plans and narrative description of the Redevelopment Work are set forth or referenced in the Redevelopment Plan attached as Exhibit B to the Restated Lease.

7. Non-Exercise Lease Amendment. If Lessee does not exercise the Option on or before the Option Expiration Date (or the Option is not exercisable by the Option Expiration Date), then (a) the Option shall automatically terminate, and (b) at County's election by written notice from Director to Lessee, the Existing Lease shall be considered to be (or to have been) automatically amended effective as of the Option Expiration Date (the "**Effective Amendment Date**") as follows (the "**Non-Exercise Amendment**"):

(i) delete Sections 11, 13 and 14 of the Existing Lease and insert Subsection 4.2.2 of the form of Restated Lease in lieu of such Sections 11, 13 and 14 (for purposes hereof, all references in such Subsection 4.2.2 to "Annual Minimum Rent" or "Monthly Minimum Rent" shall mean and refer to the square foot rental (payable annually or monthly, as applicable) referenced in Section 12 of the Existing Lease, as amended below);

(ii) the square foot rental payable under Section 12 of the Existing Lease shall be adjusted as of the Effective Amendment Date and each three (3) years thereafter through the remaining term of the Existing Lease to equal seventy-five percent (75%) of the average total annual rent that was payable by Lessee under the Existing Lease during the three (3) year period immediately preceding each such adjustment date, provided that in no event shall the annual square foot rental ever be reduced to be less

than the annual square foot rental required to be paid under Section 12 of the Existing Lease as of the date immediately prior to each such adjustment;

(iii) amend and restate Section 18 of the Existing Lease in full in accordance with Sections 2.2 and 2.3 of the form of Restated Lease;

(iv) amend and restate Section 22 of the Existing Lease in full in accordance with Article 11 (excepting Subsections 11.2.4 and 11.2.5) and Article 12 (excepting Sections 12.3.6 and 12.12) of the form of Restated Lease, provided that all references in such Articles 11 and 12 to Net Proceeds Share, Net Refinancing Proceeds and Sections 4.6 through 4.8 shall be deleted;

(v) add Section 4.5 of the form of Restated Lease to the Existing Lease;

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

(vii) amend Sections 26 and 27 of the Existing Lease to adjust the amount and scope of commercial general liability, automobile liability, garagekeeper's legal liability, workers compensation and employer's liability insurance coverage required to be carried by Lessee to equal the amounts and coverages set forth in Subsections 9.1.1, 9.1.2 and 9.1.3 of the form of Restated Lease, to add to Section 26 of the Existing Lease the provisions of Subsection 9.1.7 of the form of Restated Lease, and to add to Section 26 of the Existing Lease the provisions of Section 9.6 of the form of Restated Lease;

(viii) amend and restate Sections 8 and 10 of the Existing Lease in accordance with Sections 5.3, 5.4, 5.7, 5.8, 5.9 and 5.10 of the Restated Lease, except that all references to the "Redevelopment Work" shall be deleted and the terms and conditions of such Sections shall be applicable only to "Alterations;"

(ix) amend and restate Sections 30, 31 and 32 of the Existing Lease in full in accordance with Article 14 of the form of Restated Lease, except that all references in Article 14 of the form of Restated Lease to "Net Proceeds Share," "Net Refinancing Proceeds" and "Permitted Capital Expenditures" shall be deleted;

(x) add the last sentence of Section 10.1 and all of Section 10.2 of the form of Restated Lease to the Existing Lease (for purposes hereof, the reference in Section 10.2 of the form of Restated Lease to "Section 10.1 above" shall mean and refer to Section 35 of the Existing Lease, as amended); and

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

For purposes of the Non-Exercise Amendment, all references in the form of Restated Lease to the "Effective Date" shall mean and refer to the Effective Amendment Date set forth above. Within thirty (30) days after request by County, County and Lessee shall execute

and deliver a written document confirming the modifications to the Existing Lease set forth in this Section 7, but Lessee's failure to execute such written document upon request by County shall not affect the effectiveness of the Non-Exercise Amendment, which, at County's election by written notice from Director to Lessee, shall become automatically effective as of (or retroactive to) the Option Expiration Date if Lessee does not exercise the Option on or before the Option Expiration Date (or the Option is not exercisable by the Option Expiration Date).

8.4 Effect Upon Sections 4.6 through 4.8 of the Restated Lease of Changes of Ownership That Occur During the Option Term. If a Change of Ownership occurs during the Option Term with respect to which a Net Proceeds Share is payable under this Section 8 and the Gross Transfer Proceeds from such Change of Ownership exceed Thirty-Seven Million Three Hundred Seventy-Five Thousand Dollars (\$37,375,000.00), then prior to the execution of the Restated Lease Section 4.8.1.1 of the form of Restated Lease shall be modified in accordance with the "DRAFTING NOTE" set forth in such Section 4.8.1.1.

8. Changes of Ownership During the Option Term. As additional consideration for the grant of the Option, County and Lessee agree that the terms and provisions of Sections 4.6 through 4.8 of the Restated Lease shall be applicable during the Option Term with respect to any Change of Ownership (as defined in the Restated Lease) that occurs during the Option Term (including prior to or concurrently or substantially concurrently with the exercise of the Option, or prior to or concurrently or substantially concurrently with the execution of the Restated Lease), including without limitation an assignment of the Lessee's leasehold interest under the Existing Lease and its rights under this Agreement. If a Change of Ownership that is not an Excluded Transfer (as defined in the Restated Lease) occurs prior to the Effective Date of the Restated Lease, and if the Gross Proceeds (as defined in the Restated Lease) from such Change of Ownership exceed \$6,022,951.00, then prior to the execution of the Restated Lease the Base Value (as defined in the Restated Lease) under Section 4.8.1.1 of the Restated Lease shall be changed to the Gross Proceeds from such Change of Ownership. There shall be no assignment of Lessee's rights under this Agreement nor any Change in Ownership with respect to Lessee during the Option Term or prior to the execution of the Restated Lease, except as permitted under Section 10.6 of this Agreement or as otherwise approved by County in writing.

9. County Costs. Regardless of whether Lessee exercises the Option, Lessee shall promptly reimburse County for the Actual Costs (as defined in the form of Restated Lease) incurred by County in the review, negotiation, preparation, documentation and administration of this Agreement, the Restated Lease and the term sheets and memoranda that precede or preceded any of the foregoing. County shall have the right to require Lessee to pay all unpaid Actual Costs that were incurred prior to or as of the date of this Agreement concurrent with Lessee's execution and delivery of this Agreement. Lessee shall pay any remaining unpaid Actual Costs incurred by County within thirty (30) days following receipt by Lessee of an invoice from the County for such Actual Costs.

10. Miscellaneous.

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

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

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

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

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

10.6 No Assignment. Except as expressly provided in this Section 10.6, Lessee shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of County, which consent may be withheld by County in its sole and absolute discretion. Notwithstanding the foregoing, Lessee shall have the right to assign all of its rights and interest under this Agreement to an assignee that acquires all of Lessee's rights and interest under the Existing Lease pursuant to an assignment of the Existing Lease that is approved by County in accordance with the terms and provisions of the Existing Lease; provided, however, that Director shall have the authority in Director's discretion to approve any such assignment that constitutes an Excluded Transfer (as defined in the Restated Lease).

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

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

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

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

10.11 Successors and Assigns. Subject to Section 10.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

10.12 Lessee Default. For purposes of this Agreement, a "**Lessee Breach**" under this Agreement means a failure of Lessee to perform or comply with any material obligation or covenant of Lessee under this Agreement. For purposes of this Agreement, a "**Lessee Default**" under this Agreement means Lessee's failure to cure a Lessee Breach under this Agreement within (a) ten (10) days after Lessee's receipt of written notice from County in the case of the payment of money, or (b) thirty (30) days after Lessee's receipt of written notice from County in the case of any other obligation or covenant of Lessee under this Agreement; provided, however, that if the nature of the Lessee Breach under this clause (b) is such that it cannot with reasonable diligence be cured within thirty (30) days, then the cure period set forth in this clause (b) shall be extended for such additional period as reasonably required for the cure of the Lessee Breach as long as Lessee commences cure of the Lessee Breach within thirty (30) days after Lessee's receipt of written notice from County and diligently prosecutes such cure to completion.

10.13 Exhibit. Exhibit attached to this Agreement is hereby expressly incorporated herein by reference.

10.14 Representation Regarding Existing Encumbrances. Lessee represents and warrants to County that as of the date of this Agreement there are no deeds of trust, mortgages or other security interests that encumber Lessee's interest in the Existing Lease or the Premises other than the "Deed of Trust" referenced in the Lender Consent attached to this Agreement. The grant of the Option set forth herein is contingent upon (a) the accuracy of the foregoing representation and warranty, and (b) the execution by the beneficiary of such Deed of Trust and delivery to County of such executed Lender Consent concurrent with the execution and delivery of this Agreement by Lessee and County.

[SIGNATURES ON FOLLOWING PAGE]

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

I hereby certify that pursuant to section 25103 of the government code, delivery of this document has been made.

LORI GLASGOW
Executive Officer
Clerk of the Board of Supervisors

By: [Signature]
Deputy



ATTEST:

LORI GLASGOW
Executive Officer-Clerk
of the Board of Supervisors

By: [Signature]
Deputy

APPROVED AS TO FORM:

MARY C. WICKMAN,
County Counsel

By: [Signature]
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: [Signature]

THE COUNTY OF LOS ANGELES

By: [Signature]
Chair, Board of Supervisors

HARBOR REAL ESTATE LIMITED
PARTNERSHIP, a Delaware limited partnership

By: Vaparetto Corp., an Illinois corporation, its
general partner

By: [Signature]
Name: GREGORY F. SCHEM
Title: PRESIDENT

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

23

MAR 15 2016

[Signature]
LORI GLASGOW
EXECUTIVE OFFICER

78478

LENDER CONSENT

The undersigned represents that it is the current beneficiary under that certain [Deed of Trust With Assignment of Rents] dated MARCH 21, 2013, and recorded in the Official Records of Los Angeles County, California on JULY 19, 2013 as Instrument No. 20131064295 (the "Deed of Trust"). As such beneficiary the undersigned hereby consents to Section 7 of the foregoing Option to Amend Lease Agreement and agrees that the Deed of Trust shall be subject and subordinate to any Non-Exercise Amendment that occurs pursuant to Section 7 of such Option to Amend Lease Agreement.

SCHEM REVOCABLE FAMILY TRUST
DATED 2/3/94

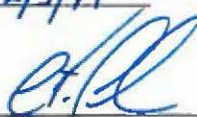
By: 
Name: GREGORY F. SCHEM
Its: TRUSTEE

EXHIBIT A
FORM OF RESTATED LEASE

AMENDED AND RESTATED LEASE AGREEMENT

by and between

County of Los Angeles

and

HARBOR REAL ESTATE LIMITED PARTNERSHIP,
a Delaware limited partnership

(Parcel 53 — Lease No., 78483)

Dated as of April 29, 2016

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**AMENDED AND RESTATED LEASE AGREEMENT
PARCEL 53 — MARINA DEL REY**

THIS AMENDED AND RESTATED LEASE AGREEMENT (“**Lease**”) is made and entered into as of the 29th day of April, 2016 (“**Effective Date**”), by and between the COUNTY OF LOS ANGELES (“**County**”), as lessor, and HARBOR REAL ESTATE LIMITED PARTNERSHIP, a Delaware limited partnership (together with its permitted successors and assigns, “**Lessee**”), as lessee.

WITNESSETH

WHEREAS, County owns fee title to certain real property in Marina del Rey commonly known as Parcel 53 and more particularly described in Exhibit A attached hereto (the “**Premises**”);

WHEREAS, County and Playa Del Rey Marine Supply Company, Inc. (the “**Original Lessee**”), entered into Lease No. 5691, dated June 19, 1962 (as amended prior hereto, the “**Existing Lease**”), pursuant to which County leased to Original Lessee the Premises for a term that commenced effective as of March 1, 1962 with a scheduled expiration date of February 28, 2022 (the “**Existing Expiration Date**”); and

WHEREAS, Lessee is the current successor-in-interest to the Original Lessee’s right, title and interest as lessee under the Existing Lease; and

WHEREAS, County and Lessee desire to enter into this Amended and Restated Lease Agreement to fully amend and restate the Existing Lease in its entirety, including an extension of the expiration of the lease term by thirty-nine (39) years from the Existing Expiration Date to February 28, 2061 and the redevelopment and renovation of the Premises by Lessee in accordance with the terms and provisions of this Lease.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree that the Existing Lease is fully amended and restated in its entirety by this Lease, as follows:

1. BACKGROUND AND GENERAL.

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

1.1.1 “**ACCOUNTING YEAR**” shall have the meaning set forth in Section 14.7.

1.1.2 “**ACTUAL COST**” shall mean (i) the reasonable out-of-pocket costs and expenses incurred by County with respect to a particular activity or procedure, including without limitation, expenditures to third party legal counsel, financial consultants and advisors, (ii) costs incurred in connection with appraisals, (iii) the

reasonable value of services actually provided by County's in-house counsel, and (iv) the reasonable value of services actually provided by County's lead lease negotiator/administrator and any other lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below County department head) required by the lead lease negotiator/administrator for technical expertise or assistance. In those instances in which Lessee is obligated to reimburse County for its Actual Costs incurred in performing obligations required to be performed by Lessee under this Lease which Lessee fails to perform within the applicable cure period, if any, provided under this Lease, Actual Costs shall also include a reasonable allocation of County overhead and administrative costs to compensate County for performing such obligations on behalf of Lessee.

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

1.1.4 **"ADJUSTMENT DATES"** shall have the meaning set forth in subsection 4.2.1.3.

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

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

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

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

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

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

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

1.1.12 **"APPLICABLE RATE"** shall mean an annually compounded rate of interest equal to the lesser of (a) ten percent (10%) per annum or (b) the Prime Rate, as defined in subsection 4.3.5, plus three percent (3%) per annum; however, the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws. In the event that the Applicable Rate as determined by the first sentence of this definition exceeds such maximum rate of interest, then the Applicable Rate shall be deemed to be the maximum rate permissible under Applicable Laws notwithstanding the first sentence of this definition.

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

1.1.14 “**ASSIGNMENT STANDARDS**” shall have the meaning set forth in Section 11.2.

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

1.1.16 “**AWARD**” shall have the meaning set forth in subsection 6.1.3.

1.1.17 “**BASE VALUE**” shall have the meaning set forth in subsection 4.8.1.1.

1.1.18 “**BENEFICIAL INTEREST**” shall have the meaning set forth in subsection 4.6.4.

1.1.19 “**BOARD**” shall mean the Board of Supervisors for the County of Los Angeles.

1.1.20 “**BUSINESS DAY**” shall have the meaning set forth in Section 17.3.

1.1.21 “**CALCULATION NOTICE**” shall have the meaning set forth in Section 4.7.

1.1.22 “**CAPITAL IMPROVEMENT FUND**” shall have the meaning set forth in Section 5.13.

1.1.23 “**CHANGE OF OWNERSHIP**” shall have the meaning set forth in subsection 4.6.1.

1.1.24 “**CHANGE OF CONTROL**” shall have the meaning set forth in subsection 4.6.1.

1.1.25 “**CITY**” shall mean the City of Los Angeles, California.

1.1.26 “**COMPLETION DATE**” shall mean the date of the issuance of a certificate or certificates of occupancy (whether temporary or permanent) or other applicable governmental permit(s), certificate(s) or approval(s) with respect to the Redevelopment Work that permits the legal occupancy, use or operation of the Premises.

1.1.27 “**CONDEMNATION**” shall have the meaning set forth in subsection 6.1.1.

1.1.28 “**CONDEMNOR**” shall have the meaning set forth in subsection 6.1.4.

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

1.1.30 “**COUNTY**” shall have the meaning set forth in the first paragraph of this Lease.

1.1.31 “**COUNTY OPTION**” shall have the meaning set forth in subsection 11.2.4.

1.1.32 “**COUNTY OPTION PRICE**” shall have the meaning set forth in subsection 11.2.4.

1.1.33 “**COUNTY POOL RATE**” shall have the meaning set forth in subsection 4.3.5 of this Lease.

1.1.34 “**COUNTY SUBLEASE**” shall have the meaning set forth in Section 1.2.

1.1.35 “**COUNTY SUBLEASE PREMISES**” means the portion of the Premises and Improvements leased by Lessee to County under the County Sublease.

1.1.36 “**DATE OF TAKING**” shall have the meaning set forth in subsection 6.1.2.

1.1.37 “**DEPARTMENT**” shall mean the Department of Beaches and Harbors of the County of Los Angeles.

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

1.1.39 “**DISQUALIFICATION JUDGMENT**” shall have the meaning set forth in subsection 16.15.1.

1.1.40 “**DOCUMENTED TRANSACTION COSTS**” shall have the meaning set forth in subsection 4.8.1.3.

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

1.1.42 “**ENCUMBRANCE**” shall have the meaning set forth in subsection 12.1.1.

1.1.43 “**ENCUMBRANCE HOLDER**” shall have the meaning set forth in subsection 12.1.1.

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

1.1.45 “**EVENTS OF DEFAULT**” shall have the meaning set forth in Section 13.1.

1.1.46 “**EXCLUDED TRANSFERS**” shall have the meaning set forth in subsection 4.6.2.

1.1.47 “**EXISTING EXPIRATION DATE**” shall have the meaning set forth in the Recitals to this Lease.

1.1.48 “**EXISTING LEASE**” shall have the meaning set forth in the Recitals to this Lease.

1.1.49 “**EXTENDED TIME**” shall have the meaning set forth in Section 15.15.

1.1.50 “**EXTENSION FEE**” means the extension fee paid by Lessee to County in connection with the execution of this Lease in the amount of One Hundred Thousand Dollars (\$100,000.00).

1.1.51 “**FAIR MARKET RENTAL VALUE**” shall have the meaning set forth in subsection 4.3.1.

1.1.52 “**FINAL PLANS AND SPECIFICATIONS**” shall have the meaning set forth in subsection 5.3.3.

1.1.53 “**FINANCING EVENT**” shall have the meaning set forth in Section 12.1.

1.1.54 “**FIRST DEPOSIT MONTH**” shall have the meaning set forth in Section 5.13.

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

1.1.56 “**FORCE MAJEURE DELAY**” shall have the meaning set forth in subsection 5.6.1.

1.1.57 “**GROSS ERROR**” shall have the meaning set forth in subsection 16.15.4.

1.1.58 “**GROSS PROCEEDS**” shall have the meaning set forth in Section 4.8.

1.1.59 “**GROSS RECEIPTS**” shall have the meaning set forth in subsection 4.2.2.2.

1.1.60 “**GROSS REVENUES**” shall have the meaning set forth in subsection 4.2.2.3.

1.1.61 “**HAZARDOUS SUBSTANCES**” means the following:

(a) petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

(b) any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive; and

(c) any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “solid waste” or similarly defined substance pursuant to any Applicable Laws or other substance or material regulated under Applicable Laws.

1.1.62 “**IMPROVEMENTS**” means all buildings, structures, fixtures, fences, anchorage facilities, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems and other improvements now or hereafter located on the Premises. The inclusion of structures, fixtures, fences, anchorage facilities, fountains, and utility systems in the foregoing definition is not intended to constitute a characterization by County or Lessee with regard to the nature of any particular item of personal property located at the Premises for income tax purposes.

1.1.63 “**IMPROVEMENT COSTS**” shall have the meaning set forth in subsection 4.8.1.2.

1.1.64 “**INCOME APPROACH**” shall have the meaning set forth in Section 6.5.

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

1.1.66 “**INSTITUTIONAL LENDER**” shall have the meaning set forth in subsection 12.1.3.1

1.1.67 “**INSURANCE RENEGOTIATION DATE**” shall have the meaning set forth in Section 9.6.

1.1.68 “**LANDSIDE IMPROVEMENTS**” shall have the meaning set forth in subparagraph 5.1(b).

1.1.69 “**LATE FEE**” shall have the meaning set forth in Section 4.5.

- 1.1.70 **“LEASE”** shall mean this Amended and Restated Lease Agreement.
- 1.1.71 **“LEASE YEAR”** shall have the meaning set forth in Section 2.1.
- 1.1.72 **“LESSEE”** shall have the meaning set forth in the first paragraph of this Lease.
- 1.1.73 **“LESSEE SALE PRICE”** shall have the meaning set forth in subsection 11.2.4.
- 1.1.74 **“MAJOR SUBLEASE”** shall have the meaning set forth in subsection 11.1.1.
- 1.1.75 **“MAJOR SUBLESSEE”** shall have the meaning set forth in subsection 11.1.1.
- 1.1.76 **“MATERIAL MODIFICATION”** shall mean a modification to the Redevelopment Work (or other Alterations, as applicable) as to which any one of the following applies: (1) the total cost of the modifications exceeds one percent (1%) of the total estimated construction cost of the Redevelopment Work (or the other Alterations that are then proposed to be constructed by Lessee); (2) the proposed modification is structural in nature; (3) the modification affects or is visible from the exterior of the Improvements; (4) the modification is not in material compliance with the Redevelopment Work listed in subparagraphs (a) and (b) of Section 5.1 of this Lease; or (5) the modification is not in material compliance with the Permitted Uses under this Lease.
- 1.1.77 **“MINIMUM STANDARDS”** shall mean the requirements of Policy Statement No. 25 and the Specifications and Minimum Standards of Architectural Treatment and Construction for Marina del Rey approved in 1989, as modified by County or the Department from time to time in a manner consistent with commercially reasonable standards applicable to other comparable facilities in Marina del Rey.
- 1.1.78 **“MONTHLY MINIMUM RENT”** shall have the meaning set forth in subsection 4.2.1.
- 1.1.79 **“NET AWARDS AND PAYMENTS”** shall have the meaning set forth in Section 6.7.
- 1.1.80 **“NET PROCEEDS SHARE”** shall have the meaning set forth in Section 4.6.
- 1.1.81 **“NET REFINANCING PROCEEDS”** shall have the meaning set forth in subsection 4.8.5.
- 1.1.82 **“NET TRANSFER PROCEEDS”** shall have the meanings set forth in subsections 4.8.1 and 4.8.2.

1.1.83 “**NOTICE OF COMPLETION**” shall have the meaning set forth in subsection 5.7.7.

1.1.84 “**OPERATING COVENANT EXCEPTIONS**” shall have the meaning set forth in Section 3.3.

1.1.85 “**PARTIAL TAKING**” shall have the meaning set forth in Section 6.5.

1.1.86 “**PAYMENT BOND**” shall have the meaning set forth in subsection 5.4.3.2.

1.1.87 “**PERCENTAGE RENT**” shall have the meaning set forth in subsection 4.2.2.

1.1.88 “**PERFORMANCE BOND**” shall have the meaning set forth in subsection 5.4.3.1.

1.1.89 “**PERMITTED CAPITAL EXPENDITURES**” shall have the meaning set forth in Section 5.13.

1.1.90 “**PERMITTED EXTENSION**” shall have the meaning set forth in Section 5.6.

1.1.91 “**PERMITTED USES**” shall have the meaning set forth in Section 3.1.

1.1.92 “**PREMISES**” shall have the meaning set forth in the Recitals to this Lease.

1.1.93 “**PRIME RATE**” shall have the meaning set forth in subsection 4.3.5.

1.1.94 “**PROMENADE**” shall have the meaning set forth in Section 15.20.

1.1.95 “**PROPOSED TRANSFER**” shall have the meaning set forth in subsection 11.2.4.

1.1.96 “**PUBLIC WORKS DIRECTOR**” shall mean the Director of the Department of Public Works of the County of Los Angeles.

1.1.97 “**PURCHASE MONEY NOTE**” shall have the meaning set forth in subsection 4.7.2.

1.1.98 “**REDEVELOPMENT PLAN**” shall have the meaning set forth in Section 5.1.

1.1.99 “**REDEVELOPMENT WORK**” shall have the meaning set forth in Section 5.1.

1.1.100 “**REMOVAL SECURITY FUND**” shall have the meaning set forth in subsection 2.3.2.

1.1.101 **“RENEGOTIATION DATES”** shall have the meaning set forth in Section 4.3.

1.1.102 **“REPLY”** shall have the meaning set forth in Section 16.5.

1.1.103 **“REQUIRED LANDSIDE IMPROVEMENTS COMMENCEMENT DATE”** shall have the meaning set forth in Section 5.6.

1.1.104 **“REQUIRED WATERSIDE IMPROVEMENTS COMMENCEMENT DATE”** shall have the meaning set forth in Section 5.6.

1.1.105 **“REQUIRED COMMENCEMENT DATE”** shall have the meaning set forth in Section 5.6.

1.1.106 **“REQUIRED COMPLETION DATE”** shall have the meaning set forth in Section 5.6.

1.1.107 **“RESPONDING PARTY”** shall have the meaning set forth in the first paragraph of Article 16.

1.1.108 **“REVERSION”** shall have the meaning set forth in subsection 5.6.3.

1.1.109 **“REVERSION CONDITION”** shall have the meaning set forth in Section 12.12.

1.1.110 **“SEAWALL”** shall have the meaning set forth in Section 10.5.

1.1.111 **“SECTION”** shall mean a section of this Lease.

1.1.112 **“SECURITY DEPOSIT”** shall have the meaning set forth in Section 7.1.

1.1.113 **“SHALL”** and **“WILL”** are mandatory and the word **“MAY”** is permissive.

1.1.114 **“STATE”** shall mean the State of California.

1.1.115 **“STATEMENT OF POSITION”** shall have the meaning set forth in subsection 16.6.

1.1.116 **“SUBLEASE”** shall have the meaning set forth in subsection 11.1.1.

1.1.117 **“SUBLESSEE”** shall have the meaning set forth in subsection 11.1.1.

1.1.118 **“SUBSECTION”** shall mean a subsection of a Section of this Lease.

1.1.119 **“SUBSEQUENT RENOVATION”** shall have the meaning set forth in Section 5.11.

1.1.120 “**SUBSEQUENT RENOVATION FUND**” shall have the meaning set forth in Section 5.12.

1.1.121 “**SUBSEQUENT RENOVATION PLAN**” shall have the meaning set forth in Section 5.11.

1.1.122 “**TERM**” shall have the meaning set forth in Section 2.1.

1.1.123 “**TIME OF THE ESSENCE**” shall have the meaning set forth in Section 15.2.

1.1.124 “**UNINSURED LOSS**” shall have the meaning set forth in Section 10.3.

1.1.125 “**UNREASONABLE COUNTY ACTIVITY**” shall have the meaning set forth in subsection 5.6.2.

1.1.126 “**WATERSIDE IMPROVEMENTS**” shall have the meaning set forth in subparagraph 5.1(a).

1.1.127 “**WRITTEN APPRAISAL EVIDENCE**” shall have the meaning set forth in subsection 16.7.

1.2 **Lease**. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, County hereby leases to Lessee, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined) and upon the terms and conditions and subject to the requirements set forth herein. This Lease fully amends, restates and supersedes the Existing Lease. County and Lessee acknowledge and agree that a portion of the Premises and Improvements are leased by Lessee, as landlord, to County, as tenant, pursuant to that certain Lease Agreement dated February 3, 2015 (as amended from time to time, the “**County Sublease**”). County and Lessee acknowledge and agree that the County Sublease remains in full force and effect as a Sublease under this Lease.

1.2.1 **As-Is**. Lessee acknowledges that (1) it is currently in possession of the Premises, (2) Lessee or its predecessors-in-interest have continuously occupied and/or managed and operated the Premises since 1962, and (3) the Improvements now existing on the Premises were constructed by Lessee or its predecessors with contractors selected by them. Lessee accepts the Premises and existing Improvements in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the Effective Date. Lessee hereby represents that in connection with its acceptance of the Premises Lessee has been given the opportunity to perform such tests, inspections, reviews studies and investigations respecting the Premises and the existing Improvements as it considers necessary or appropriate to adequately evaluate the condition and other aspects of the Premises. Lessee hereby accepts the Premises and the existing Improvements on an “**AS IS WITH ALL FAULTS**” basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied,

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

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

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

2. **TERM**.

2.1 **Term**. The term of the Existing Lease commenced on March 1, 1962. The term of this Lease (“**Term**”) is a continuation of the term of the Existing Lease and, unless terminated sooner in accordance with the provisions of this Lease, the Term of this Lease shall expire at

11:59 p.m. on February 28, 2061. For purposes of this Lease, “**Lease Year**” shall mean each fiscal year (or partial fiscal year) from March 1 to the following February 28 (or 29, if applicable) during the Term of this Lease. Notwithstanding the foregoing, with respect to any provision in this Lease that refers to a specified number of Lease Years after the Effective Date, the number of Lease Years after the Effective Date shall be calculated based on the following: (a) if the Effective Date is prior to July 1 of a calendar year, then the first Lease Year after the Effective Date shall mean the period from the Effective Date through December 31 of the calendar year during which the Effective Date occurs, and (b) if the Effective Date is on or after July 1 of a calendar year, then the first Lease Year shall mean the period from the Effective Date through December 31 of the calendar year following the calendar year during which the Effective Date occurs.

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

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

2.3.1 **County’s Election to Receive Improvements.** At the election of County, all Improvements (and all alterations, additions, and betterments thereto) shall remain upon and be surrendered with the Premises as part thereof and title thereto shall vest in County without compensation therefor to Lessee. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to receive any and all proceeds which are attributable to the Condemnation of Improvements or personal property belonging to Lessee immediately prior to the taking of possession by the Condemnor as said rights are set forth in Article 6 of this Lease, or to remove any personal property (including any furniture or equipment that does not constitute a real estate fixture under Applicable Law) or any signage identifying Lessee (as opposed to other signage used in the operation of the Premises and associated Improvements), upon the expiration of the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee’s obligations under this Lease to use the Premises for the Permitted Uses.

2.3.2 **Duty to Remove.** No earlier than six (6) years, and no later than five (5) years prior to the expiration of the Term, Lessee shall deliver to County a report prepared by a construction and demolition expert approved by County, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of removing all Improvements on the Premises at the expiration of the Term. County may give written notice (the “**County Removal Notice**”) at any time, no later than the later of (a) six (6) months following Lessee’s delivery of the removal cost report described above, or (b) four (4) years prior to the expiration of the Term, or concurrently upon any earlier termination, of County’s election to require Lessee to remove, at the sole cost and expense of Lessee, not later than the expiration of the Term or earlier termination of this Lease, all or any portion of the at grade, above grade and below grade Improvements of any kind whatsoever placed or maintained on the Premises, whether placed thereon or

maintained by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings. If pursuant to the County Removal Notice County elects to require the removal of all or any portion of the Improvements, then Lessee shall, upon the expiration or termination of this Lease, (a) demolish and remove the Improvements required by County to be removed, (b) restore those portions of the Premises on which Improvements have been removed to a level graded pad with no excavations, hollows, hills or humps, and (c) surrender possession of the Premises to County.

If County elects to require Lessee to remove all or a portion of the Improvements pursuant to the County Removal Notice, then Lessee shall, no later than the date that is thirty (30) days after Lessee's receipt of the County Removal Notice, provide County with a written plan which sets forth Lessee's proposed method of securing the discharge of Lessee's removal and restoration obligations pursuant to this subsection. Such security plan shall detail (i) the form of security proposed by Lessee (the "**Removal Security Fund**"), which security shall be either a deposit of funds, or a letter of credit, bond or other form of security in form and amount, and from an issuer, satisfactory to County, and (ii) a schedule satisfactory to County for the delivery by Lessee of the Removal Security Fund on a periodic basis over the remaining Term of the Lease, which schedule shall in all events provide for a full funding of the Removal Security Fund not later than two (2) years prior to the expiration of the Term. The amount of the Removal Security Fund shall be no less than the estimated costs to remove the Improvements set forth in the report described above, adjusted annually to reflect the increase or decrease, if any, in the ENR Index over the ENR Index as of the date of the cost estimation set forth in such expert report; provided, however, that in no event shall such adjustment result in a Removal Security Fund of an amount less than that set forth in the expert report. If County requires Lessee to establish a Removal Security Fund, then Lessee shall have the right to credit to such removal fund the monthly Capital Improvement Fund deposits thereafter required to be made by Lessee during the remaining Term pursuant to Section 5.13 of this Lease, to the extent that in the Director's reasonable judgment sufficient funds remain available from time to time in the Capital Improvement Fund to satisfy the purposes of Section 5.13 of this Lease. Any uncured failure by Lessee to fund the Removal Security Fund as required under this subsection 2.3.2 shall constitute an Event of Default.

If County elects to require Lessee to remove all or a portion of the Improvements pursuant to the County Removal Notice, Lessee shall not be required to make additional capital improvements to the Improvements for the remainder of the Term for any reason other than as required to comply with the maintenance, repair and replacement (if repair is not possible) obligations of Lessee under this Lease or as required to satisfy the obligations of Lessee under this Lease with respect to compliance with Applicable Laws. If County requires the Removal Security Fund, Lessee shall have the right to use all amounts remaining in the Capital Improvement Fund at the end of the Term for the Improvement removal purposes described in this subsection 2.3.2, if and to the extent that such funds were not required for Capital Improvement Fund purposes. If a Removal Security Fund is required, but County does not require the removal of the Improvements at the end of the Term, then the Removal Security Fund (including any Capital

Improvement Funds that were transferred to the Removal Security Fund and were not required for Capital Improvement Fund purposes under Section 5.13) shall be returned to Lessee.

If County decides not to require Lessee to remove all of the Improvements on the Premises as provided above, then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall turn over to County all Improvements not required to be removed by Lessee, in good and workmanlike condition, consistent with the condition of other Improvements of comparable age and construction quality.

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

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

2.3.5 **Title to Certain Improvements Passes to County; Lessee to Maintain.** Notwithstanding any contrary provision of this Lease, the County shall own the Seawall located on the Premises, and as between County and Lessee, title to all utility lines, transformer vaults and all other utility facilities constructed or installed by Lessee upon the Premises shall vest in County upon construction or installation to the extent that they are not owned by a utility company or other third party provider. Notwithstanding that title shall vest in County, all utility lines, transformer vaults and all other utility facilities (other than any sewer, storm drain or other utility systems which have been dedicated to and accepted by County pursuant to a dedication separate from this Lease), shall be maintained, repaired, and replaced, if and as needed, by Lessee during the Term, subject to the first sentence of the third paragraph of subsection 2.3.2 above.

3. **USE OF PREMISES.**

3.1 **Specific Primary Use.** The Premises shall be used for only the following purposes: (a) boat repair; (b) small craft anchorage; (c) marine equipment sales; (d) yacht and marine insurance brokerage; (e) new and used boat sales; (f) commercial office use, including research and development; (g) rental of storage containers stored in the work yard for boat

related storage purposes; (h) small tool rentals; (i) fuel sales; (j) sale of prepackaged foods, beverages and miscellaneous merchandise related to the use of boats; (k) the rental of storage/parking units for the storage of boater related items and vehicle parking; and (l) as the County Sublease Premises, the uses permitted under the County Sublease (“**Permitted Uses**”). The Premises shall not be used for any purpose other than the Permitted Uses, without the prior written consent of County, which consent may be withheld by County in its sole and absolute discretion. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

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

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

3.2.2 **Restrictions and Prohibited Uses.** Without expanding upon or enlarging the Permitted Uses of the Premises as set forth in this Lease, the Permitted Uses are subject to the following provisions:

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

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

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

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

3.2.2.5 Without the prior written reasonable approval of Director, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Premises, whether attached to an improvement or otherwise; provided that the foregoing requirement to obtain Director's approval as to any antennae or other transmission or reception devices shall be inapplicable to the extent that such requirement violates Applicable Law; and provided, further, that no antennae existing on the Premises as of the Effective Date shall require the approval of Director.

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

3.2.2.7 Except for the Excluded Conditions and the Seawall, no adverse environmental condition in violation of Applicable Laws shall be permitted to exist on or in any portion of the Premises or the Improvements, nor shall any Hazardous Substances be permitted to be generated, treated, stored, released, disposed of, or otherwise deposited in or on, or allowed to emanate from, the Premises, the Improvements or any portion thereof, including, without limitation, into subsurface waters; provided, however, that Hazardous Substances may be stored or used on the Premises or in the Improvements, so long as such storage and use is of a type and quantity, and conducted in a manner (a) in the ordinary course of business of an otherwise Permitted Use, (b) in accordance with standard industry practices for such Permitted Use, and (c) in compliance with all Applicable Laws.

This Subsection 3.2.2.7 shall not impose liability upon Lessee to County for any Hazardous Substances that might be present in seawater passing over, under, through or around any portion of the Premises or any Improvement as long as (I) such Hazardous Substances did not originate at or from the Premises or Improvements, and (II) with respect to Hazardous Substances that did not originate at or from the Premises or Improvements, were not caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees.

3.2.2.8 The Premises shall not be used for (a) live bait sales; (b) commercial sport fishing or tour boat operations; or (c) residential purposes (other than liveaboards).

3.3 **Active Public Use.** The parties acknowledge that the ultimate objective of this Lease is the complete and continuous use of the facilities and amenities located in Marina del Rey by and for the benefit of the public, without discrimination as to race, gender or religion, along with the generation and realization of revenue therefrom. Accordingly, Lessee agrees and

covenants that it will operate the Premises fully and continuously (except to the extent that Lessee is prevented from doing so due to Force Majeure, temporary interruption as necessary for maintenance and repair, or temporary interruption as necessary to accommodate renovation, alteration or other improvement work required or permitted to be performed by Lessee under this Lease (collectively, “**Operating Covenant Exceptions**”)) in light of these objectives, consistent with the operation of comparable facilities, and that it will use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Lease. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives.

3.4 **Days of Operation.** The Anchorage Facilities shall be open every day of the year for at least hours commensurate with the hours of operations of other similar facilities in Southern California, subject to the Operating Covenant Exceptions and except for such holidays, if any, during which similar businesses are customarily closed. The boatyard facilities on the Premises shall be open Mondays through Fridays (excluding holidays) for at least hours commensurate with the hours of operation of other similar facilities in Southern California. The County Sublease Premises shall be operated in compliance with the terms and provisions of the County Sublease.

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

The development located on the Premises shall be operated under the trade name “The Boatyard” or such other name or names as approved by Director. Lessee shall not change the trade name for any development located on the Premises without the prior written approval of Director. Director’s approval under this paragraph shall not be unreasonably withheld. Upon the expiration or earlier termination of this Lease, Lessee reserves all rights under Applicable Law to the trade name “The Boatyard” and County shall not have the right to use the trade name “The Boatyard” in violation of Applicable Law(s); provided, however, that without limitation of County’s rights, County shall not be restricted from using the words “boat” or “yard”, whether lower case or capitalized, or both of such words as long as such two words are not combined into one word, in connection with any operation of the Premises after the expiration or earlier termination of this Lease.

3.6 **Compliance with Regulations.** Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all licenses and permits required for the use, operation, maintenance, repair or improvement of the Premises. Without limitation of the foregoing, Lessee shall comply with (a) all conditions and requirements of Coastal Development Permit No(s). _____ **[PRIOR TO LEASE EXECUTION INSERT COASTAL**

DEVELOPMENT PERMIT NO(S). ISSUED FOR REDEVELOPMENT WORK], and (b) all public access requirements of the Marina del Rey Local Coastal Program, as amended.

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

3.8 **Reservations.** Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all encumbrances, reservations, licenses, easements and rights of way (a) existing as of the Effective Date, or (b) otherwise referenced in this Lease in, to, over or affecting the Premises for any purpose whatsoever, or (c) consented to by Lessee.

Without limiting the foregoing, Lessee expressly agrees that this Lease and all rights hereunder shall be subject to (i) all prior matters of record, and (ii) the right of County or any other governmental authority existing as of the Effective Date or otherwise disclosed to or known to Lessee, as their interests may appear, to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of County or such other governmental authority to convey such easements and transfer such rights to others; provided, however, that no new facilities (excluding replacement facilities for facilities existing as of the Effective Date) shall be constructed on the Premises by County after the Effective Date pursuant to this clause (ii) that unreasonably interfere with Lessee's business operations on the Premises.

4. **PAYMENTS TO COUNTY.**

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

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

4.1.2 **Taxes and Assessments.** Lessee agrees to pay before delinquency all lawful taxes, assessments, fees, or charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Premises covered hereby or to the Improvements thereon for any reason, as well as all taxes, assessments, fees, and charges

on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Premises. Lessee shall have the right to contest the amount of any assessment imposed against the Premises or the possessory interest therein; provided, however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Lessee.

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

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

4.2.1 **Annual Minimum Rent and Monthly Minimum Rent.** Lessee shall pay to County the minimum rent described in this subsection 4.2.1 (subject to adjustment pursuant to Sections 4.3 below) during each Lease Year of the Term (the "**Annual Minimum Rent**"). Annual Minimum Rent shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "**Monthly Minimum Rent**"); provided, however, if any Lease Year is shorter or longer than a full calendar year, or if any month during the Term is less than a full calendar month, then the Annual Minimum Rent and Monthly Minimum Rent, as applicable, shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to the number of days in such full calendar year or month, as applicable.

4.2.1.1 During the period from the Effective Date through the earlier of the Completion Date or the Required Completion Date, the Annual Minimum Rent shall be Two Hundred Sixty-Four Thousand Nine Hundred Eighty-Four Dollars (\$264,984.00) per year. Lessee shall provide written notice to County of the Completion Date promptly upon the occurrence thereof.

4.2.1.2 For the period commencing on the day following the last day of the period described in subsection 4.2.1.1 above and continuing until the date that is the last day of February that is at least 3 years following the last day of the period described in subsection 4.2.1.1 above, the Annual Minimum Rent per year shall be the greater of (a) Two Hundred Sixty-Four Thousand Nine Hundred Eighty-Four Dollars (\$264,984.00) per year; or (b) seventy-five percent (75%) of the annual average total of the annual square foot rental payable under Section 12 of the Existing Lease and the annual percentage rental payable under Section 13 of the Existing Lease, for the five (5) full Lease Years preceding the Effective Date.

4.2.1.3 Effective at the end of the period described in subsection 4.2.1.2 and effective every three (3) years thereafter until the first Renegotiation Date, and

thereafter effective each third (3rd), sixth (6th) and ninth (9th) anniversaries of each Renegotiation Date (each an “**Adjustment Date**” and collectively the “**Adjustment Dates**”), the Annual Minimum Rent shall be adjusted as provided in this subsection 4.2.1.3. The Annual Minimum Rent shall be adjusted as of each Adjustment Date to the greater of (a) the amount equal to seventy five percent (75%) of the average total Annual Minimum Rent and Percentage Rent payable by Lessee during the five (5) Lease Years immediately preceding the Adjustment Date; or (b) the Annual Minimum Rent in effect for the period immediately preceding the Adjustment Period.

For purposes of clarification, in no event shall the Annual Minimum Rent as adjusted pursuant to subsections 4.2.1.2 and 4.2.1.3 above ever be less than the Annual Minimum Rent that was in effect immediately prior to the adjustment. The limitation set forth in the immediately preceding sentence shall not be applicable to the adjustment of the Annual Minimum Rent as of each Renegotiation Date pursuant to Section 4.3 below.

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

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

(b) TEN PERCENT (10%) of Gross Receipts from the rental or other fees charged for the use of dry storage facilities, landside gear lockers, landside storage space, individual storage rooms (including those used for storage of vehicles), storage containers located in the work yard, boats, motors, tackle, recreational equipment, tools, equipment, launch and retrieving of small boats and from the sale of live bait;

(c) INTENTIONALLY OMITTED;

(d) SIXTEEN PERCENT (16%) of Gross Revenues received by Lessee with respect to (i) commercial repair shop space rentals or occupancies, (ii) boat broker and boat dealer office rentals or occupancies, including the display, sale or rental of boats, yachts, trailers, trailer cabanas, recreational vehicles or other similar items, or (iii) the rental of offices utilized for banking, insurance, financial services, clerical, administrative, real estate, legal, medical, marine engineering, research and development, maritime related business (non-sales), corporate offices, or other similar professional uses;

(e) INTENTIONALLY OMITTED;

(f) FIVE PERCENT (5%) of Gross Receipts received by Lessee or a Sublessee (or an affiliate of Lessee or a Sublessee) if Lessee or a Sublessee (or an affiliate of Lessee or a Sublessee) is the operator of an enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee or a Sublessee from an unaffiliated operator of an enterprise, with respect to any telecommunication (including, without limitation, wireless antennae or fiber optics), cable, internet, satellite, telephone, electricity co-generation or other similar services or facilities;

(g) SIX PERCENT (6%) of Gross Receipts received by Lessee or a Sublessee (or an affiliate of Lessee or a Sublessee) if Lessee or a Sublessee (or an affiliate of Lessee or a Sublessee) is the operator of an enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee or a Sublessee from an unaffiliated operator of an enterprise, with respect to commercial boating activities, including, but not limited to, charter boat, bareboat charters and sport-fishing boats, as further defined in Policy Statement No. 21 issued by Director;

(h) FIVE PERCENT (5%) of Gross Receipts received by Lessee or a Sublessee (or an affiliate of Lessee or a Sublessee) if Lessee or a Sublessee (or an affiliate of Lessee or a Sublessee) is the operator of an enterprise, or TWENTY-FIVE PERCENT (25%) of any commissions or fees collected by Lessee or a Sublessee from an unaffiliated operator of an enterprise, with respect to the installation and/or operation of coin-operated vending or service machines, including pay telephone;

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

(j) THREE PERCENT (3%) of Gross Receipts from the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, except that Gross Receipts from facilities established and operated as a take-out food operation shall be reported under category (s); for purposes of the foregoing, a "take-out food operation" shall mean a restaurant or other food operation a majority of the Gross Receipts from which are derived from the sale of food or beverages to be consumed off-site;

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

(l) INTENTIONALLY OMITTED;

(m) FIFTEEN PERCENT (15%) of Gross Receipts from club dues, initiation fees and assessments, except that separate club assessments for capital improvements are exempted;

(n) FIVE PERCENT (5%) of Gross Receipts or other fees charged from the operation of sightseeing boats, touring boats or water taxis;

(o) TWO PERCENT (2%) of Gross Receipts from the operation of a cable television facility under a franchise granted by the County;

(p) FOUR PERCENT (4%) of Gross Receipts or other fees charged by authorized boat repair yards, including repair, painting, tugboat, salvage and boat pump-out services and similar activities, except that the sale of boat parts that are separately invoiced shall be reported under category (v) below;

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

(r) TWENTY PERCENT (20%) of Gross Receipts for parking fees or charges, except where such parking fees or charges arise in connection with an activity the Gross Receipts from which are required to be reported in a Percentage Rent category greater than TWENTY PERCENT (20%); and provided, further, that if an enclosed individual dry storage facility (as opposed to, for example, an enclosed parking area used for multiple vehicles or an outdoor parking area) is used for the storage of a vehicle, then the Gross Receipts from the rental of such dry storage facility shall be included under category (b) above and not under this category (r);

(s) FIVE PERCENT (5%) of Gross Receipts from the sale of miscellaneous goods and services not specifically provided for in other Percentage Rent categories under this subsection 4.2.2, and as further defined in Policy Statement No. 21 issued by Director;

(t) Not applicable;

(u) FOUR PERCENT (4%) of Gross Receipts from hauling, launching and lay fees for boat owner do-it-yourself activities; and

(v) TWO PERCENT (2%) of Gross Receipts from retail ship chandlery sales and ONE PERCENT (1%) of Gross Receipts from wholesale ship chandlery sales. Ship chandlery sales shall be considered wholesale only when the sale is to a holder of a valid California resale license which is verified by inclusion of the valid resale license number

for such sale on the corresponding invoice or other sales records retained by Lessee or Sublessee relating to such sale. All other ship chandlery sales shall be considered retail.

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

4.2.2.2 **Gross Receipts.** Except as herein otherwise provided, the term “**Gross Receipts**” as used in this Lease means the gross amount of all money, receipts, compensation, or other things of value, including but not limited to charges, sales price, rentals, payments, reimbursements (including, without limitation, common area maintenance or other expenses, taxes, utilities, insurance, promotional expenses or charges, and other payments or reimbursements), fees and commissions made or earned by Lessee and/or all its assignees or Sublessees, from any business, use, occupation, or any combination thereof, pertaining to use or operation of the Premises for all purposes other than Percentage Rent category (d) of subsection 4.2.2 above, originating, transacted, or performed in whole or in part, on the Premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares, food, beverages or merchandise, calculated in accordance with the accounting method described in the last sentence of Section 14.1.

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

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

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

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

a. goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to

any retailers without profit, where such returns or deliveries are made solely for the convenient operation of the business of Lessee or its Sublessee and not for the purpose of consummating a sale made in, about or from the Premises;

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

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

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

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

f. tips and gratuities paid to employees;

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

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

i. fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card, provided, however, that the amounts excluded under this paragraph (i) in connection with a particular business operation shall not exceed the actual charges for such matters;

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

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

(5) Gross Receipts shall not include amounts reimbursed to Lessee for the Cost of each Sublessee's submetered electricity, water and gas for such Sublessee's space, provided that (A) each Sublessee's obligation to reimburse Lessee for such utility charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Premises; (B) the reimbursed sum is in an amount equal to the Cost of the Sublessee's usage of such

utilities; and, (C) the receipt is actually credited against the cost of the Sublessee's usage of such utilities. For the purpose of the foregoing sentence, the "Cost" of the Sublessee's usage of utilities shall mean the actual costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility bill that is allocable to the Sublessee based on such Sublessee's submetered consumption of such utilities, and in paying the portion of any third party submeter reading and service charge to each submeter that is actually read and a direct allocation of the submeter service charge to each such submeter that is serviced. County shall have the right to approve all submeters and to challenge the legitimacy or amount of any Cost, and all disputes regarding such County approvals or challenges, if not resolved by the parties within thirty (30) days after notice to Lessee of such disapproval or challenge, shall be resolved by arbitration pursuant to Article 16 of this Lease.

4.2.2.3 **Gross Revenues.** Except as herein otherwise provided, the term "**Gross Revenues**" as used in this Lease means all gross revenues derived by Lessee from the Premises with respect to the uses or operations described in Percentage Rent category (d) of subsection 4.2.2 above, including without limitation, (i) all base or minimum rents, percentage rents and other rents payable by Sublessees to Lessee, (ii) all tax, insurance, operating expense, repair and maintenance, common area operation, management fee, or other cost or expense reimbursements or charges payable by Sublessees to Lessee, and (iii) all charges, fees, commissions, compensation of other amounts payable by Sublessees to Lessee, whether payable in the form of money or other things of value, calculated in accordance with the accounting method described in the last sentence of Section 14.1; provided, however, that at the written direction of Director, Lessee shall exclude from Gross Revenues, specified items or categories of revenue payable by County, as Sublessee under the County Sublease, to Lessee. The following additional terms and provision shall be applicable to the calculation of Gross Revenues, except that at the written direction of Director specified provisions of subparagraphs (1) – (4) shall not be applicable to the County Sublease.

(1) If any Sublessee pays any tax, insurance, operating expense, repair and maintenance, common area operation, management fee or other costs or expenses directly instead of reimbursing Lessee for such items, Gross Revenues shall be increased to include such items paid directly by such Sublessee.

(2) Gross Revenues are intended to be absolutely gross, and there shall be no deduction from or offset against Gross Revenues for any overhead, management fee, general administrative costs or other costs or expenses incurred by Lessee, including without limitation, the costs and expenses reimbursed by Sublessees.

(3) Gross Revenues shall not include security deposits paid by a Sublessee to Lessee to be held by Lessee as security for a Sublessee's obligations under its Sublease, except to the extent Lessee allocates or applies any portion of such security deposit to unpaid rent or other amounts payable by such Sublessee to Lessee,

in which event the sum so allocated or applied shall be included in Gross Revenues as of the date of such allocation or application.

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

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

4.2.2.5 **Effect of Sublessee, etc. Doing Business.** Except as specifically provided to the contrary in this Lease, for all Percentage Rent categories set forth in subsection 4.2.2 above except for Percentage Rent category (d), where a Sublessee is conducting a business or engaged in any use or occupation or any combination thereof on Lessee's leasehold, Lessee shall pay Percentage Rent based on whichever of the following results in the greater Percentage Rent: (1) the Gross Receipts of each Sublessee under one or more of categories (a) through (v) of subsection 4.2.2 above (excluding category (d)); or (2) the Gross Receipts received by Lessee from such Sublessee.

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

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

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

4.3 **Renegotiation of Annual Minimum and Percentage Rents.** Effective as of the first March 1 that follows the tenth (10th) anniversary of the Effective Date, and each ten (10) years thereafter (each a “**Renegotiation Date**” and collectively, the “**Renegotiation Dates**”), the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises.

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

Notwithstanding any contrary provision of this Lease, in connection with the readjustment of Percentage Rent pursuant to this Section 4.3, (A) in no event shall the percentage of Gross Revenues under Percentage Rent category (d) of subsection 4.2.2 ever be reduced below sixteen percent (16%); and (B) the requirement in the immediately preceding clause (A) that the percentage for Percentage Rent category (d) shall never be reduced below sixteen percent (16%) shall have no effect on the determination of the Fair Market Rental Value percentages for the other Percentage Rent categories even if 16% exceeds the Fair Market Rental Value for such Percentage Rent category (d).

4.3.2 **Renegotiation Period.** Not more than one (1) year nor less than nine (9) months prior to the Renegotiation Date, Lessee shall deliver to County written notice setting forth Lessee’s determination of the Fair Market Rental Value of the Premises. Lessee’s notice shall include a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as Lessee deems

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

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

4.3.3 **Negotiation of Fair Market Rental Value.** If County (or Lessee, as the case may be) does so notify Lessee (or County, as the case may be) of its disagreement as provided in subsection 4.3.2, County and Lessee shall have sixty (60) days from the end of the applicable response period in which to agree upon the Fair Market Rental Value for the Premises. County and Lessee shall negotiate in good faith during said sixty (60) day period. If the parties do so agree, they shall promptly execute an amendment to this Lease setting forth the Fair Market Rental Value so jointly determined, to be effective upon the Renegotiation Date. Director shall be authorized to execute any such amendment on behalf of County. During the period of negotiation, Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to the obligation to continue to pay to County Annual Minimum Rent and Percentage Rent at the then-existing levels.

4.3.4 **Arbitration.** If County and Lessee fail to reach agreement during the sixty (60) day period set forth in subsection 4.3.3, then, unless the parties agree otherwise, the Fair Market Rental Value of the Premises shall be determined by arbitration as set forth in Article 16 of this Lease and the parties shall execute an amendment to this Lease setting forth the Fair Market Rental Value as determined by arbitration. In order to determine the Fair Market Rental Value of the Premises, the

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

4.3.5 **Retroactivity.** In the event that, pursuant to subsections 4.3.3 or 4.3.4 hereof, the parties execute an amendment to this Lease setting forth the Fair Market Rental Value and the Annual Minimum Rent, such amendment, if executed prior to the Renegotiation Date, shall be effective as of the Renegotiation Date; if executed after the Renegotiation Date, such amendment shall be retroactive to the Renegotiation Date. In the event that such amendment is executed after the Renegotiation Date, then, within thirty (30) days after such execution, Lessee shall pay to County, or County shall at its election pay or credit to Lessee, the difference, if any, between (a) such Fair Market Rental Value for the Premises and (b) the actual Annual Minimum Rent and Percentage Rent paid by Lessee to County, for the period of time from the Renegotiation Date until the date of such payment. Lessee (with respect to overpayments) or County (with respect to underpayments) shall further be entitled to interest on each portion of such payment from each date on which the applicable rental payments were payable under this Lease to the date paid or credited, whichever is applicable, at the following rates, compounded quarterly:

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

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

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

Lease Year, with any Excess Percentage Rent Payments credited as provided in subsection 4.2.2.4.

Payment may be made by check or draft issued and payable to The County of Los Angeles, and mailed or otherwise delivered to the Department of Beaches and Harbors, Los Angeles County, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, or such other address as may be provided to Lessee by County. Lessee acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand.

4.5 **Late Fees.** In the event any payment hereunder is not received by County by the date due, Lessee acknowledges that County will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee (“**Late Fee**”) of six percent (6%) of the unpaid amount shall be added to any amount that remains unpaid five (5) days after such amount was due and payable; provided, however, that Lessee shall not be required to pay a Late Fee in the case of the first instance in any calendar year that a payment is not made by Lessee within the foregoing five (5) day period, so long as such delinquency is cured within one (1) business day after written notice from County. In addition to any Late Fee, any unpaid rent due shall additionally bear interest at an annual rate equal to the Prime Rate plus three percent (3%), computed from the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County).

4.6 **Changes of Ownership and Financing Events.** Except as otherwise provided in this Section 4.6, each time Lessee proposes either (a) a Change of Ownership (that is not an Excluded Transfer) or (b) a Financing Event, County shall be paid (1) an Administrative Charge equal to the Actual Cost incurred by County in connection with its review and processing of said Change of Ownership or Financing Event (“**Administrative Charge**”) and (2) subject to the remaining provisions of this Section 4.6, a Net Proceeds Share, in the event County approves such proposed Change of Ownership or Financing Event and such transaction is consummated. “**Net Proceeds Share**” shall mean the applicable amount determined pursuant to Section 4.8 of this Lease. Changes of Ownership and Financing Events are further subject to County approval as provided in Articles 11 and 12 of this Lease.

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

For the purposes of this Lease, “**Change of Control**” shall refer to a transaction whereby the transferee acquires a beneficial residual interest in Lessee or a Major Sublessee which brings its cumulative beneficial residual interest in Lessee or a Major Sublessee, as appropriate, to over fifty percent (50%).

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

4.6.2.1 a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee’s ownership structure), to any other person or entity that as of both the Effective Date and immediately prior to the transfer is a direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee’s ownership structure), including in each case to or from a trust for the benefit of the immediate family (as defined in subsection 4.6.2.3 below) of any direct or indirect partner or member of Lessee who is an individual, including a series of transfers resulting in an Aggregate Transfer at all times during and after which greater than fifty percent (50%) of all beneficial residual interests in Lessee continue to be owned by one or more direct or indirect partners, shareholders or members of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee’s ownership structure) as of the Effective Date;

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

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

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

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

4.6.2.6 any transfer resulting from a Condemnation by County; or

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

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

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

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

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

reference to the amount of such proceeds apportioned to this Lease, a Major Sublease or the beneficial interests therein, whichever is appropriate.

4.7 **Calculation and Payment.** A deposit of Fifteen Thousand and 00/100 Dollars (\$15,000) toward the Administrative Charge shall be due and payable upon Lessee's notification to County of the proposed Change of Ownership (that is not an Excluded Transfer) or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Net Proceeds Share shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership or Financing Event giving rise to the obligation to pay such fee, regardless of whether or not money is transferred by the parties in connection with such consummation. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge), together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 4.6. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay County the balance of the Administrative Charge otherwise allowable under Section 4.6. within thirty (30) days after receipt of the notice from County setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge) and any additional supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice. Together with its request for County approval of the proposed transaction, Lessee, a Major Sublessee or the holder of a beneficial interest in this Lease or a Major Sublease, whichever is appropriate, shall present to County its calculation of the Net Proceeds Share (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the payment of such Net Proceeds Share ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Net Proceeds Share. Within thirty (30) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Net Proceeds Share set forth therein or the related adjustment of Improvement Costs, if any. Failure of County to approve the Calculation Notice in writing within such thirty (30) day period shall be deemed to constitute County's disapproval thereof. Failing mutual agreement within thirty (30) days after the expiration of said thirty (30) day period, the dispute shall be resolved by arbitration as set forth in Article 16 of this Lease in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Net Proceeds Share and (ii) Lessee shall deposit the disputed portion of the Net Proceeds Share into an interest bearing escrow account at the closing of the transaction (or deliver to County a letter of credit or other security reasonably acceptable to County in the amount of the disputed portion), which disputed portion shall be distributed in accordance with the arbitration of the dispute pursuant to Article 16 of this Lease, in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value.

4.7.1 **Transfer of Less Than Entire Interest.** Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial residual interest in Lessee, this Lease or a Major Sublease, the Net Proceeds Share shall be due and payable with respect to those portions of such beneficial residual interest that have been acquired by the transferee since the latest of (a) the Effective Date, (b) the most recent event creating Lessee's obligation to pay a Net Proceeds Share (including without limitation an approval by County of a transfer at a price which falls below the threshold for paying a Net Proceeds Share) with respect to this Lease (or a Major Sublease), or (c) the date which is twelve (12) months prior to the transfer which constitutes the Change of Ownership.

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

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

4.8 **Net Proceeds Share.** In the event of a Change of Ownership the Net Proceeds Share shall be a sum equal to the greater of (a) five percent (5%) of the gross sale or transfer

proceeds or other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor, such consideration shall in no event be deemed to be less than the fair value of the interests transferred) (the “**Gross Proceeds**”), or (b) twenty percent (20%) of the Net Transfer Proceeds from such transfer. Notwithstanding the foregoing, if the Gross Proceeds are less than 105.26% of the Applicable Costs (as defined in subsection 4.8.1 or 4.8.2 below, as applicable), then the Net Proceeds Share under the immediately preceding sentence shall be calculated only in accordance with clause (b) in such sentence (i.e., the Net Proceeds Share shall be twenty percent (20%) of the Net Transfer Proceeds from such transfer).

In the case of a Financing Event, the Net Proceeds Share (if any) shall be equal to twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event. Notwithstanding the foregoing, in connection with any Financing Event used to fund the cost of the acquisition of an Ownership Interest in Lessee that constitutes an Excluded Transfer, if such Financing Event is secured by the Ownership Interest that is transferred, then the Net Refinancing Proceeds from such Financing Event shall not include the portion of the proceeds of such Financing Event used to fund the acquisition cost of such Ownership Interest.

Notwithstanding any contrary provision of this Section 4.8, in the calculation of Net Transfer Proceeds and Net Refinancing Proceeds derived from a Change of Ownership or Financing Event, as applicable, pursuant to the remaining provisions of Section 4.8 below, there shall be no duplication of any amounts to be subtracted from the total consideration received in connection with such transaction, even if a particular amount qualifies for subtraction under more than one category.

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

4.8.1.1 The amount of \$6,022,951.00 plus the Extension Fee paid by Lessee to County in connection with the execution of this Lease (collectively, the “**Base Value**”); plus

4.8.1.2 The final actual construction costs paid by Lessee in connection with the construction of the Redevelopment Work, and other capital renovations to the Premises, or other physical capital Improvements or Alterations to the Premises in compliance with Article 5 herein (but not periodic maintenance and repair), in each case that are incurred by Lessee after the Effective Date, which costs have been submitted to County within thirty (30) days after the completion of such Improvements, along with evidence reasonably satisfactory to Director that such costs have been incurred (the amounts described in this subsection 4.8.1.2 are referred to as “**Improvement Costs**”). Notwithstanding the foregoing, with respect to Improvements or Alterations which are not part of the Redevelopment Work, Lessee shall submit Improvement Costs on an annual basis within ninety (90) days following the end of each fiscal year. If by the date that is ninety (90) days after the completion of the Redevelopment Work (or other Improvements) the final amount of the

Improvement Costs is not established because of a dispute or disputes between Lessee and its contractor(s), then Lessee shall note such dispute(s) in its submission of the Improvement Costs (including a description of the costs and the amounts under dispute). Lessee shall thereafter notify County in writing within thirty (30) days after the resolution of any such dispute as to any final adjustment required to the amount of the Improvement Costs to reflect the resolution of such dispute. Improvement Costs shall include all hard and soft costs, construction period interest on Lessee's construction loan, and developer fees incurred by Lessee, as long as such developer fees do not exceed four percent (4%) of hard construction costs; plus

4.8.1.3 Commissions, title and escrow costs, documentary transfer taxes, reasonable attorneys' fees, prepayment fees, penalties or other similar charges (such as yield maintenance premiums or defeasance costs), and other bona fide closing costs actually paid to third parties and documented to the satisfaction of Director, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County a Net Proceeds Share (collectively, "**Documented Transaction Costs**"); plus

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

4.8.2 **Transfer by Lessee's Successor.** In the case of a transfer by a successor Lessee (a transfer by a Lessee other than the original Lessee) that constitutes a Change of Ownership (that is not an Excluded Transfer), "**Net Transfer Proceeds**" shall mean the Gross Proceeds minus the Applicable Costs. For purposes of this subsection 4.8.2, Applicable Costs shall mean the sum of the following with respect to such successor Lessee:

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

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

certification and evidence reasonably satisfactory to Director that such costs have been incurred, as provided in subsection 4.8.1.2; plus

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

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

4.8.4 **Other Transfers.** With respect to any Change of Ownership that is not an Excluded Transfer and is not described in subsections 4.8.1 through 4.8.3 (e.g., a transfer of an interest in an entity holding a direct or indirect ownership interest in this Lease or in a Major Sublease), subsections 4.8.1 and 4.8.2 shall apply to such Change of Ownership, except that in lieu of deducting the amounts described in either subsections 4.8.1.1 and 4.8.1.2, on the one hand, or subsections 4.8.2.1 and 4.8.2.2, on the other hand, as applicable, in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred or which was transferred in the past but constitutes a portion of an Aggregate Transfer (which cost shall in no event be deemed to be less than a pro rata share of the amounts described in subsection 4.8.1.1 and 4.8.1.2, on the one hand, or subsections 4.8.2.1 and 4.8.2.2, on the other hand, as applicable, for such interest or for each interest in the aggregation pool in the case of an Aggregate Transfer) shall be deducted. Furthermore, in the event that any such Change of Ownership produces a Net Proceeds Share, the then existing Improvement Costs shall be increased by an appropriate amount to reflect the basis on which the Net Proceeds Share was calculated, and the basis of the interest that was transferred and for which a Net Proceeds Share was paid shall also be increased for subsequent transfers of the same interest, as if realized by Lessee upon a transfer of a comparable interest in this Lease or in a Major Sublease, as appropriate.

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

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

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

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

such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its best efforts to obtain such information voluntarily and provides County with the opportunity to review any such information so obtained. Lessee agrees to use its best efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of five percent (5%) or greater beneficial interests in Lessee or a Major Sublessee.

5. **REDEVELOPMENT WORK; ALTERATIONS.**

5.1 **Redevelopment Work.** Promptly following the Effective Date Lessee shall commence the performance of the Redevelopment Work on the Premises described in the redevelopment plan attached to this Lease as Exhibit B (the “**Redevelopment Plan**”). The construction work described in the Redevelopment Plan, along with all associated improvements, hardscape, landscape and other site work approved by County and to be performed in connection with the work described in such Redevelopment Plan, is referred to herein as the “**Redevelopment Work.**” The Redevelopment Work shall include, without limitation, the construction of the following:

(a) **Waterside Improvements:**

- (i) demolition and replacement of existing dock structures to result in 101 newly-renovated slips;
- (ii) replacement of two restroom buildings with a single larger facility to include enclosed laundry rooms, heated washrooms, private lockers, and showers;
- (iii) travel lift ways to be widened to accommodate larger vessels and an additional 75-100 ton travel lift; and
- (iv) replacement of engineer specified concrete areas in yard to accommodate higher loads produced by larger travel lift.

The foregoing work items described in this subparagraph 5.1(a) and all other related or associated work set forth in the Redevelopment Plan are collectively referred to as the “**Waterside Improvements.**”

(b) **Landside Improvements:**

- (i) creation of a public promenade along the Fiji Way frontage of the width set forth in the approved Final Plans and Specifications;
- (ii) upgraded landscaping;
- (iii) addition of fencing and partitions between the slips and yard areas;
- (iv) pave and re-stripe parking areas; and

- (v) installation of new signage on existing pylon along Fiji Way.

The foregoing work items described in this subparagraph 5.1(b) and all other related or associated work set forth in the Redevelopment Plan are collectively referred to as the “**Landside Improvements**.” Each reference in this Lease to a component of the Redevelopment Work shall mean and refer to either the Waterside Improvements or the Landside Improvements.

There shall be no changes, modifications or exceptions to the Redevelopment Plan, except as expressly approved in advance in writing by the Director or otherwise in accordance with this Article 5. The scope, design, density, site coverage, layout and open space, view corridors, height, construction materials, landscaping, hardscaping and other improvement specifications pertaining to the Redevelopment Work shall be in accordance with the Redevelopment Plan, and shall be subject to County’s approval as set forth in this Article 5. Lessee shall be responsible for the acquisition and compliance with all required governmental (including, without limitation, County, Coastal Commission and Design Control Board) planning and entitlement approvals for the Redevelopment Work. Lessee shall be solely responsible for all costs and expenses incurred in connection with the design, entitlement and construction of the Redevelopment Work.

Lessee shall expend not less than the Minimum Development Cost (as defined below) for the following out-of-pocket costs of the design, entitlement and construction of the Redevelopment Work: (I) hard construction costs; and (II) soft costs, including design and architectural fees, financing charges and the Extension Fee; provided, however, that the total amount of any development fees shall not exceed four percent (4%) of hard costs, and the total soft costs shall not in the aggregate exceed seven and one-half percent (7.5%) of hard costs. The contractor’s general conditions and supervision shall not exceed a total of five percent (5%) of hard construction costs and the contractor’s profit and overhead shall not exceed a total of ten percent (10%) of hard construction costs. For purposes of satisfaction of the Minimum Development Cost requirement, any labor performed by Lessee shall be charged at market rates comparable to that charged for similar work performed third party contractors. All expenditures shall be subject to verification and reasonable approval by Director. The “**Minimum Development Cost**” shall mean \$7,500,000, increased (but not decreased) by the same percentage increase (if any) in the ENR Index from the month of January, 2012 through the month of the commencement of construction of the Redevelopment Work. The Minimum Development Cost requirement shall not be construed as a maximum amount that Lessee is required to expend for the Redevelopment Work, but only as a minimum amount, and Lessee shall be required to perform the Redevelopment Work in accordance with the requirements and standards set forth in this Article 5 even if the costs necessary to do so exceed the Minimum Development Cost for the Redevelopment Work.

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

Improvements. Both the Redevelopment Work and the Subsequent Renovation shall be considered to be Alterations. Accordingly, except as expressly provided in this Article 5, all of the terms and provisions of Article 5 of this Lease shall be applicable to the Redevelopment Work and the Subsequent Renovation.

5.3 **Plans and Specifications for Alterations.** Lessee shall make no Alterations without the prior written approval of the Director. Prior and as a condition precedent to the construction of any Alterations, Lessee shall submit to Director, for Director's approval, the plans, specifications and other materials described in this Section 5.3 pertaining to such Alterations. All Alterations must be consistent with the Permitted Uses set forth in Article 3 of this Lease.

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

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

deemed Director's approval thereof; provided, however, that in the event that the preliminary plans, outline specifications and construction cost estimates contain substantial changes from the approved schematics and narrative (other than Approved Governmental Changes), then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the preliminary plans, outline specifications and construction cost estimates, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

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

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

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

than Approved Governmental Changes), then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the final plans, detailed construction specifications and construction cost statement, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

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

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

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

5.4.1 **Permits and Other Approvals.** Lessee shall have received and furnished the Department with copies of all permits, licenses and other governmental approvals necessary for commencement of the Redevelopment Work or Alterations, as the case may be. All permits, licenses and other governmental approvals necessary for subsequent stages of the Redevelopment Work or Alterations shall be furnished to the County prior to commencement of such stages. Notwithstanding any contrary provision hereof, all discretionary governmental approvals for all of the Redevelopment Work, Subsequent Renovation or other Alterations shall have been received by Lessee as a condition to the commencement of the Redevelopment Work, Subsequent Renovation or other Alterations, as applicable.

5.4.2 **Copies of Construction Contracts.** Lessee shall have furnished County with copies of any contract(s) entered into between Lessee and any general

contractor(s) employed for the purpose of constructing the Redevelopment Work or Alterations, as the case may be.

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

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

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

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

5.4.4 **Alternative Security.** In lieu of providing the Payment and Performance Bonds, Lessee may, in its discretion, provide any one or a combination of the following alternative security reasonably acceptable to Director : (i) a completion guaranty, in form and substance reasonably acceptable to County, made by an individual or entity with a sufficient net worth and liquidity, in the sole discretion of Director, to comply with the terms of such guaranty in view of the potential financial responsibility involved, (ii) a certificate of deposit, cash or United States governmental security, (iii) a letter of credit, or (iv) a set aside letter from Lessee’s construction lender. The security described in clauses (ii), (iii) and (iv) above shall be in an amount equal to one hundred percent

(100%) of the construction contract price for hard costs, and shall permit County to draw thereon to complete the construction of the Improvements if same have not been completed by Lessee or if a material Event of Default has occurred under this Lease. Any alternative security provided by Lessee pursuant to this subsection may name County and Lessee's construction lender as co-beneficiaries. A condition precedent to Lessee's right to provide the alternate security described in this subsection 5.4.4 shall be delivery by Lessee to County of an opinion of counsel from a firm and in a form acceptable to County to the effect that the construction work does not constitute a public work of improvement requiring the delivery of the bonds described in subsection 5.4.3 above. Director shall have the authority, in his reasonable discretion, to modify, waive or reduce the amount of any bonds or alternate security required hereunder.

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

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

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

5.6 Completion of Redevelopment Work. Lessee shall comply with all time deadlines and schedules described in this Article 5 relating to the commencement and

completion of the construction of the Redevelopment Work, subject to the terms and provisions of subsection 5.6.1 below pertaining to Force Majeure Delay.

The construction of the Redevelopment Work shall be performed in accordance with a phased construction schedule approved by Director. Lessee shall commence construction of the Landside Improvements within twelve (12) months after the Effective Date (the “**Required Landside Improvements Commencement Date**”). Lessee shall commence construction of the Waterside Improvements within eighteen (18) months after the Effective Date (the “**Required Waterside Improvements Commencement Date**” and individually with the Required Landside Improvements Commencement Date, each, a “**Required Commencement Date**”) Subject to the provisions of this Section 5.6, all of the Redevelopment Work shall be substantially completed on or before thirty-six (36) months following the Effective Date (the “**Required Completion Date**”). For purposes of this Lease, the terms “substantial completion” or “substantially completed” as they pertain to the Redevelopment Work shall mean the completion of the Redevelopment Work in accordance with the Final Plans and Specifications, subject to minor so-called punch list items that do not interfere with the use and occupancy of the Redevelopment Work. Without limitation of any other requirements for substantial completion, the Redevelopment Work shall not be considered substantially completed until Lessee has received a temporary certificate of occupancy or equivalent approval required for the legal occupancy and use of all of the Redevelopment Work.

Lessee shall have the right to extend both of the Required Commencement Dates for a six (6) month period by written notice to County of Lessee’s exercise of such extension right and payment to County, concurrent with such notice, of the sum of Fifteen Thousand Dollars (\$15,000.00). Lessee shall have a second right to extend both of the Required Commencement Dates for a second six (6) month period by written notice to County of Lessee’s exercise of such extension right and payment to County, concurrent with such notice, of the sum of Twenty-Five Thousand Dollars (\$25,000.00). No extension of the Required Commencement Dates shall extend the Required Completion Date. Lessee shall have the right to extend the Required Completion Date for a six (6) month period by written notice to County of Lessee’s exercise of such extension right and payment to County, concurrent with such notice, of the sum of Twenty-Five Thousand Dollars (\$25,000.00). Lessee shall have a second right to extend the Required Completion Date for a second six (6) month period by written notice to County of Lessee’s exercise of such extension right and payment to County, concurrent with such notice, of the sum of Thirty-Five Thousand Dollars (\$35,000.00). Each of the foregoing extensions is referred to herein as a “**Permitted Extension**.” Each extension notice (and the concurrent extension payment) for a Permitted Extension must be delivered by Lessee to County no later than thirty (30) days prior to the then-effective Required Commencement Date or Required Completion Date with respect to which Lessee is exercising such extension right.

5.6.1 Force Majeure Delay. Lessee shall diligently pursue the commencement and substantial completion of the Redevelopment Work by the Required Completion Date. If after Lessee’s exercise of the Permitted Extensions set forth above in Section 5.6, Lessee is still unable to commence and/or substantially complete (as applicable) the Redevelopment Work or a component thereof, despite Lessee’s diligent efforts to do so, due to a Force Majeure Delay, then the applicable Required Commencement Date and/or Required Completion Date with which Lessee has been unable to comply shall be further

extended for the continued period of such delay that is due to a Force Majeure Delay; provided, however, that in no event shall a Required Commencement Date or the Required Completion Date (as extended pursuant to Lessee's exercise of the Permitted Extensions) be extended for Force Majeure Delay pursuant to this subsection 5.6.1 for a period of longer than one (1) year. Notwithstanding any extension of a Required Commencement Date or the Required Completion Date pursuant to this subsection 5.6.1, Lessee shall to the extent possible commence and proceed to complete the portions, if any, of the Redevelopment Work that can be completed notwithstanding such Force Majeure Delay. Any extension of a Required Commencement Date or the Required Completion Date due to Force Majeure Delay shall be limited to the period of the Force Majeure Delay and no such delay shall be considered to have commenced until such time as Lessee shall have notified Director in writing of such delay.

For purposes of this Article 5, "**Force Majeure Delay**" shall mean delays in commencement or substantial completion of the construction of the Redevelopment Work beyond the applicable Required Commencement Dates or the Required Completion Date set forth in Section 5.6 (as extended by the Permitted Extensions), due to (a) fire or other casualty, earthquake, tidal wave or flood, tornado or other act of God; (b) civil disturbance, war, organized labor dispute or freight embargo; (c) a hidden condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Premises which was not known to Lessee as of the commencement of such construction activity; (d) an injunction or restraining order issued pursuant to a court action commenced by a plaintiff other than County or the California Coastal Commission acting in their governmental capacity, Lessee or any person or entity affiliated with Lessee; (e) Unreasonable County Activity (as defined in subsection 5.6.2 below) after the commencement of construction; or (f) any other unforeseeable event beyond the control of Lessee. As a condition to clause (d) above constituting a Force Majeure Delay, Lessee shall, regardless of whether it is a named party in the action, diligently pursue the removal of any such restraining order or injunction and shall exhaust all commercially reasonable efforts to appeal such restraining order or injunction.

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

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

5.6.2 Unreasonable County Activity. For the purposes of this Lease, the following shall be deemed to be "**Unreasonable County Activity**": (i) County's failure to provide required joinder, if any, in Lessee's proposals for the Improvements described

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

(a) Within a reasonable time under the circumstances, Lessee must notify Director in writing of the specific conduct comprising the alleged Unreasonable County Activity, and the next opportunity, if any, for County to rectify such alleged conduct. If Lessee fails to notify Director in writing as specified in the immediately preceding sentence within ten (10) days following Lessee's discovery of the alleged Unreasonable County Activity, then notwithstanding any contrary provision of this subsection 5.6.2, in no event shall Lessee be entitled to an extension for any period of the delay occurring prior to the date of Lessee's notice described in this paragraph (a).

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

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

5.6.3 **County's Inducement; Failure to Complete.** Lessee acknowledges that the principal inducement to County to enter into this Lease Agreement is the timely commencement and completion of the Redevelopment Work. If Lessee fails to commence or substantially complete the Redevelopment Work or a component thereof on or before the applicable Required Commencement Date or the Required Completion Date (as such date may be extended by Lessee's exercise of a Permitted Extension or by Force Majeure Delay in accordance with the provisions of subsection 5.6.1), and such failure is not cured within the cure period set forth in Section 13.1.3, then Lessee shall have committed an Event of Default under this Lease. In addition to such failure constituting an Event of Default and in addition to all rights and remedies which County may have in connection with such Event of Default, if Lessee fails to commence or substantially complete the Redevelopment Work or a component thereof on or before the applicable Required Commencement Date or the Required Completion Date (as such date may be extended by Lessee's exercise of a Permitted Extension or by Force Majeure Delay in accordance with the provisions of subsection 5.6.1), subject to Section 12.12 County shall have the unilateral right to declare on written notice to Lessee that this Lease is automatically amended to change the expiration of the Term from February 28, 2061 to February 28, 2022 (i.e., the Existing Expiration Date) (the "**Reversion**"). If County exercise the Reversion and such Reversion takes effect after the application of Section 12.12 of this Lease, then (a) Lessee shall be relieved of its obligation to complete any remaining Redevelopment Work, except that any incomplete Redevelopment Work shall be completed by Lessee such that no item of construction remains partially unfinished and such that the Premises and Improvements are in compliance with all Applicable Laws and the remaining terms and provisions of this Lease; and (b) Section 5.11 of this Lease shall terminate.

5.7 **Manner of Construction.**

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

5.7.2 **Utility Work.** Any work performed by or on behalf of Lessee or any occupant of the Premises to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service

shall be performed in a manner that minimizes interference with the provision of such services to the Premises and other persons.

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

5.7.4 **Compliance with Construction Documents and Laws; Issuance of Permits.** All Improvements on the Premises shall be completed in substantial compliance with any construction documents approved by County and also in compliance with all applicable local, state and federal laws and regulations. Lessee shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

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

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

threatening or which involves the threat of potential substantial damage, County shall have the right to enter the Premises immediately and without notice to or accompaniment by Lessee.

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

5.7.8 **Final Completion Certificate.** Promptly after completion of the Redevelopment Work, upon Lessee’s request, County shall execute and deliver to Lessee a final completion certificate (the “**Final Completion Certificate**”) as to the work which is the subject thereof, which shall conclusively evidence the completion of such work by Lessee in accordance with the terms of this Lease.

5.8 **Use of Plans.** Contracts between Lessee and any architect, design professional or licensed contractor in connection with the construction, alteration or modification of Improvements on the Premises shall provide, in form and content reasonably satisfactory to County, for the assignment thereof to County (and Lessee’s Encumbrance Holder(s) if required by Lessee’s Encumbrance Holder(s)) as security to County for Lessee’s performance hereunder, and County shall be furnished with a copy of any such contract, together with the further agreement of the parties thereto, that if this Lease is terminated by County due to Lessee’s default, County (or if County enters into a new lease with Lessee’s Encumbrance Holder pursuant to Article 12, then Lessee’s Encumbrance Holder) may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract, upon the payment of any sums due to any party thereto. County’s right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trade marks, trade names or logos of Lessee or any such architect, design professional or contractor; provided, however, that this sentence shall not prohibit or restrict County’s use of the trade name(s) of the Premises and/or Improvements to the extent permitted under Section 3.5 above. The assignment to County and Lessee’s Encumbrance Holder(s) described in this Section 5.8 shall be effective until the Final Completion Certificate for the subject work is issued, and shall be subordinate to the security interest, if any, of Lessee’s construction lender in the assigned contract, which subordination shall be in a form reasonably acceptable to Lessee’s construction lender.

5.9 **Where Director Approval Not Required.** Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Article 5, Lessee shall not be required to seek or obtain the approvals of Director described in this Article 5 (including those set forth in Section 5.3) for Alterations (other than the Redevelopment Work) where all of the following conditions are satisfied: (i) the total cost of the project is less than One Hundred Thousand Dollars (\$100,000), adjusted annually to reflect the increase or decrease in the ENR Index from and after the Effective Date (provided, however, that in no event shall such adjustment result in a reduction of the threshold for Director approval to less than One Hundred Thousand Dollars (\$100,000)); (ii) none of the proposed construction activity is structural in nature; and (iii) none

of the proposed construction, additions, modifications or changes affect or are visible from the exterior of the Premises; provided, however, that whenever Lessee makes or constructs or permits any improvements in or to the Premises, Lessee shall (a) give written notice thereof (including a description of the work to be done and the permits obtained for such work), and (b) furnish a copy of “as-built” plans upon completion of such work to County.

5.10 **Protection of County.** Nothing in this Lease shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Premises of any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics’ liens or other claims against the County’s interest in the Premises or County.

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

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

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

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

5.11 **Subsequent Renovation.** In addition to the Redevelopment Work to be performed by Lessee pursuant to Section 5.1, Lessee shall be required to complete a renovation of the Improvements during the remaining Term of the Lease in accordance with the terms and provisions of this Section 5.11 (the “**Subsequent Renovation**”). The construction of the Subsequent Renovation shall be commenced by Lessee not earlier than January 1, 2035 and completed by Lessee not later than December 31, 2039. The Subsequent Renovation shall consist of such renovation and construction work as necessary to revitalize and upgrade the exterior areas, the building exterior, the common areas and the landscaping of the Landside Improvements to a condition and appearance commensurate with other recently constructed or renovated boat repair, small craft anchorage, boat-related storage and marine-related office improvements located in comparable marinas in California. Lessee shall be required to expend hard and soft costs on the design, permitting and construction of the Subsequent Renovation in an amount not less than the full amount of the Renovation Fund required to be funded by Lessee under Section 5.12 below (or substitute arrangement referenced in such Section 5.12), but the amount of such Renovation Fund shall be merely the minimum required cost of the Subsequent Renovation and shall not limit Lessee’s obligation to satisfy the requirements for the Subsequent Renovation described herein. Soft costs expended from the Renovation Fund shall be subject to the same limitations and restrictions as set forth in Section 5.1 with respect to the soft costs includable to satisfy the Minimum Development Cost with respect to the Redevelopment Work.

Prior to the commencement of construction of the Subsequent Renovation, Lessee shall submit to Director a renovation plan for the Subsequent Renovation (the “**Subsequent Renovation Plan**”), which renovation plan shall (a) describe the proposed renovation work in such detail as reasonably requested by Director, (b) include a design, governmental approval and construction schedule for the work described therein, (c) include a budget for all work costs, and (d) address such other matters as Director reasonably requests. The Subsequent Renovation Plan shall be submitted by Lessee to County not later than such date as, taking into consideration the approval periods described in this Section 5.11 and Section 5.3 above, and the estimated time required to obtain all necessary governmental approvals and permits, will reasonably be expected to permit the completion by Lessee of the Subsequent Renovation by the date required under this Section 5.11. Director shall have sixty (60) days after receipt of the Subsequent Renovation Plan within which to reasonably approve or disapprove the Subsequent Renovation Plan, or to approve the Subsequent Renovation Plan subject to conditions imposed by Director in his or her reasonable judgment. Failure of Director to notify Lessee in writing of his or her approval or disapproval of the Subsequent Renovation Plan shall be deemed Director’s disapproval of the Subsequent Renovation Plan. Upon Director’s approval of the Subsequent Renovation Plan, Lessee shall proceed to satisfy all conditions in this Article 5 to the commencement of the Subsequent Renovation and to commence and complete the Subsequent Renovation in accordance with the Subsequent Renovation Plan and the terms and conditions of this Article 5. Lessee’s failure to comply with the schedule approved by Director as part of Subsequent Renovation Plan and/or to meet the construction commencement and completion deadlines pertaining to the Subsequent Renovation set forth in this Section 5.11 (except to the extent due to Force Majeure delay) shall, if not cured within the cure period set forth in Subsection 13.1.2, constitute an Event of Default. If any dispute arises as to whether Director has failed to exercise reasonable judgment in the approval or disapproval of the Subsequent Renovation Plan, the parties shall negotiate in good faith to resolve such dispute and if they are unable to do so within thirty (30) days after Lessee has received Director’s written disapproval (or, in the event of a

deemed disapproval, thirty (30) days after the end of Director's sixty (60) day review period set forth above in this paragraph) such dispute shall be submitted to arbitration pursuant to Article 16 of this Lease.

5.12 Subsequent Renovation Fund. Commencing with the month during which the first (1st) anniversary of the earlier of the Completion Date or the Required Completion Date occurs, and continuing each month thereafter until the completion of the Subsequent Renovation, Lessee shall establish and maintain a reserve fund (the "**Subsequent Renovation Fund**") in accordance with the provisions of this Section 5.12 for the purpose of funding the cost of the Subsequent Renovation; provided, however, that Lessee's obligation to perform the Subsequent Renovation shall not be limited to the funds available in the Subsequent Renovation Fund. The Subsequent Renovation Fund shall be held in an account established with a reputable financial institution reasonably acceptable to Director (which shall include Lessee's Encumbrance Holder) into which deposits shall be made by Lessee pursuant to this Section 5.12. On or before the fifteenth (15th) day of each month during the period during which the Subsequent Renovation Fund is required to be maintained by Lessee hereunder, Lessee shall make a monthly deposit to the Subsequent Renovation Fund in an amount equal to one-quarter of one percent (0.25%) of total Gross Receipts and Gross Revenues for the previous month. All interest and earnings on the Subsequent Renovation Fund shall be added to the Subsequent Renovation Fund, but shall not be treated as a credit against the Subsequent Renovation Fund deposits required to be made by Lessee pursuant to this Section 5.12. Disbursements shall be made from the Subsequent Renovation Fund only for costs for the design, permitting, entitlements and construction of the Subsequent Renovation which have been reasonably approved by Director. The Renovation Fund shall be used only for the purposes of the Subsequent Renovation set forth in Section 5.11 above and for expenditures required under the approved Subsequent Renovation Plan. To the extent set forth in the approved Subsequent Renovation Plan, the Renovation Fund may be used for expenditures for yard area renovation, including concrete, utility, drainage, environmental clarifiers, fencing, gates, vaults, dockside renovation, building façade renovation, signage, hardscaping renovation, and cosmetic and design improvements for the purpose of renovating the overall condition and appearance of the facility.

Prior to the disbursement of any amounts from the Subsequent Renovation Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Subsequent Renovation Fund. Director shall have no obligation to approve the disbursement of amounts from the Subsequent Renovation Fund unless and until Director has approved Lessee's Subsequent Renovation Plan for such Subsequent Renovation and Lessee has furnished to Director evidence reasonably satisfactory to Director that Lessee has sufficient financial resources (taking into consideration the Subsequent Renovation Fund) to pay for all costs of such Subsequent Renovation. In lieu of making Renovation Fund deposits, Lessee shall have the right to provide substitute funding arrangements satisfactory to Director, such as a bonding mechanism, letter of credit or other approved security mechanism, in the same amounts and timing, as the Renovation Fund deposits.

5.13 Capital Improvement Fund. Commencing with the month (the "**First Deposit Month**") following the month during which the earliest of the date of the substantial completion of the Landside Improvements, the date of the substantial completion of the Waterside

Improvements, or the Required Completion Date occurs, and continuing during the remaining Term of the Lease, Lessee shall establish and maintain a reserve fund (the “**Capital Improvement Fund**”) in accordance with the provisions of this Section 5.13 for the cost of Permitted Capital Expenditures (as defined below) for the Premises. Lessee and County agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide funds for the costs of additions, replacements, renovations or significant upgrades of or to the Improvements on the Premises, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security and communications systems, structural components, heavy equipment attached to and constituting a part of the building (such as attached cranes, lifts, slings, racking system, fueling system and equipment), or roof) that significantly increase the capacity, efficiency, useful life or economy of operation of the Improvements or their major systems, after the completion of the Redevelopment Work (“**Permitted Capital Expenditures**”). Permitted Capital Expenditures shall not include any costs for the Redevelopment Work or the Subsequent Renovation. In addition, Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the buildings or their major systems in an ordinarily efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied.

Commencing on the fifteenth (15th) day of the First Deposit Month and continuing on or before the fifteenth (15th) day of each month thereafter during the remaining Term, Lessee shall make a monthly deposit to the Capital Improvement Fund in an amount equal to one-half percent (0.50%) of total Gross Receipts and Gross Revenues for the previous month. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Lessee pursuant to this Section 5.13.

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

Disbursements shall be made from the Capital Improvement Fund only for costs for Permitted Capital Expenditures which have been incurred by Lessee following the first anniversary of the Completion Date and which are approved by Director and satisfy the requirements of this Section 5.13. For the purpose of obtaining Director’s prior approval of any Capital Improvement Fund disbursements, Lessee shall submit to Director on an annual calendar year basis a capital expenditure plan for the upcoming year which details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Lessee requests Director’s approval, which approval shall not be unreasonably withheld. Any anticipated expenditure set forth in such capital expenditure plan which is approved by Director as an acceptable Capital Improvement Fund disbursement shall be considered pre-approved by Director (but only up to the amount of such expenditure set forth in the annual capital

expenditure plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to Director for Director's approval revisions to the then current capital expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted capital expenditure plan. Prior to the disbursement of any amounts from the Capital Improvement Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Capital Improvement Fund.

All then-existing amounts in the Capital Improvement Fund shall be expended for Permitted Capital Expenditures not later than five (5) years prior to the expiration of the Term of the Lease. Thereafter, if County elects to require Lessee to remove the Improvements at the end of the Term and requires Lessee to provide a Removal Security Fund to secure its obligation to perform such removal obligations in accordance with subsection 2.3.2 of this Lease, then Lessee shall have the right to contribute the deposits thereafter required to be made by Lessee under this Section 5.13 towards Lessee's obligations to fund the Removal Security Fund in subsection 2.3.2, but only if and to the extent that there are sufficient funds made available in the Capital Improvement Fund for any needed Permitted Capital Expenditures, as determined by Director in Director's sole and absolute discretion.

6. **CONDEMNATION.**

6.1 **Definitions.**

6.1.1 **Condemnation.** "Condemnation" means (1) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or otherwise, and (2) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

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

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

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

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

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

6.4 **Effect of Partial Taking.** If a portion of the Premises or the Improvements thereon are taken by Condemnation, this Lease shall remain in effect, except that Lessee may

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

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

6.5 **Effect of Partial Taking on Rent.** If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect as to the portion of the Premises not so taken (a "**Partial Taking**"), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Premises not so taken to the fair market value of the entire Premises immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Adjustment Date for Annual Minimum Rent (as described in subsection 4.2.1.3 above), for the purposes of adjusting the Annual Minimum Rent, all Annual Minimum Rent and Percentage Rent paid by Lessee to County prior to the date of the Partial Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Premises which remains after the taking bears to the fair market value of the entire Premises immediately prior to the taking. If the parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be settled through arbitration in the manner set forth in Article 16 hereof. Any determinations of fair market value made pursuant to this Section 6.5 in connection with any arbitration proceeding shall be predicated upon the "income approach" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "**Income Approach**"). All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

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

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

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

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

6.7.2 **Taking For Temporary Use.** Net Awards and Payments received on account of a taking for temporary use shall be paid to Lessee; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any damage to or destruction of the Improvements, such portion shall be held and applied as provided in the first sentence of Section 6.7.1, above.

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

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

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

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

Fourth: The balance shall be paid to County.

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

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

7. **SECURITY DEPOSIT.**

7.1 **Amount and Use.** Lessee shall deliver to and maintain with County a security deposit (the "**Security Deposit**") in an amount equal to three (3) times the Monthly Minimum Rent in effect from time to time during the Term (i.e., adjusted on each Adjustment Date or Renegotiation Date to reflect any change in the Monthly Minimum Rent during the Term of this Lease).

The Security Deposit shall secure Lessee's obligations pursuant to this Lease, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Lessee within any applicable notice and cure period, and (b) any other Events of Default of Lessee under this Lease. The Security Deposit shall be applied at the discretion of County. Lessee shall have the right to maintain the Security Deposit in form of cash or in lieu or replacement of the cash Security Deposit requirement described above, in the form of a certificate of deposit, letter of credit or other approved investment instrument acceptable to County with respect to form, content and issuer. As long as no Event of Default by Lessee exists under the Lease, Lessee shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to County in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Lessee shall not be entitled to interest). Provided that no Event of Default then exists under the Lease, at the end of each

Lease Year Lessee shall be entitled to a credit for all unexpended interest accruing to Lessee's benefit with respect to the Security Deposit during such Lease Year pursuant to the immediately preceding sentence. Notwithstanding any contrary provision hereof, County shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Lessee under the Lease.

7.2 **Replacement.** In the event that some or all of the Security Deposit is drawn against by County and applied against any delinquent rent not paid by Lessee within any applicable notice or cure period, or against other Events of Default of Lessee hereunder, Lessee shall, within ten (10) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with County, or cause the issuer of any letter of credit to reissue the letter of credit, such that Lessee once again maintains a Security Deposit equal to three (3) times the then effective Monthly Minimum Rent. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in subsection 13.1.3, shall constitute an Event of Default hereunder.

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

8. **INDEMNITY.**

Except to the extent caused by the gross negligence or willful misconduct of any such indemnitee, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County and its respective Boards, officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County, to the extent arising from or caused by (a) the operation, maintenance, use, or occupation of the Premises (other than the Promenade and the Seawall) or the Improvements by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, including any occurrence in or on the Premises or Improvements, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (c) the failure of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any Applicable Law, or (d) the performance of the Redevelopment Work or any Alterations. The obligation of Lessee to so relieve, indemnify, protect, and save harmless County and each of its respective Boards, officers, agents, consultants, counsel, employees and volunteers, shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease.

Notwithstanding anything in this Lease to the contrary, Lessee and County acknowledge that their respective liability, if any, arising out of the operation, maintenance, use and/or occupation of the Promenade shall be governed by Applicable Law. In addition, Lessee shall not be required to indemnify, defend or hold County harmless with respect to the existence of any Hazardous Substances that might be present in seawater passing over, under, through or around any portion of the Premises or any Improvement as long as (I) such Hazardous Substances did not originate at or from the Premises or Improvements, and (II) with respect to Hazardous Substances that did not originate at or from the Premises or Improvements, were not caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees.

9. INSURANCE.

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

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

General Aggregate:	\$10,000,000
Products/Completed Operations Aggregate:	\$10,000,000
Personal and Advertising Injury:	\$5,000,000
Each Occurrence:	\$5,000,000

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

9.1.2 Automobile Liability insurance (written on ISO form CA 00 01 or similar then-current form reasonably acceptable to County) with a limit of liability of not less than One Million Dollars (\$1,000,000) of Primary Coverage and One Million Dollars (\$1,000,000) of Umbrella Coverage, for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto." During any

period of operation of valet parking facilities, Lessee also shall provide Garagekeeper's Legal Liability coverage, (written on ISO form CA 99 37 or similar then-current form reasonably acceptable to County) with limits of not less than Two Million Dollars (\$2,000,000) for this location.

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

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

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

9.1.5 For construction projects, including any Alterations or restoration, on the Premises, Lessee or Lessee's contractor or subcontractors will provide the following insurance (County reserves the right to determine the coverage and coverage limit required on a project by project basis):

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

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

9.1.5.3 Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 (or similar then-current form reasonably acceptable to County) with a limit of liability as reasonably required by the County for the Alterations. Such insurance shall include coverage for all “owned,” “hired” and “non-owned” automobiles, or coverage for “any auto.”

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

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

9.1.6 If the use of the Premises or Improvements involves any manufacture, distribution or service of alcoholic beverages, Liquor Liability insurance (written on ISO

policy form CG 00 33 or 34 or similar then-current form reasonably acceptable to County) with a liability limit of not less than Five Million Dollars (\$5,000,000) per occurrence and an annual aggregate of Ten Million Dollars (\$10,000,000), which limits may be covered by a combination of Primary Coverage and Umbrella Coverage. If written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of the Lease.

9.1.7 If use of the Premises involves a marina operation, berthing, docking, and/or launching of boats and/or pleasure crafts, and/or use of floating docks, piers and/or ramps, Lessee shall carry Marina Operator's Liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence, and Ten Million Dollars (\$10,000,000) 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 the Lease, or replacement coverage shall be maintained until such time.

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

9.3 General Insurance Requirements. Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to County, shall be filed with Director no later than the Effective Date, provided that the evidence of the insurance coverage required under Section 9.1.5 shall be required to be delivered by Lessee prior to the commencement of any Alterations. All certificates of insurance shall (a) specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions exceeding \$25,000 or such other commercially reasonable amount as approved by the Director; and (d) evidence all other requirements under this Article 9. The policy or policies of insurance shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to Director or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with Director.

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

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

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

- (a) that County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers, shall be named as additional insureds under any liability insurance policy or policies;
- (b) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;
- (c) in any property insurance policy, a waiver of all right of subrogation against County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers with respect to losses payable under such policies;
- (d) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;
- (e) to the extent of the indemnification obligations of Lessee in favor of any additional insureds, the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to such additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;
- (f) that losses, if any, shall be adjusted with and payable to Lessee, County and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;
- (g) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;
- (h) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,
- (i) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional

insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

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

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

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

10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Lessee's Maintenance and Repair Obligations. Lessee shall maintain the Premises, including paved or unpaved ground surfaces and Improvements thereon (including the Promenade, but excluding the Excluded Conditions and excluding the Seawall), in conformance with the Minimum Standards regarding the use and occupancy of commercial and anchorage projects in Marina del Rey, as revised from time to time by County in a manner consistent with commercially reasonable maintenance standards applicable to other commercial and anchorage projects in Marina del Rey (the "**Maintenance Standard**"). Any dispute as to whether revisions to the Maintenance Standard adopted by the County from time to time pursuant to the immediately preceding sentence is commercially reasonable shall be submitted to arbitration pursuant to Article 16 of this Lease. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Premises (including the Promenade) and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Premises in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10. Lessee's obligations shall include the obligation to keep all dock facilities in good repair and condition in accordance with the Minimum Standards.

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

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

Lessee shall cause all trees located on the Premises to be trimmed and otherwise maintained in compliance with the Marina Del Rey tree trimming policy attached to this Lease as Exhibit D, as such policy is updated from time to time by County.

10.2 Maintenance Deficiencies. If County provides written notice to Lessee of a deficiency or other breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Section 10.1 above, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.2), then in addition to, and not in lieu of, any rights or remedies that County may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars (\$100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured;

provided, however, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in County's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Lessee), then as long as during the specified cure period Lessee commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in County's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible.

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

10.3 Option to Terminate for Uninsured Casualty. In the event of any damage to or destruction of the Premises, or any Improvements located thereon (other than the Excluded Conditions and the Seawall, except to the extent damage thereto is caused by the Lessee, its agents, employees, subtenants or contractors, or by Improvements constructed by or on behalf of Lessee), Lessee shall, except as otherwise expressly provided in this Section 10.3, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore such Improvements to their condition existing prior to the damage or destruction. Except as otherwise expressly provided in this Section 10.3, such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds. Repair and restoration of any damage or destruction shall take place in accordance with the provisions of Article 5. Notwithstanding the foregoing, Lessee shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements on the Premises where all or substantially all of the Improvements on the Premises (excluding the Excluded Conditions and the Seawall) are substantially damaged or

destroyed and such damage or destruction resulted from a cause not required to be insured against by this Lease (an “**Uninsured Loss**”), and where all of the following occur:

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

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

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

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

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

10.5 **No County Obligation to Make Repairs.** County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Premises. Notwithstanding the foregoing, Director shall in its good faith discretion consider the application of funds toward the maintenance, repair and replacement of the existing seawall protecting the Premises (the “**Seawall**”) if and to the extent such maintenance, repair and/or replacement are necessary and such funds are made available to Director for such purpose by County and its Board of Supervisors. Director shall undertake any necessary maintenance, repair and/or replacement of the Seawall with due diligence consistent with the funding provided. In the event the Seawall is in imminent danger of collapse or has collapsed, Director shall promptly seek funding from the Board of Supervisors for repair or replacement as may be necessary to avoid or repair such

collapse. Except as expressly provided in this Section 10.5, County shall have no obligation to maintain or repair the Seawall.

If the Seawall is damaged to an extent that prevents Lessee from continuing to operate business on the Premises in accordance with the Permitted Use, Lessee shall notify County in writing of such damage. If within one (1) year following such written notice County does not complete the performance of the necessary repairs to or replacement of the affected portions of the Seawall to the extent required to permit Lessee to operate business on the Premises for the Permitted Use, then Lessee shall have the right to terminate this Lease upon written notice to County at any time following the expiration of such one (1) year period that Lessee continues to be prevented from operating the Premises for the Permitted Use as a result of such damage. Lessee shall deliver a copy of such termination notice to any then-existing Encumbrance Holder and provide County with Lessee's certification under penalty of perjury that Lessee has delivered a copy of such notification to the Encumbrance Holder in accordance with this Section 10.5. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease. This Lease shall terminate thirty (30) days after the date of Lessee's termination notice unless within ten (10) days following Lessee's termination notice County receives both (a) written notice from the Encumbrance Holder objecting to such termination, and (b) an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease. As a condition to the termination of this Lease, Lessee shall deliver to County a quitclaim deed to the Premises in recordable form, in form and content satisfactory to County and/or such other documentation as may be reasonably requested by County or any title company on behalf of County, terminating Lessee's interest in the Premises and reconveying such interest to County free and clear of any and all Encumbrances and Subleases. Upon termination of the Lease pursuant to this Section 10.5, Lessee shall be required to perform all obligations of Lessee under Section 2.3 of this Lease, which obligations shall survive such termination, and Lessee shall remain obligated to perform all other obligations of Lessee that accrue or arise prior to the effective date of the termination or that otherwise expressly survive a termination of this Lease.

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

10.7 Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of water systems, sewer facilities, roads, or other County facilities on or about the Premises. Any entry by County onto the Premises pursuant to this Section 10.7, and any entry onto the Premises to perform work on the Seawall pursuant to Section 10.5 above, shall be made in accordance with the following requirements: (i) prior to entry onto the Premises County shall cause each of its contractors to provide to Lessee evidence that such contractor has procured commercial general liability insurance coverage pertaining to such contractor's

activities on the Premises, which insurance coverage shall be consistent with County's insurance requirements generally applicable to County contractors, and shall name Lessee as an additional insured; (ii) County's contractors shall comply with industry standard safety requirements; and (iii) County shall repair, or cause its contractors to repair, any damage to the Premises caused by the activities of County and/or its contractors on the Premises pursuant to this Section 10.7 or Section 10.5 above.

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

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

11. **ASSIGNMENT AND SUBLEASE.**

11.1 **Subleases.**

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

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

Notwithstanding any contrary provision of this subsection 11.1.2, Lessee shall not be required to obtain County's approval of any berthing agreements with individual boat owners in the ordinary course (not including any master agreement for multiple boats), as long as such berthing agreement is substantially in the form of a standard berthing agreement submitted to and approved by County and the term of such

berthing agreement does not exceed twelve (12) months (each, an “**Approved Berthing Agreement**”). Upon written request by County, Lessee shall furnish County with a list and copy of all then-effective Approved Berthing Agreements.

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

11.2 **Approval of Assignments and Major Subleases.** Except as specifically hereinbefore provided in this Article 11, Lessee shall not, without the prior written consent of County, which shall be based upon factors described in Exhibit C hereto, which is incorporated herein by this reference (“**Assignment Standards**”), either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Lease or any interest, right, or privilege therein (including without limitation the right to manage or otherwise operate the Improvements located from time to time on the Premises), or enter into a Major Sublease affecting the Premises, or license the use of all or substantially all of the Premises. Any Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee (as opposed to an assignment of the Lease) shall not require County consent if it is an Excluded Transfer. If such Change of Ownership with respect to beneficial ownership interests is not an Excluded Transfer, then it shall require County’s consent as if it constituted an assignment of Lessee’s interest in this Lease. For avoidance of doubt, any actual assignment of Lessee’s interest in this Lease shall require County consent even if it is an Excluded Transfer; provided, however, that in the case of an assignment of the Lessee’s interest in the Lease that constitutes an Excluded Transfer, Director shall have the authority to grant consent on behalf of County. In addition, for purposes of this provision, the following matters (except for Excluded Transfers) shall require the prior written consent of County to be effective: (1) the addition, removal or replacement of one or more general partners or managing members in a Lessee which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation (except for a sole general partner, if any) or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (b) if any general partner or managing member owning more than fifty percent (50%) of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member owning fifteen percent (15%) or less of the interests in the partnership or limited liability entity; or (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock, partnership interests or limited liability company interests in an entity that owns, or is a general partner or managing member of an entity that owns, an interest in this Lease. Lessee shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the matters provided herein requiring County’s consent. These same limitations and approval requirements as to Lessee’s interest in the Lease shall also apply with respect to the Sublessee’s interest under a Major Sublease.

11.2.1 County's Use of Discretion and Limitation on Permissible

Assignees. Prior to the Completion Date, County shall have the right to withhold its consent to any assignment or Major Sublease in its sole and absolute discretion. After the Completion Date, County shall not unreasonably withhold or delay its consent to a proposed assignment or Major Sublease if the Assignment Standards are satisfied to the reasonable satisfaction of County. If County withholds its consent to an assignment or Major Sublease, County shall notify Lessee in writing of the reason or reasons for such disapproval.

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

11.2.3 Procedure. Requests for approval of any proposed assignment (excluding Excluded Transfers and Subleases that are not Major Subleases) shall be processed in accordance with the following procedures:

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

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

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

11.2.3.4 Lessee shall be required to reimburse County for its Actual Costs incurred in connection with the proposed assignment, whether or not County

ultimately grants its approval to the proposed assignment (without duplication of any Administrative Charge payable under Section 4.6).

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

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

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

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

(d) **Business Plan.** County shall be provided with the proposed assignee's business plan for the Premises (unless the assignment is pursuant to a Change of Ownership that constitutes an Excluded Transfer or is pursuant to a Change of Ownership that involves the transfer of only beneficial ownership interests in the constituent owners of Lessee, and following such transfer there is no intended change in the business plan for

the Premises), including pro forma financial projections for the Premises for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections.

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

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

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

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

11.2.3.6 **Nondisturbance.** At the request of Lessee, County shall agree to execute a subordination, nondisturbance and attornment agreement and a ground lessor's estoppel certificate on commercially reasonable terms in favor of any Major Sublessee.

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

11.2.4 **County Right to Recapture.** If Lessee proposes to assign its interest in this Lease or the Premises, or proposes to enter into any Major Sublease affecting the

Premises (with either such proposed transaction herein referred to as a “**Proposed Transfer**”), it shall provide County with written notice of such desire and the sale price (“**Lessee Sale Price**”) at which it is willing to consummate the Proposed Transfer. Within thirty (30) days thereafter, County shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest subject to the Proposed Transfer. During said thirty (30) day period, Lessee may continue to market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County’s rights as provided herein. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, County shall have an assignable option to purchase the interest subject to the Proposed Transfer (“**County Option**”) at the Lessee Sale Price. Such County Option shall have a term of five (5) calendar months from the date of County’s notice of its election to acquire such option. During the term of the County Option, Lessee shall make the Premises and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, County shall pay to Lessee at the expiration of the County Option period (or, at County’s election, credit to Lessee against the next applicable installment(s) of Annual Minimum Rent and Percentage Rent), a sum (the “**County Option Price**”) which represents (i) three percent (3%) of the Lessee Sale Price, plus (ii) seven percent (7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County’s election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (a) fails to elect to acquire the County Option within said thirty (30) day period, or (b) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then during the nine (9) month period following the later of (a) or (b), Lessee shall be entitled to enter into an agreement to consummate the Proposed Transfer with a third party (subject to County’s approval rights as otherwise set forth in this Lease) so long as (1) the actual price for the Proposed Transfer is equal to or greater than the Lessee Sale Price last offered to County and upon no more favorable material terms to the assignee, and (2) the transfer is consummated not later than twelve (12) months after the later of (a) or (b). In the event of a proposed Major Sublease or other permitted assignment of less than all of the Premises, County’s election shall pertain to the portion of the Premises that is the subject of the proposed Major Sublease or assignment and, in the event that County elects to acquire such portion of Lessee’s interest in the Premises, Lessee’s Annual Minimum Rent shall be proportionally reduced and Lessee’s obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Premises retained by Lessee. In the event that County elects to recapture all or any portion of the Premises as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably necessary to evidence the termination of this Lease, to set a termination date and to prorate rent and other charges with respect to the termination. County’s rights pursuant to this subsection 11.2.4 shall not apply to Financing Events or those events identified in subsection 4.6.2 of this Lease.

11.2.5 County Credits Toward Purchase Price. In the event that County or its assignee elects to exercise the County Option, it shall receive the following credits

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

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

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

12. ENCUMBRANCES.

12.1 **Financing Events.**

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

12.1.2 **County Approval Required.** Lessee may, with the prior written consent of Director, which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Director, consummate one or more Financing Event(s). Lessee shall submit to Director a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event. The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Director. Lessee shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Director shall have sixty (60) days (thirty (30) days for the initial construction loan for the Redevelopment Work) to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days (thirty (30) days for the initial construction loan for the Redevelopment Work) after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event; provided, however, that if the preliminary loan package included draft loan documents then the foregoing sixty (60) day period shall be reduced to thirty (30) days. If not approved by Director in writing within the foregoing periods, the proposed Financing

Event shall be deemed disapproved by Director (and, if so requested in writing by Lessee), Director shall within thirty (30) days of such request deliver to Lessee a written description of Director's objections to said proposed Financing Event). Lessee shall reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event. One (1) copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with any approved Encumbrance shall be filed with Director not later than seven (7) days after the effective date thereof. The same rights and obligations set forth above in this subsection 12.1.2 shall inure to the benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

12.2 Consent Requirements In The Event of a Foreclosure Transfer.

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

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

12.2.3 **Subsequent Transfer By Encumbrance Holder.** For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (i) County's consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom its receives such transfer is released under subsection 12.3.1 below, and (ii) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults (as defined below). For clarification purposes, the right to a single transfer under this Section shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Section.

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

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

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

12.3.3 Following any Foreclosure Transfer which is a transfer of the leasehold interest under the Lease, County shall recognize the Foreclosure Transferee as the Lessee under the Lease and shall not disturb its use and enjoyment of the Premises, and the Foreclosure Transferee shall succeed to all rights of Lessee under this Lease as a direct lease between County and such Foreclosure Transferee, provided that the Foreclosure Transferee cures any pre-existing Event of Default other than any such pre-existing Event of Default that (i) is an incurable non-monetary default, (ii) is a non-monetary default that can only be cured by a prior lessee, (iii) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (iv) relates to any obligation of a prior lessee to pay any Net Proceeds Share (collectively, "**Excluded Defaults**"), and thereafter performs the full obligations of Lessee under this Lease. Pursuant to Section 12.3.7 below, following any Foreclosure Transfer which is a transfer of Ownership Interests, the foregoing rights under this Section 12.3.3 shall also inure to the benefit of the Lessee.

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

12.3.5 No Foreclosure Transfer, and no single subsequent transfer by an Encumbrance Holder following a Foreclosure Transfer pursuant to subsection 12.2.3, shall trigger (i) any obligation to pay an Administrative Charge nor any Net Proceeds Share, (ii) any acceleration of any financial obligation of Lessee under this Lease, (iii) any recapture right on the part of County, or (iv) any termination right under this Lease. Any Foreclosure Transfer, and any single subsequent transfer by an Encumbrance Holder

following a Foreclosure Transfer pursuant to subsection 12.2.3, shall be deemed to be excluded from the definition of "**Change of Ownership**" for all purposes of this Lease. For clarification purposes, the "single subsequent transfer" referred to above applies to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder (as more fully explained in subsection 12.2.3), so that there may be more than one "single subsequent transfer" benefited by this Section.

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

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

12.4 **No Subordination.** County's rights in the Premises and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with subsection 12.1.2, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

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

Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

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

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

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

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

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

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

(1) The Encumbrance Holder or Major Sublessee may cure the default within sixty (60) days after the end of Lessee's cure period as provided in Section 13.1 hereof (or, if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the "initial cure

period"), provided, however, if the curing of such default reasonably requires activity over a longer period of time, the initial cure period shall be extended for such additional time as may be reasonably necessary to cure such default, so long as the Encumbrance Holder or Major Sublessee commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's initial cure period shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

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

12.7 **New Lease.**

12.7.1 **Obligation to Enter Into New Lease.** In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall

the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Section 12.7 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.7 of this Lease, and (ii) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Section 12.7, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Premises. From and after the effective date of the new lease, the Encumbrance Holder (or its affiliate) shall have the same rights to a single transfer that are provided in subsection 12.2.3 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 12. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 11 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

12.7.2 **Priority of New Lease.** The new lease made pursuant to this Section 12.7 shall be prior to any mortgage or other lien, charge or encumbrance on County's fee interest in the Premises, and any future fee mortgagee or other future holder of any lien on the fee interest in the Premises is hereby given notice of the provisions hereof.

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

12.9 **Participation in Certain Proceedings and Decisions.** Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the

Premises following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

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

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

12.12 **Rights of Encumbrance Holders With Respect to Reversion.** For purposes of this Section 12.12, a “**Reversion Condition**” refers to the Event of Default by Lessee under subsection 5.6.3 of the Lease that permits County to declare a Reversion pursuant to such subsection 5.6.3. Notwithstanding subsection 5.6.3 of this Lease, so long as an Encumbrance Holder exists with respect to Lessee's entire leasehold interest in this Lease, a Reversion under subsection 5.6.3 of this Lease shall not occur unless and until (i) County has given written notice of the occurrence of the Reversion Condition to each such Encumbrance Holder in accordance with subsection 12.6.2 (which notice shall describe the Reversion Condition that has occurred, and shall include the following statement in all capital and bold letters: “**YOUR FAILURE TO COMMENCE A CURE OF THE DEFAULT DESCRIBED IN THIS NOTICE WITHIN 60 DAYS OF YOUR RECEIPT OF THIS NOTICE, AND TO THEREAFTER PURSUE SUCH CURE TO COMPLETION IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION 12.6.3 OF THE LEASE APPLICABLE TO NONMONETARY DEFAULTS, WILL RESULT IN COUNTY’S RIGHT TO DECLARE AN AUTOMATIC AMENDMENT AND REVERSION OF THE TERMS OF THE LEASE IN ACCORDANCE WITH THE REVERSION DESCRIBED IN SUBSECTION 5.6.3 OF THE LEASE**”), and (ii) no such Encumbrance Holder commences a cure of the default within 60 days of its receipt of such notice (as such time period may be subject to extension as expressly provided in Section 12.6) and thereafter pursues such cure to completion in accordance with the provisions of subsection 12.6.3 of the Lease applicable to nonmonetary defaults. Further, in the event that a Reversion occurs, such Reversion shall be subject to the “new lease” provisions of Section 12.7 of the Lease (and in such event the Reversion shall be deemed a “termination” of this Lease solely for purposes of Section 12.7 and the “new lease” to be entered into pursuant to Section 12.7 shall mean a new lease on the same terms as this Lease (with no modifications set forth in the last sentence of subsection 5.6.3), not the Existing Lease).

13. **DEFAULT.**

13.1 **Events of Default.** The following are deemed to be “**Events of Default**” hereunder:

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

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

13.1.3 **Failure to Perform Other Obligations.** The failure of Lessee to keep, perform, and observe any and all other promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty five (35) days after written notice of Lessee’s failure to perform from Director; provided, however, that where Lessee’s performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty five (35) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty five (35) day period, County will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time. Notwithstanding any contrary provision of this subsection 13.1.3, the proviso set forth in the immediately preceding sentence providing for an extension of the cure period beyond thirty five (35) days shall not be applicable to any failure of Lessee to comply with a Required Commencement Date or the Required Completion Date set forth in Section 5.6 above (as such dates may be extended pursuant to the exercise by Lessee of a Permitted Extension or by Force Majeure Delay pursuant to subsection 5.6.1), subject to Section 12.6.

13.1.4 **Nonuse of Premises.** The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of thirty five (35) days, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease. Without limitation of the foregoing, a discontinuance of the operation of the marine repair facilities, including landside repair facilities and haul-outs shall constitute a default under this subsection 13.1.4. Notwithstanding the foregoing, the termination of operations in a portion of the Premises by a Sublessee shall not constitute an Event of Default under this subsection 13.1.4 if Lessee uses its best efforts to recover possession of such portion of the Premises from such Sublessee and to re-sublease such portion of the Premises to another Sublessee as soon as possible; provided, further, that except as provided below operations in such portion of the Premises in accordance with this Lease must recommence no later than one

hundred eighty (180) days following the date that operations in such portion of the Premises first terminated. The one hundred eighty (180) day period set forth in the immediately preceding sentence shall be tolled for delays incurred by Lessee beyond such one hundred eighty (180) day period in recovery of possession of the Premises due to the Sublessee's bankruptcy or contest of unlawful detainer proceedings, as long as Lessee diligently continues to prosecute its action to recover possession of the Premises. In addition, notwithstanding any contrary provision of this subsection 13.1.4, an Event of Default shall not be triggered under this subsection 13.1.4 due to the termination of operations by a Sublessee as long as (i) Lessee diligently attempts to re-open the subject space as soon as reasonably possible and the subject space is re-opened for business not later than three hundred sixty five (365) days after the date that such operations were closed, and (ii) during any period between the end of the one hundred eighty (180) day period set forth above in this subsection 13.1.4 (as such period may be extended as provided above) and the date that the subject portion of the Premises is re-opened for business, Lessee pays County Percentage Rent for such space based upon an imputed Gross Receipts or Gross Revenues (as applicable) for such space equal to the actual Gross Receipts or Gross Revenues (as applicable) for such space during the one year period prior to the closure of business for such space.

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

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

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

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

permit such access to the Premises as is reasonably necessary to permit Lessee to comply with its removal obligations.

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

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

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

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

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

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

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

Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon.

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

14. **ACCOUNTING.**

14.1 **Maintenance of Records and Accounting Method.** In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, Lessee and all Sublessees shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Accounting Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Premises separate and apart from those in connection with Lessee's (or sublessee's or licensee's, as appropriate) other business operations, if any. With respect to the calculation of Gross Receipts and Gross Revenues, and the preparation of the reports and maintenance of records required herein, Lessee shall utilize either: (i) the accrual method of accounting, or (ii) a modified accrual method of accounting, modified in that (A) expenses are accrued on an approximate basis each month during the fiscal year with full accrual treatment for the full fiscal year financial statements, and (B) depreciation is calculated on a tax basis rather than a GAAP basis.

14.2 **Cash Registers.** To the extent retail sales are conducted on the Premises, or other cash or credit sales of goods or services are conducted, all such sales shall be recorded by means of cash registers or computers which automatically issue a customer's receipt or certify the

amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

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

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

14.3 Statement; Payment. No later than the fifteenth (15th) day of each calendar month, Lessee shall render to County a detailed statement certified by Lessee's chief financial officer showing Gross Receipts and Gross Revenues (as applicable under subsection 4.2.2) during the preceding calendar month, along with a calculation in such detail as reasonably acceptable to County of any other amounts to be calculated under Sections 4.2 through 4.8 inclusive. Lessee shall accompany same with remittance of any amount required to be paid by Lessee under such Sections 4.2 through 4.8.

14.4 Availability of Records for Inspector's Audit. Books of account and records for the then current and five (5) prior Accounting Years as hereinabove required shall be kept or made available at the Premises or at another location within Los Angeles County, and County and other governmental authorities shall have the right at any reasonable times and on reasonable prior notice to examine and audit said books and records, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts and Gross Revenues derived from occupancy of the Premises and the compliance of Lessee with the terms of this Lease and other governmental requirements. This Section 14.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

14.4.1 Entry by County. Upon at least forty-eight (48) hours advance notice, County and its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

14.5 Cost of Audit. In the event that, for any reason, Lessee does not make available its (or its sublessee's or licensee's) original records and books of account at the Premises or at a location within Los Angeles County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in County's favor of greater than two percent

(2%) of the revenue due County for the period audited, then Lessee shall pay County audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5.

14.6 **Additional Accounting Methods.** County may require the installation of any additional accounting methods or machines which are typically used by operators of comparable facilities and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

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

14.8 **Annual Financial Statements.** Within six (6) months after the end of each Accounting Year, or at Lessee’s election, after the completion of Lessee’s fiscal year, Lessee shall furnish to County certified statements of Gross Receipts and Gross Revenues, as applicable (including a breakdown by Percentage Rent category), and the amount of any Permitted Capital Expenditures for such Accounting Year prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is reasonably satisfactory to County. All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee’s activities at, from or relating to the Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises.

14.9 **Accounting Obligations of Sublessees.** Lessee shall cause all sublessees, licensees, concessionaires and others conducting business operations on or from the Premises to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records. County shall provide written notice to Lessee of the failure of any sublessee, licensee, concessionaire or other person or entity conducting business operations on or from the Premises, to comply with this Article 14 after County’s discovery of such failure, and provide Lessee with the right to cure any such failure by payment to County of amounts which may be owing to County, as shown on an audit conducted by County, or on an audit supplied by Lessee or such sublessee, licensee, concessionaire or other person or entity and accepted by County, or as otherwise determined pursuant to Section 14.10 below. In such event, County shall permit Lessee to subrogate to any right of County to enforce this provision against such sublessee, licensee, concessionaire or other person or entity, to the extent Lessee does not have a direct right of enforcement against such sublessee, licensee, concessionaire or other person or entity.

14.10 **Inadequacy of Records.** In the event that Lessee or its sublessees, licensees or concessionaires, as appropriate, fails to keep the records required by this Article 14 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts and Gross Revenues, such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts or Gross Revenues levels (as applicable) on or from the Premises, the past or present level of Gross Receipts or Gross Revenues (as applicable) experienced by tenants of

comparable leaseholds in Marina del Rey with comparable business operations, or any other method as reasonably determined by Director and shall utilize such methodology as Director deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and/or Gross Revenues (as applicable) and the calculation of Percentage Rent due.

15. **MISCELLANEOUS.**

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

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

15.3 **County Costs.** Lessee shall promptly reimburse County for the Actual Costs incurred by County in the review, negotiation, preparation and documentation of this Lease and the term sheets and memoranda that preceded it.

15.4 **County Disclosure and Lessee's Waiver.**

15.4.1 **Disclosures and Waiver.**

15.4.1.1 "AS IS". Lessee acknowledges that it is currently in possession of the Premises and that Lessee or its predecessor-in-interest has continuously occupied and/or managed and operated the Premises since 1962. Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the execution of this Lease by Lessee and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".

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

15.4.1.3 Lessee hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County, its officers, agents, employees or volunteers which Lessee now has or may have or asserts in the future which are based upon any defects in the physical condition of the Premises and

the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument. The waiver and release set forth in this Subsection 15.4.1.3 (i) shall not apply to the Excluded Conditions, and (ii) shall not alter the parties' rights and obligations under the Existing Lease with respect to any abandoned wells or other environmental conditions existing on the Premises as of the Effective Date.

15.4.1.4 California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

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



Lessee's Initials

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

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

Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Premises to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 15.5 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities

to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding tenant arising from such failure to surrender, and any lost profits to County resulting therefrom, provided that County notifies Lessee that Lessee's failure to timely surrender the Premises will cause County to incur such lost profits.

15.6 **Waiver of Conditions or Covenants.** Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. No delay, failure, or omission of County to re-enter the Premises or of either party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

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

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

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

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

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

If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State of California and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

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

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

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

<u>COUNTY:</u>	Director
	Department of Beaches and Harbors
	Los Angeles County
	13837 Fiji Way
	Marina del Rey, California 90292
	Phone: 310/305-9522
	Fax: 310/821-6345

With a Copy to: Office of County Counsel
Los Angeles County
500 West Temple Street
Los Angeles, California 90012
Attn: County Counsel
Phone: 213/974-1801
Fax: 213/617-7182

LESSEE: Harbor Real Estate Limited Partnership
c/o _____

Attn: _____
Phone: _____
Fax: _____

With a Copy to: _____

Attn.: _____
Phone: _____
Fax: _____

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

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

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

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

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

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

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

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

15.18 **Indemnity Obligations.** Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney’s fees, reasonable expert fees and court costs.

15.19 **Controlled Prices.** Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a

public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Lessee that any of said prices are not fair and reasonable, Lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its Sublessees, assignees, concessionaires, permittees or licensees, as directed. Lessee may appeal the determination of Director to the Board, whose decision shall be final and conclusive. Pending such appeal, the prices fixed by Director shall be the maximum charged by Lessee.

15.20 **Promenade**. As part of the Redevelopment Work Lessee shall construct a pedestrian promenade along Fiji Way (the “**Promenade**”). The Promenade shall be designed and constructed in accordance with the Redevelopment Plan, the Local Coastal Plan and Marina del Rey design guidelines. County hereby reserves a public easement for access over and use of the Promenade for the pedestrian and park related uses for which they are designed and such other related uses as may be established by the County from time to time, all in accordance with such rules and regulations as are promulgated from time to time by the County regulating such public use. Lessee shall be responsible for the maintenance and repair of the Promenade in accordance with commercially reasonable maintenance and repair standards established by the County from time to time for other comparable public facilities in Marina del Rey. At the request of either party the exact legal description of the Premises encumbered by the public easement reserved herein shall be established based upon the final as-built drawings for the Promenade to be delivered by Lessee upon the completion thereof in accordance with the terms and provisions of Article 5 and such legal description shall be recorded in the Official Records of the County as a supplement to this Lease.

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

15.22 **Seaworthy Vessels**. On or before January 1, April 1, July 1 and October 1 of each year during the Term, Lessee shall deliver to Director a report which contains the following information with respect to every vessel that is moored in the water at the Premises (including floating homes as defined in Title 19 of the Los Angeles County Code), if any: (i) the name, address and telephone number of the registered owner (and slip tenant, if other than the registered owner) for each vessel; (ii) the state registration or federal document number, and name (if any), of the vessel; (iii) whether the vessel is a power vessel, sailing vessel or floating home; and (iv) the slip number and length of the vessel, and whether the vessel is presently authorized by Lessee for liveaboard tenancy. In addition, Lessee shall require, and shall certify annually to Director, that as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels from and after the immediately preceding certification (or in the case of the initial certification, from and after the Effective Date) have been required to pass seaworthiness inspection by the Harbor Patrol within sixty (60) days of such slip rental. Henceforth, all of Lessee’s slip leases shall provide that any newly tenanted vessel which is unable to pass such inspection within the required period, or such reasonable extension thereof as may be granted in the Director’s sole discretion, shall be ineligible for continued slip tenancy on the leasehold

premises and shall be removed therefrom. The requirements of the two preceding sentences shall not be applicable to any vessel which is specifically exempted from seaworthiness requirements by Title 19 of the Los Angeles County Code.

15.23 **Water Quality Management Program.** During the Term of the Lease, Lessee shall comply with all water quality management requirements imposed by the Coastal Commission in connection with the issuance of the Coastal Development Permit for the commercial dock improvements or imposed under Applicable Laws. In addition, during the Term of the Lease, Lessee shall remove floating debris from the water surrounding the commercial dock facilities on the Premises in accordance with a program and regular schedule reasonably acceptable to the Director.

16. **ARBITRATION.**

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

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

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

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

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

16.3 **Scope of Arbitration.** County and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

minimum rent, percentage rent, market value, insurance level and/or other monetary amounts, and shall additionally set forth the facts supporting such party's position.

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

16.7 **Written Appraisal Evidence**. Neither party may, at any time during the proceedings, introduce any written report which expresses an opinion regarding Fair Market Rental Value or the fair market value of the Premises, or any portion thereof, ("**Written Appraisal Evidence**") unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of this Lease; correlate the appraisal method(s) applied; discuss the relevant factors and data considered; review rentals paid by lessees in Marina del Rey and other marina locations within Southern California who are authorized to conduct similar activities on comparable leaseholds; and, describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed. With respect to disputes regarding Fair Market Rental Value, such Written Appraisal Evidence shall express an opinion regarding the fair market rental value of the Premises as prescribed by subsection 4.3.1. Written Appraisal Evidence in connection with disputes arising out of Article 6 of this Lease shall predicate any valuation conclusions contained therein on the Income Approach. Written Appraisal Evidence shall in all other respects be in material conformity and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute or any successor entity.

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

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

16.10 **Awards of Arbitrators**.

16.10.1 **Monetary Issues.** With respect to monetary disputes (including without limitation disputes regarding Percentage Rent, Fair Market Rental Value and the amount of coverage under the policies of insurance required pursuant to Article 9 of this Lease), the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position. The arbitrator shall instead select whichever of the two Statements of Position is the closest to the monetary or numerical amount that the arbitrator determines to be the appropriate determination of the rent, expense, claim, cost, delay, coverage or other matter in dispute and shall render an award consistent with such Statement of Position. For purposes of this Section 16.10, each dispute regarding Annual Minimum Rent, each category of Percentage Rent and the amount of required insurance coverage shall be considered separate disputes (a "Separate Dispute"). While the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position concerning a Separate Dispute, the arbitrator shall have the right, if the arbitrator so chooses, to choose one party's Statement of Position on one or more of the Separate Disputes, while selecting the other party's Statement of Position on the remaining Separate Disputes. For example, if the parties are unable to agree on the Annual Minimum Rent and three Percentage Rent categories to be renegotiated pursuant to Section 4.3 and the amount of liability insurance coverage to be renegotiated pursuant to Section 9.3, then there shall be five Separate Disputes and the arbitrator shall be permitted to select the County's Statement of Position with respect to none, some or all of such five Separate Disputes and select the Lessee's Statement of Position, on the balance, if any, of such five Separate Disputes. Upon the arbitrator's selection of a Statement of Position, pursuant to this Article 16, the Statement of Position so chosen and the award rendered by the arbitrator thereon shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

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

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

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

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

executed copy to the County, which shall thereafter be executed by County as soon as reasonably practicable.

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

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

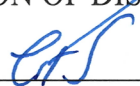
16.14.2 The party alleging Gross Error shall have the burden of proof.

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

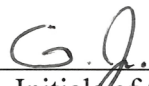
16.15 **Notice.**

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

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



Initials of Lessee



Initials of County

17. **DEFINITION OF TERMS; INTERPRETATION.**

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

17.2 **Tense; Gender; Number; Person.** Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word “person” includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

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

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

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

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

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

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

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

THE COUNTY OF LOS ANGELES

HARBOR REAL ESTATE LIMITED PARTNERSHIP, a Delaware limited partnership

By: Hilda F. Solis
Chair, Board of Supervisors

By: Vaparetto Corp., a California corporation, its general partner

By: [Signature]
Name: CARLOS F. S. HEN
Its: PRESIDENT



ATTEST:

LORI GLASGOW,
Executive Officer – Clerk of the
Board of Supervisors

By: [Signature]
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

APPROVED AS TO FORM:

23 MAR 15 2016

MARY C. WICKHAM,
County Counsel

By: [Signature]
Deputy

[Signature]
LORI GLASGOW
EXECUTIVE OFFICER

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: [Signature]

78483

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Parcels 832 to 845 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county.

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

Also, subject to the public easement reserved by the County of Los Angeles in Section 15.20 of this Lease.

EXHIBIT B
PARCEL 53
DEVELOPMENT PLAN

<i>Term Sheet Template Item</i>	<i>Lessee Proposal Boat Yard Facility — Parcel 53</i>

A reasonably detailed, written narrative description of the work to be done, including each of the following:

- ❑ **All new construction and renovation**
- ❑ **Timing for the start of the work**
- ❑ **Timing for the completion of the work**

The narrative shall include all applicable components of the project, grouped as set forth below.

Existing Site and Improvements:

Parcel 53 is a 7.218-acre, rectangular shaped site with about 40% submerged land and 60% dry land. The lot has approximately 650 feet of street frontage along Fiji Way and 650 feet of navigable waterway on Basin H. The parcel is primarily used for boat repair, boat sales, and marine anchorage with five floating docks containing 103 slips (not including 5 end-ties). There are two, 18-foot wide boat haul-out ways which are serviced by a 35-ton and 60-ton Marine Travelift.

Property improvements consist of a single steel-frame and concrete block main building containing approximately 22,087 square feet, two boater restroom buildings, and an electrical utility building. The main building houses the business office for The BoatYard, two boat sales/brokerage offices, four maintenance shop bays, a worker break room and restroom, and a 8,400 square foot high-clear building (approx. 30 feet high) with 4,423 square feet of mezzanine office space currently leased to the County of Los Angeles. Total net area of all buildings is 28,609 (see attached drawings for exact location and size).

Under the certified LCP, the Parcel is currently part of Development Zone Three and is zoned "Marine Commercial and Water" with a Waterfront Overlay Zone designation ("WOZ"). The parcel is restricted under the LCP to remain utilized as a boat repair facility.

New Improvements:

The following is the proposed "Scope of Work" for Improvements to the existing "BoatYard" facility (Please refer to the submitted plans for detailed Site Plan and Exterior Elevations).

- 1) Construct a new 921 sq. ft. fully accessible Restroom Facility in the center of the site along the concrete walkway with direct access to the docks that will include showers, laundry facilities, a fish cleaning area, Ice/beverage/snack vending machines and storage areas;

<i>Term Sheet Template Item</i>	<i>Lessee Proposal Boat Yard Facility — Parcel 53</i>

- 2) Construct a new 3,650 sq. ft. Carport along the west side of the property to provide 16 private garages to rent for car, boat and boating/fishing equipment storage, along with a 424 sq. ft. Boater Storage with 7 private secure storage spaces;
- 3) Replace existing 770 Sq. ft. non-accessible Restroom Facility located north of the existing main Boatyard Building along the concrete walkway to provide new commercial lease use;
- 4) Demolish existing outdated non-accessible Restroom building at the North corner of the existing site. Re-grade and repave the area to relocate new larger boat ways;
- 5) Remove existing Dock access gates and railing along seawall at boat dock ramps and provide new galvanized or aluminum entry gates with tempered glass and secured dock access gates, galvanized or aluminum guardrail, and resurface concrete walkway adjacent to boat ramps with stamped colored concrete in grey 4" squares broom finish texture and light grey cobblestone edge borders and bands (see Sheet A4);
- 6) Provide new drains @ the new Fire Access Gate and Boat Ways Gate that tie into Storm Water Storage System and add new large storage tank between existing 3 stage clarifier and filter system to enhance the capacity of the Storm Water Storage System;
- 7) Expand the Boat Repair Work Area along the North East side of the existing site towards Fiji Way to make room for repair and launch access of larger boats and yachts;
- 8) Widen the driveway 4' to 30' clear and add new accessible curb ramps to the sidewalk on each side at the center driveway along Fiji Way;
- 9) Provide new accessible walkway from sidewalk along Fiji Way to existing accessible ramp @ South East corner of walkway around the existing main Boatyard Building;
- 10) Provide new concrete "wave" pattern adjacent to existing public sidewalk at Fiji Way to provide a wider pedestrian access, provide bench seating and tie into existing improvements being done to adjacent lease properties;
- 11) Enhance existing landscape planting areas along Fiji Way, and provide new planting areas with California Marine Native, draught tolerant, palm trees, shrubs, plants and groundcover that will complement the new landscaping plans approved for the Fiji Way Street Landscaping improvements and upgrade irrigation systems as necessary (See Sheet A3 "Landscaping Plan with Lighting";
- 12) Repave and restripe the existing parking areas to provide for a total of 106 spaces as set forth in Sheet A1 "Title Page";

<i>Term Sheet Template Item</i>	<i>Lessee Proposal Boat Yard Facility — Parcel 53</i>

- 13) Replace the existing chain link fencing enclosing the Boatyard Repair Work Area with new 8' high chain link fence with solid blue vinyl screening in Marine Blue color. The new vinyl screening along Fiji Way will have 2 colors of Marine Blue and Grey as shown in Sheet A5 "Street Elevation";
- 14) Provide new exterior marine grade, lighting fixtures with LED lamping along driveway entrances @ Fiji Way, in Parking Lot, Boat Repair Work Area, along new walkway guard railing @ seawall, down new dock gangway guardrails and on exterior of new Garage Building, new Restrooms and remodeled Marine Commercial Lease Building.
- 15) Replace all existing docks with new aluminum, concrete, or wood docks as set forth in Sheet A2 "Site Plan". Existing piles to be reused if possible to mitigate environmental impact and dislocation of existing boat tenants. Docks to have power, water, and fire suppression along with a holding tank pump-out at the end of the haul out ways.
- 16) Replace existing haul-out ways with a new double berth facility capable of hauling larger vessels than currently able. The new facility is designed for a Marine Travelift of up to 100-tons on one side and for a 35-ton machine on the other. Maximum width of haul-out facility contemplated up to 28 feet for the 100-ton side and 18-feet on the other. (See Grantham Engineering Plans attached)

The two new buildings and the existing structure to be redeveloped will have the following finishes to match and complement the existing main Building @ 13555 Fiji Way:

- 1) Exterior Columns and Roof Fascia Overhang: Smooth Bright White Stucco (Merlex P-100 with 20/30 sand float finish);
- 2) Exterior Wall Panels: Smooth Medium Grey Stucco (Merlex P-2090 with 20/30 sand float finish);
- 3) Metal Carport Garage Doors: Clear Anodized Aluminum Panels (Cloplay Avante Collection);
- 4) Exterior Metal Man Doors: Slate Grey Paint (Dunn-Edwards);
- 5) Corrugated Metal Wave Fascia Accent: Regal Blue Paint (Dunn-Edwards);
- 6) Downspouts and Vents: White Paint (to match Merlex P-100 Stucco);
- 7) Expansion Joints: Clear Anodized Aluminum (Fry Reglet);
- 8) Commercial Windows: Anodized Aluminum frames w/ dual low-E glazing (Fleetwood).

<i>Term Sheet Template Item</i>	<i>Lessee Proposal Boat Yard Facility — Parcel 53</i>

Parking:

Business Professional Office (1/400 x 8,974 sf):	22 spaces
Industrial Marine (1/500 x 9,328 SF):	19 spaces
Warehouse (storage):	4 spaces
Boat Slips (0.6 x 101 slips):	<u>61 spaces</u>
Total Parking Spaces Required:	106 spaces

Timing and Commencement:

The redevelopment shall commence as soon as reasonably practical upon receipt of final approvals from the Board of Supervisors and upon obtaining all necessary building permits. It is expected that the Landside improvements will commence first in the Spring of 2016 with new building construction, new power and utilities, perimeter fencing, and the replacement of the 1800, 2000, and 2200 docks. Upon the termination of the bird nesting season in October 2016, construction of the new haul-out ways and remaining docks which require driven piles will commence. The final phase will complete the cosmetic improvements including paving, landscaping, fencing, and access control.

1) Scope of Work	
a) Apartments, Office and Commercial (Note: for renovation-only apartment projects, use "Renovation Comparison Worksheet" instead of this section)	
Demolition (of existing improvements prior to commencing work)	Demolition of two existing restroom buildings (approximately 770 square feet each), removal of existing boat slips and concrete haul-out ways and related infrastructure. Removal of broken concrete in boat repair area and regrading of surface to meet new haul-out ways.
New building construction	Construction of a single new restroom building consisting of 921 square feet, a new garage and storage building consisting of 4,074 square feet, and a new stand-alone commercial building of 770 square feet at the site of the existing westerly restroom building. (See Sheets A2, A8, A9, A10)
Remodeled building exteriors	Main building will be painted in accordance with approved color scheme. (See Sheet A4 "Exterior Finishes and Site Lighting")

<i>Term Sheet Template Item</i>	<i>Lessee Proposal Boat Yard Facility — Parcel 53</i>
• Remodeled building interiors	Not applicable.
• Remodeled interior building common areas	Not applicable.
• Remodeled exterior building common areas	Not applicable.
• Landscaping	The exterior of the property shall be landscaped as approved by the Design Control Board with drought resistant plantings and a selection of palm trees. (See Sheet A3 "Landscape Plan with Lighting")
b) Marina	
• Replacement of docks and slips, including design and materials	Complete replacement of the existing docks with new aluminum, concrete, or wood docks and aluminum gangways and an artificial wood decking. Every effort will be made to re-use the existing piles in their current location in order to mitigate environmental impacts and in order to reduce boater relocation disruption.
• Replacement of Haul-Out Ways	New haul-out ways to be relocated and constructed with a maximum width of 28-feet supported by a row of single, load-bearing concrete piles with an attached metal walkway for worker access and safety. The new haul-out ways will be capable of hauling larger vessels than the existing facility is able with one side designed for a 100-ton Marine Travelift and the other for a 35-ton machine. Currently, the existing facility can only haul vessels up to 18 feet wide and up to 60-tons. (See Grantham Engineering Plans attached)

<i>Term Sheet Template Item</i>	<i>Lessee Proposal Boat Yard Facility — Parcel 53</i>
• Retention of existing slip count, including slip count before and after by slip size	The new slip count and size is substantially similar to the existing conditions. Currently there are 103 slips averaging 30.7 feet in length for a total of 3,160 lineal feet, the new design has 101 slips averaging 30.4 feet with a total of 3,075 lineal feet. In addition, the new design has an approximately 200 lineal feet of additional side tie work dock area over the existing condition.
• Retention of marine commercial facilities, including area count before and after for each category	Marine commercial space shall be increased by 770 square feet along with the addition of 16 parking and storage garages (4,074 sf). (See Sheets A2, A8, A9)
c) Promenade (Waterside Walkway)	
• Walkway design and materials	The marine walkway along the bulkhead shall be replaced with new stamped concrete walkway having the pattern and color approved by the DCB. (See Sheets A2 and A4)
• Fencing design and materials	Fencing and gate design and materials shall be in compliance with the color and materials approved by the DCB. (See Sheets A1, A4, A5, A6)
• Lighting design and materials	Lighting design and materials shall be in compliance with the design, intensity, and color approved by the DCB. (See Sheet A4)
d) Signage	
• New signage program	New signage along the westerly face of the main building shall be added as approved by the DCB. New wayfinding and identification signage shall be added and renovated as approved. (See Sheet A5)

<i>Term Sheet Template Item</i>	<i>Lessee Proposal Boat Yard Facility — Parcel 53</i>
2) PLANS & DRAWINGS	
Preliminary plans for all work to be done	
a) Site Plan	
Reduced color site plans (8.5x11 or 11x17), showing work described above, including all structures, hardscape, promenade, landscaping and slips	Exhibit A-1, "Title Page" Exhibit A-2 "Site Plan" Existing Site Survey P53
b) Building Elevation	
A reduced color elevation (8.5x11 or 11x17) drawing that shows all new and/or renovated building elevations	Exhibit A-5 "Street Elevations" Exhibit A-6 "Waterside Elevations" Exhibit A-7 "North Elevation" Exhibit A-8 "Garage Building" Exhibit A-9 "Commercial Lease Building" Exhibit A-10 "Restroom Building"
c) Landscape Plan	
If not already included in the above materials	Exhibit A-3 "Landscape Plan With Lighting" Exhibit A-4 "Exterior Finishes and Site Lighting"
d) Dock Plan	
Dock construction plan, including physical layout of docks and slips	Exhibit A-2 "Site Plan" Grantham Engineering Plans (11 pages)

Term Sheet Template Item	<i>Lessee Proposal Boat Yard Facility — Parcel 53</i>	
3) BUDGET		
a) Budget worksheet		
Estimated cost for all of the work agreed upon		
	(See Attached Schedule)	
	TOTAL DEVELOPMENT COSTS	\$7,600,000

The BoatYard Parcel - 53

Summary of Landside and Marina Construction

Marina Construction Costs:				2,091,812
Marine Docks with Gangways				1,353,262
Piles (Re-Use Existing)	52	2,500	ea	130,000
Demo Old Piles				20,000
Dock Electric Incl Pedestals				250,000
Dock Plumbing				65,000
Dock Boxes	103	350	ea	36,050
Boat Pump-Out Station (Keeko)				15,000
Gangway Gates				100,000
Abutements	5	5,000	ea	25,000
Bulkhead Railing	150	650		97,500
New Haul-Out Piers:				1,232,416
Landside Construction Costs:				834,700
Parking Garage	150	4,080		612,000
Restroom Building	200	921		184,200
Convert Existing Restroom Building into Marine Commercial	50	770		38,500
Site Work:				1,218,232
Demo Walk Way at Bulkhead				50,000
Trenching				15,000
Grading at Travel Lift Piers (Incl removal of old concrete and import)				150,000
Retaining Wall				75,000
Stamped Concrete Walk Way	10	13,000	sf	130,000
Yard Fencing (Chain Link with Slats)	1,000	50	lf	50,000
Yard Gates				20,000
Demo Old Restroom				15,000
Concrete Replacement in Yard - Medina Bid	16	20,589		324,277
Asphalt (2" overlay, 5" @4,900, trench drain 180', planter box at front, utility trench closure)	Bid			168,955
Clarifier Upgrades	Est			125,000
Relocate Fuel Dispenser and Monitoring Equipment	Est			20,000
New Utilites in Yard	Est			65,000
Cathodic Protection	Est			10,000
Landscaping:				140,000
Plantings				50,000
Irrigation				15,000
Parking Gates/Control				40,000
Site Lighting	10	1,500	ea	15,000
Signage (New and Rehab of Old)				20,000
On-Site Utilities:				280,000
Electric (New SCE Service)				50,000
Gas to Restroom Bldg(s)				5,000
Potable Water (to Docks)				75,000
Fire Water				50,000
Sewer				15,000
New Electrical Switchboard in Block Building				50,000
Transformer (Upgrade - 1,200 amps)				20,000
Security system/ Gate Keys				15,000
Paint, Roofing, and Misc Repairs to Existing Building				100,000
New HVAC Units (Two 5-ton & One 10-ton)				25,000
100 Ton Travel Lift - Leased/Purchased				640,000
TOTAL HARD COSTS:				6,562,160
Soft Costs:				611,121
Architectural and Engineering-Landside Buildings				85,000
Landscape Architect				4,000
Architectural and Engineering-Water Side				80,000
Entitlement Costs (Coastal Permit, ACOE, RWQCB, DB&H, DCB, DRP, SCHC, etc.)				82,121
Noise/Vibration/Turbidity Monitoring				5,000
Permits				50,000
Mortgage Broker Fee (1%)				75,000
Financing Expenses				30,000
Legal				30,000
County Reimbursement & Lease Fee				115,000
Performance Bond				50,000
Construction Monitoring/Inspections				5,000
Contingency (Percent of Total Hard Costs)				6.5% 426,540
TOTAL COSTS:				7,599,821

THE BOATYARD RENOVATION

13555 FIJI WAY, MARINA DEL REY, CA 90292

SHEET INDEX

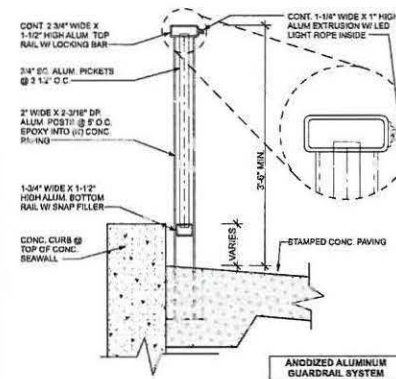
A1	TITLE SHEET
A2	SITE PLAN
A3	LANDSCAPING PLANS
A4	EXTERIOR FINISHES & SITE LIGHTING
A5	STREET ELEVATIONS
A6	WATERSIDE ELEVATIONS
A7	NORTH ELEVATION
A8	GARAGE BUILDING EXTERIOR ELEVATIONS
A9	COMMERCIAL LEASE BUILDING EXTERIOR ELEVATIONS
A10	RESTROOM BUILDING EXTERIOR ELEVATIONS

PROJECT DATA

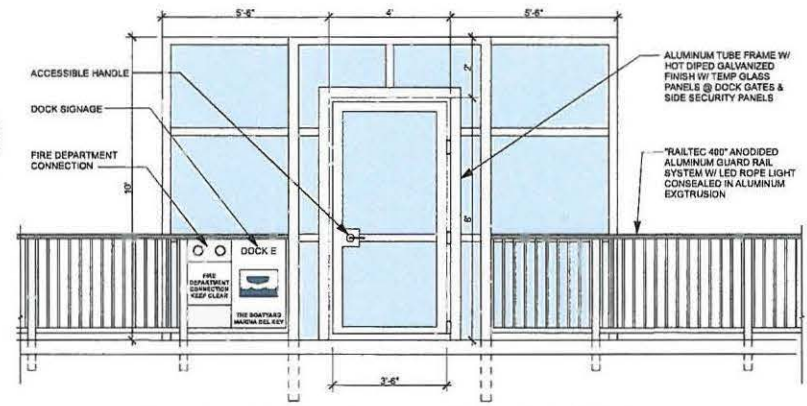
1. ADDRESS:	13555 FIJI WAY, MARINA DEL REY CA 90292
2. ASSESSORS PARCEL NUMBER:	4224-010-900
3. LEGAL DESCRIPTION:	LA COUNTY ASSESSOR MAP 88, LOTS 832-845
4. CURRENT ZONING:	MARINA
5. DISTING. USES:	OFFICE / MARINE COMMERCIAL / BOAT REPAIR MAINTENANCE / BOAT DOCK
6. PROPOSED ADDITIONAL USES:	RESTROOMS / GARAGE / BOATERS STORAGE
7. EXISTING/ PROPOSED OCCUPANCY (PER 2014 LACBC):	BUSINESS: OFFICE, BOAT STORAGE (N-B) NON-SPRINKLERED
8. PROPOSED NEW BUILDING CONSTRUCTION TYPE:	(N-B) NON-SPRINKLERED
9. PROPOSED SITE AREAS:	
A. (E) BUILDING FOOTPRINT TO REMAIN:	(9.56%) 17,664 S.F.
B. (E) RESTROOM TO BE REBUILT FOR MARINE COMM.	(0.42%) 770 S.F.
C. (E) ELECTRICAL BUILDING:	(0.15%) 275 S.F.
D. (N) RESTROOMS:	(0.50%) 921 S.F.
E. (N) GARAGE AND STORAGE:	(2.20%) 4,074 S.F.
F. (E) & (N) PAVED AREAS:	(83.40%) 154,162 S.F.
G. (E) & (N) LANDSCAPING AREAS:	(1.77%) 3,278 S.F.
H. TOTAL GROSS SITE AREA:	(100.00 %) 184,840 S.F.
10. PROPOSED BUILDING AREAS:	
A. (E) MARINE COMMERCIAL:	5,400 S.F.
B. (E) YACHT SALES:	2,034 S.F.
C. (E) BOATYARD OFFICE:	2,133 S.F.
D. (E) BOATYARD WAREHOUSE:	5,097 S.F.
E. (E) ELECTRICAL BUILDING:	275 S.F.
F. (E) TRASH ENCLOSURE:	482 S.F.
G. (E) RESTROOM REBUILT FOR MARINE COMMERCIAL:	770 S.F.
H. (N) RESTROOMS:	921 S.F.
I. (N) 16 CAR GARAGE:	3,650 S.F.
J. (N) BOATER STORAGE WITH 6 UNITS:	674 S.F.
K. TOTAL PROPOSED GROSS BUILDING AREA:	24,186 S.F.
L. FUTURE MEZZANINE ADDITION FOR LA COUNTY LEASE:	4,423 S.F.
M. TOTAL FUTURE GROSS BUILDING AREA W/ LA COUNTY LEASE:	28,609 S.F.
11. PARKING SPACES (PER CDD):	
A. CURRENT PROJECT PARKING REQUIRED:	
B. BUSINESS PROFESSIONAL OFFICE:	(1/400 X 7,204) 18 SPACES
C. INDUSTRIAL MARINE:	(1/500 X 4,673) 13 SPACES
D. WAREHOUSE STORAGE:	(1/200 X 4,014) 4 SPACES
E. BOAT SLIPS:	(0.6 X 101 UNITS) 61 SPACES
F. GARAGE, RESTROOMS, ELEC. BLD'G, TRASH (NONE REQ'D):	0 SPACES
G. TOTAL PARKING SPACES REQUIRED FOR CURRENT PROJECT:	96 SPACES
H. FUTURE PROPOSED PARKING REQUIRED W/ MEZZANINE ADDITION:	
I. BUSINESS PROFESSIONAL OFFICE:	(1/400 X 8,974) 22 SPACES
J. INDUSTRIAL MARINE:	(1/500 X 9,328) 19 SPACES
K. WAREHOUSE STORAGE:	(1/200 X 4,014) 4 SPACES
L. BOAT SLIPS:	(0.6 X 101 UNITS) 61 SPACES
M. GARAGE, RESTROOMS, ELEC. BLD'G, TRASH (NONE REQ'D):	0 SPACES
N. TOTAL PARKING SPACES REQUIRED:	106 SPACES
O. PARKING PROVIDED:	
P. ACCESSIBLE 17' X 18' SPACES PROVIDED:	5 SPACES
Q. STANDARD 9' X 18' SPACES PROVIDED:	86 SPACES
R. CAR GARAGE 9' X 18' SPACES PROVIDED:	16 SPACES
S. COMPACT SPACES 9' X 18'-6" PROVIDED - 40% OF TOTAL:	31 SPACES
T. TOTAL PARKING SPACES PROVIDED:	138 SPACES



BEFORE

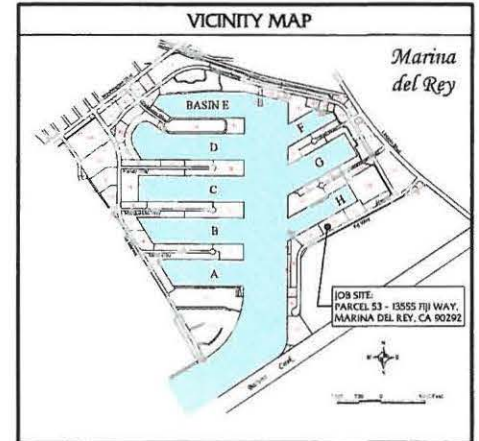


GUARD RAILING W/ LED
ROPE LIGHT DETAIL



ELEVATION OF NEW BOAT DOCK RAMP GATES &
GUARD RAILING FROM THE BOATYARD

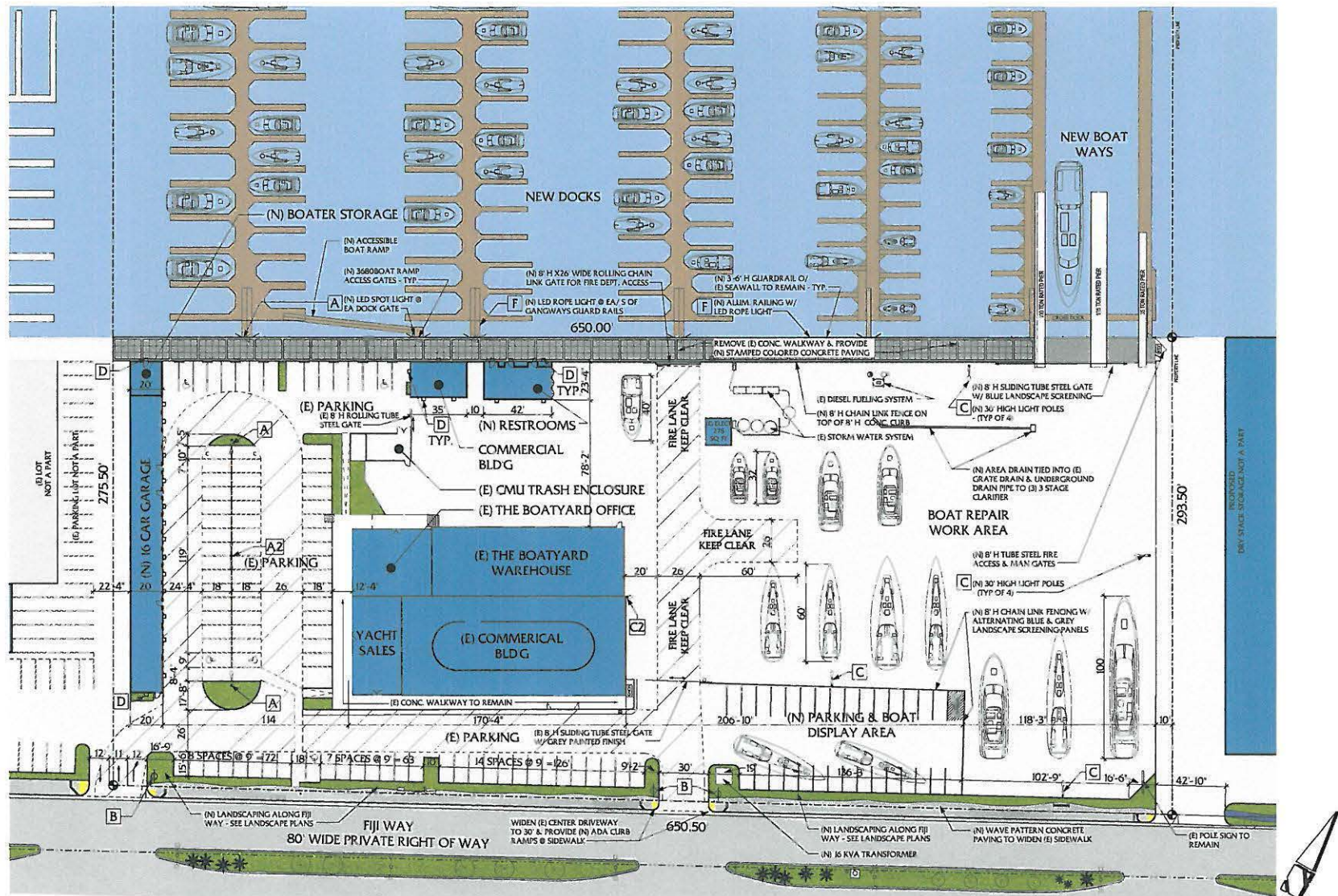
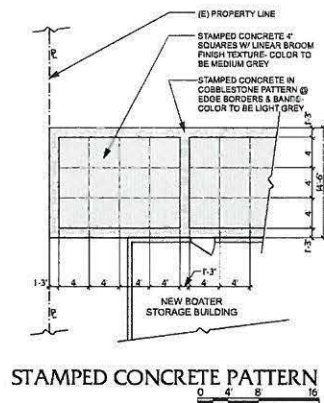
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SHEET: A1 - TITLE PAGE

13555 FIJI WAY
MARINA DEL REY, CA 90292
PHONE: (310) 823-8964





SHEET: A2 - SITE PLAN

13555 FIJI WAY
MARINA DEL REY, CA 90292
PHONE: (310) 823-8964

OFFICE: 562-437-6311
FAX: 562-437-0611
EMAIL: pacdesign88@gmail.com
1415 COTA AVENUE
LONG BEACH, CA 90813

COMMERCIAL / INDUSTRIAL / RESIDENTIAL ARCHITECTURE



STATUS	REPORT	I	E	MR	RA
	X				

Printed On: May 15, 2011 - 12:26pm

Doc Edition: 155 (mg)



PROJECT		CLIENT	
THE BOATYARD MARINA AND TRAVEL LIFT PIERS REPLACEMENT PARCEL 53		HARBOR REAL ESTATE GROUP	
 Blue Water Group Planning and Engineering Services for Marina and Waterfront Redevelopment		 Blue Water Group Planning and Engineering Services for Marina and Waterfront Redevelopment	
2500 Van Cabello Marina, Suite 200 San Pedro, CA 90731 TEL: 310 540 3132 FAX: 310 540 1794		2500 Van Cabello Marina, Suite 200 San Pedro, CA 90731 TEL: 310 540 3132 FAX: 310 540 1794	
EXISTING SITE SURVEY P53		EXISTING SITE SURVEY P53	
DATE: 11-30-05 SCALE: 1"=30'		DATE: 11-30-05 SCALE: 1"=30'	

EXISTING SITE		DATE	05-10-11
SURVEY		1" = 30'	
P53		DK-1	- of -

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



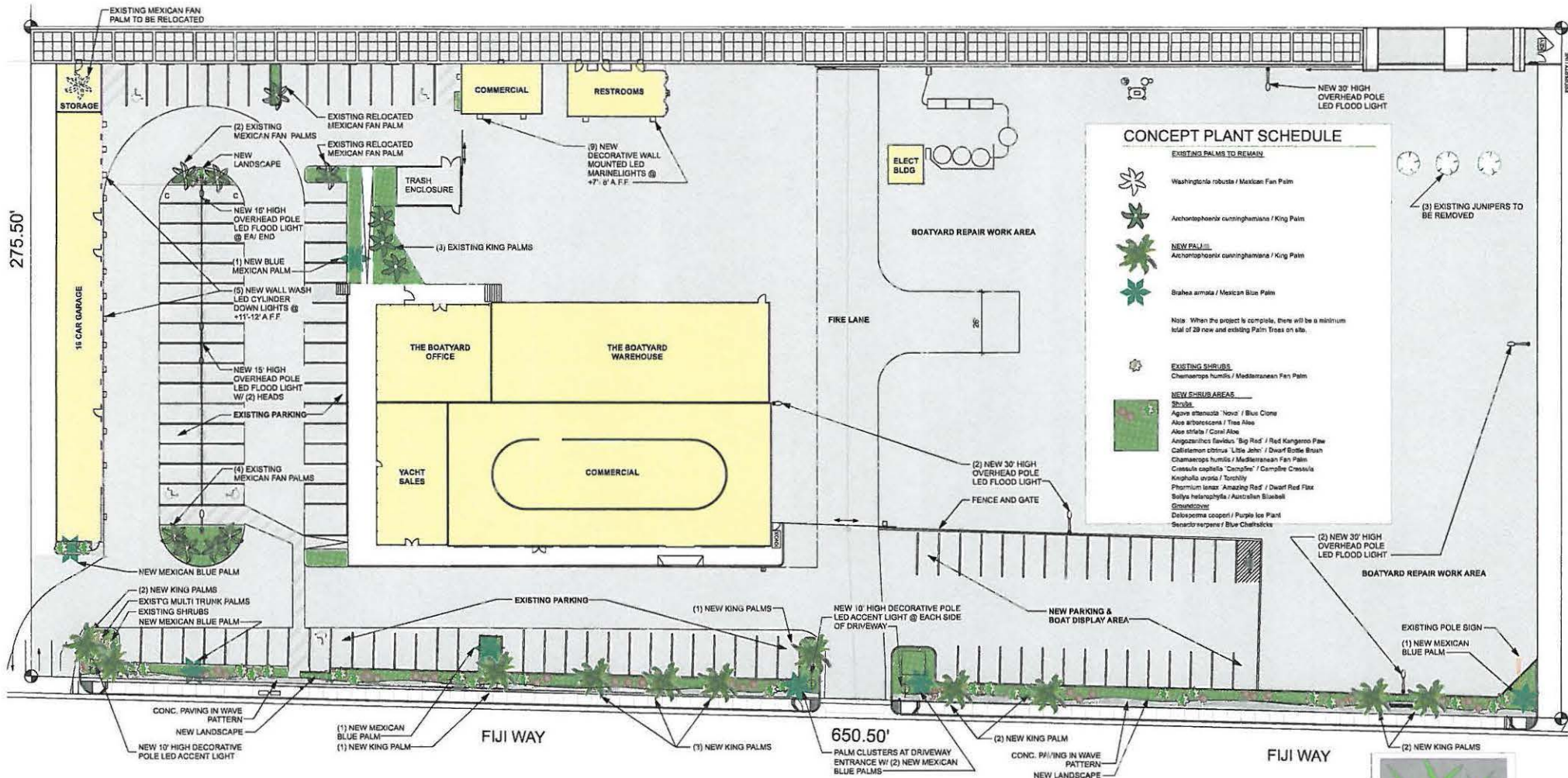
HILLWATER
Design Group

Planning and Engineering Services
For Marinas and Waterfront Resorts

DATE	TIME	LOCATION	WIND	SEA	WAVE	TEMP	WIND	SEA	WAVE	TEMP
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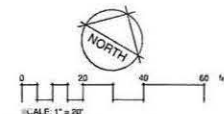
**HARBOR
REAL ESTATE
GROUP**

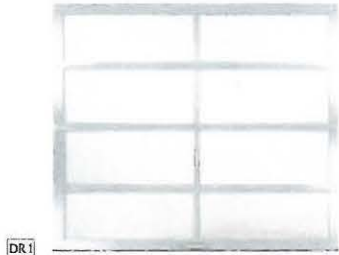
PROJECT
THE BOATYARD
MARINA AND TRAVEL
LIFT PIERS
REPLACEMENT
PARCEL 53



SHEET: A3 - LANDSCAPE PLAN WITH LIGHTING

13555 FIJI WAY
MARINA DEL REY, CA 90292
PHONE: (310) 823-8964





DR1



M3



M4



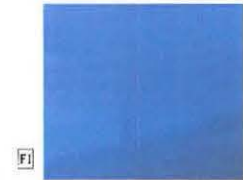
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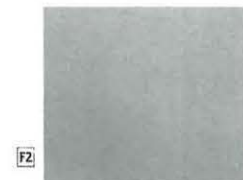
S1



M3



M4



F1



S1

EXTERIOR FINISH SCHEDULE		
SYMBOL	LOCATION	FINISH MATERIAL & COLOR
DR1	GARAGE DOORS	8" HIGH "CLOPAY" AVANTAGE COLLECTION" ALUMINUM SECTIONAL ROLL-UP GARAGE DOORS WITH "LIFTMASTER" AUTOMATIC OPENER / LIGHT COLOR, WHITE FRAMES & CLEAR ANODIZED ALUMINUM PANELS
DR2	MAN DOOR	3/8" EXTERIOR FLUSH METAL DOOR WITH STAINLESS STEEL LEVER HANDLE & HINGES COLOR: GREY PAINT, FACTORY FINISH
M1	CORRUGATED METAL FASCIA	25 GA. CORRUGATED METAL SIDING IN WAVE PATTERN WITH ELECTROSTATIC PAINT PER DRAWINGS COLOR: BLUE
M2	EXTERIOR WALL EXPANSION JOINT	"TRY REGLET" # PCSV-75 REVEAL MOLDING COLOR: CLEAR ANODIZED ALUMINUM
M3	EXTERIOR WALL SCUPPER	8" WIDE X 4" HIGH GL. THRU WALL OVERFLOW ROOF SCUPPER @ 2" ABV. TOP OF ROOF DRAIN COLOR: WHITE (FIELD PAINTED)
M4	EXTERIOR WALL VENT	14" WIDE X 8" HIGH GL. THRU WALL VENT WITH "INSECT" SCREEN, ROT. @ 43" ABOVE TOP OF CURB COLOR: WHITE (FIELD PAINTED)
M5	TUBE STEEL FENCE, RAILING & GATES	"RAILTEC 400" ALUMINUM TUBE GUARDRAIL SYSTEM W/ CLEAR ANODIZED FINISH
S1	EXTERIOR WALL FINISH	"LA HABRA" STUCCO WITH 20/30 SAND FLOAT FINISH STUCCO W/ ELASTAMERK COLOR COAT COLOR: LIGHT GREY (RAY RIDGE, 87993 (S2) BASE 100)
S2	EXTERIOR WALL FINISH	"LA HABRA" STUCCO WITH 20/30 SAND FLOAT FINISH STUCCO W/ ELASTAMERK COLOR COAT COLOR: WHITE (SO 179, BASE 100)
F1	CHAIN LINK FENCING	"FENCE SCREEN.COM SERIES 200" 88% BLOCKAGE, COLOR: BLUE
F2	CHAIN LINK FENCING	"FENCE SCREEN.COM SERIES 200" 88% BLOCKAGE, COLOR: BLUE W/ LIGHT GREY IN ALTERNATING PATTERN - SEE ELEVATION
P1	STAMPED COLORED CONCRETE	GREY 4" SQUARES W/ BROOM FINISH TEXTURE & LIGHT GREY COBBLESTONE EDGE BORDERS & BANDS



DR1 M2 F



A A2 B C D E



D



E



A A2 C C2



B

PROPOSED SITE LIGHTING FIXTURE SCHEDULE					
ALL LIGHTING FIXTURES SHALL BE MARINE GRADE, COPPER FREE ALUMINUM WITH A BLACK POLYESTER POWDER COAT FINISH, U.L. APPROVED, WITH CLUT OFF SHADING, NO NIGHT SKY LIGHTING, & LED LAMPS					
KEY	# FIXTS	DESCRIPTION	MANUFACTURER MODEL #	LOCATION	MOUNT'G HEIGHT LED WATTS LUMENS TEMP
A	2	OVERHEAD POLE FLOOD LIGHT	WE-EF LIGHTING USA PFL240 LED (700mA) 660-1420	SOUTH PARKING LOT IN FRONT & REAR PLANTERS	15' 24 LED 48 W 5330 L 3000 K
A2	1	OVERHEAD POLE FLOOD LIGHT W/ 2 HEADS	WE-EF LIGHTING USA PFL240 LED (700mA) 661-9361 W/ EV2 POLE BRACKET	SOUTH PARKING LOT IN CENTER OF PARKING STALLS	18' 48 LED 96 W 10590 L 4000 K
B	3	DECORATIVE POLE ACCENT LIGHT	WE-EF LIGHTING USA ZA630 LED-FT (700mA) 651-3036	ALONG FIJI WAY @ DRIVEWAYS	10' 30 W 3000 L 4000 K
C	4	OVERHEAD POLE SECURITY FLOOD LIGHT	WE-EF LIGHTING USA PFL240 LED (1000/1050mA) 660-1419	JUST INSIDE FENCE FACING BOAT REPAIR WORK AREA	30' 48 LED 156 W 16476 L 4000 K
C2	1	WALL MOUNTED SECURITY FLOOD LIGHT	WE-EF LIGHTING USA PFL240 LED (1000/1050mA) 660-1419 W/ 128-0919 WALL MOUNT BRACKET	ON NORTH END OF MAIN BUILDING FACING BOAT REPAIR WORK AREA	30' 48 LED 156 W 16476 L 4000 K
D	14	WALL 1/2" ASH CYLINDER DOWN LIGHT	WE-EF LIGHTING USA DL8129 LED 621-2121-1419	16 ON THE SIDES OF NEW GARAGE 68 ON THE COMMERCIAL LEASE BUILDING, & 16 ON THE NEW RESTROOMS	11' - 12' 1 LED 15 W 1740 L 3000 K
E	7	GATE FRAME MOUNTED CYLINDER SPOT DOWN LIGHT	BEGA-US 66735-10-537-X4	@ THE LATCH SIDE OF SECURITY GATES @ TOP OF EACH GANGWAY	7'-6" 24 LED 63 W 501 L 4000 K
F	-	CONTINUOUS ROPE RECESSED DOWN LIGHTING	MODA LIGHT SUPER AQUAFLEX 3000	@ THE BOTTOM OF NEW GUARDRAIL ALONG TOP OF SEAWALL	24 LED 48 W 5330 L 3000 K



SHEET: A4 - EXTERIOR FINISHES & SITE LIGHTING

13555 FIJI WAY
MARINA DEL REY, CA 90292
PHONE: (310) 823-8964

OFFICE: 562-437-6311
FAX: 562-488-0011
EMAIL: pacdesign88@gmail.com
1415 COCA AVENUE
LONG BEACH, CA 90813
COMMERCIAL / INDUSTRIAL / RESIDENTIAL ARCHITECTURE



WEST ELEVATION FACING PARKING LOT BEFORE



MAIN BOATYARD GATE EXISTING

PROJECT ADDRESS: 13555 FIJI WAY SUITE A
MARINA DEL REY, CA 90292
LITIAL DESCRIPTION: LOT 5 COMMERCIAL MARINE
NAME OF FACILITY: THE BOATYARD
NAME OF NEW TENANT: NAOS YACHTING
DESCRIPTION OF WORK: FABRICATION OF NEW IDENTIFICATION SIGNS
AND 1 DIRECTIONAL SIGN

PROPOSED DIRECTIONAL SIGN



WEST ELEVATION FACING PARKING LOT W/ NEW SIGN

Custom Font
Color to Match PMS 289C

Denison
yacht sales

Color to Match PMS 289C

Color Black to Match PMS 2C 2X

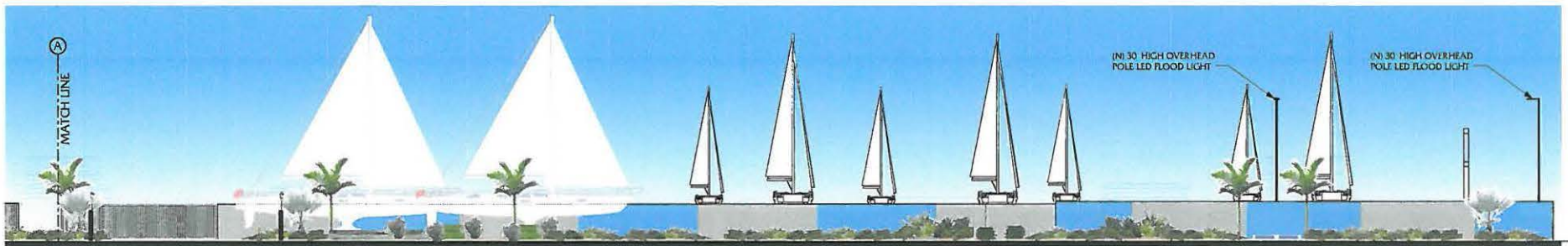
Color to White

Color to Match PMS 3965 C

Color to Match PMS 485 C

1. Cut out Sign Foam Letters. Surface painted
2. Mounting Screws
#10 x 2 1/2" FH S-S tapping screws
as needed per letter and artwork
3. 1" Aluminum Stand Off Sleeves

PROPOSED LEASE TENANT SIGN



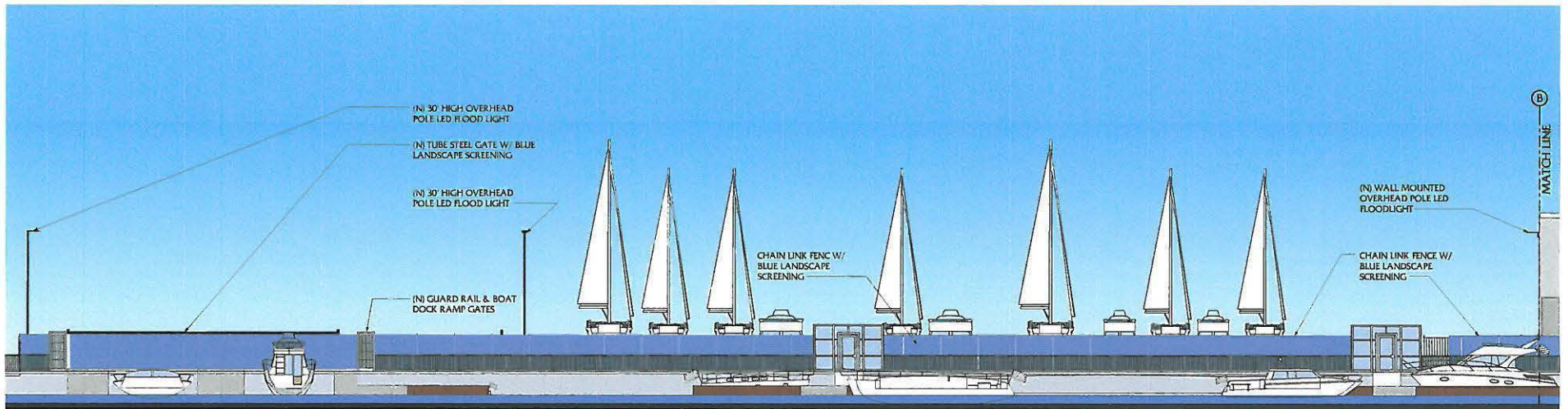
SOUTH ELEVATION FACING THE BOATYARD FROM FIJI WAY



SHEET: A5 - STREET ELEVATION

13555 FIJI WAY
MARINA DEL REY, CA 90292
PHONE: (310) 823-8964





ELEVATION OF NEW BOAT YARD FROM NEW DOCKS



SHEET: A6 - WATERSIDE ELEVATION

13555 FIJI WAY
MARINA DEL REY, CA 90292
PHONE: (310) 823-8964





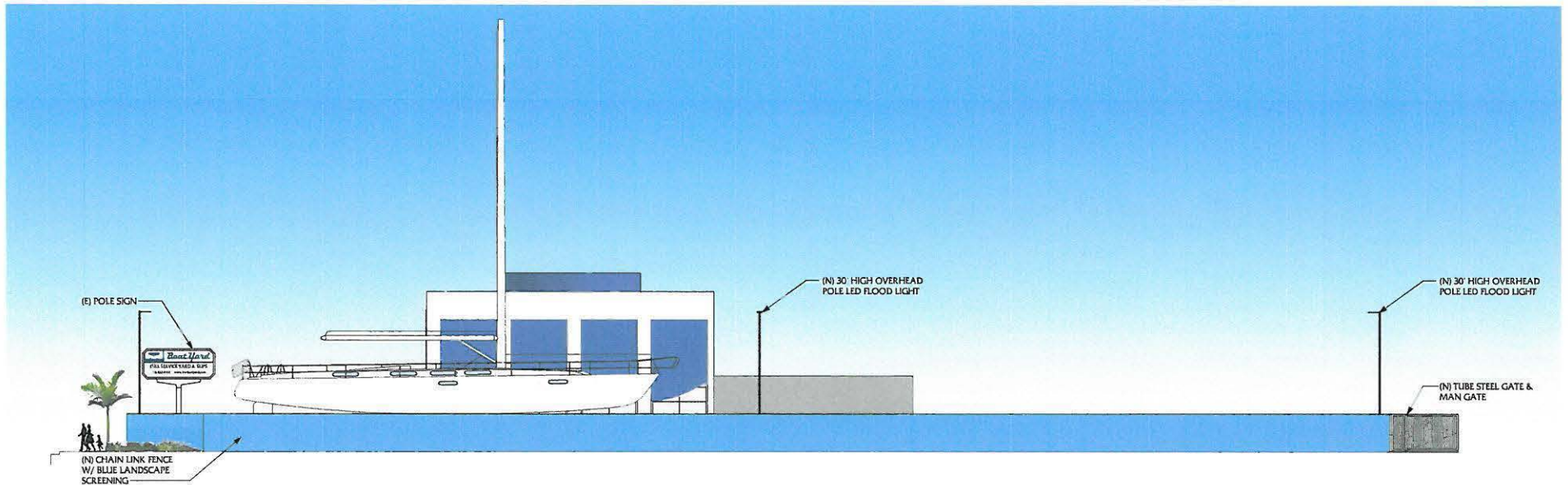
EXISTING POLE SIGN
TO REMAIN



EXISTING NORTH ELEVATION



EXISTING CHAIN LINK GATES TO BE
REPLACED W/ TUBE STEEL GATES



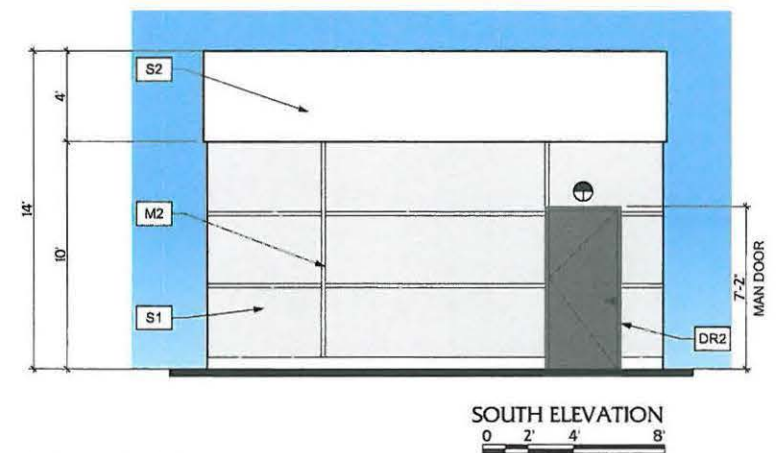
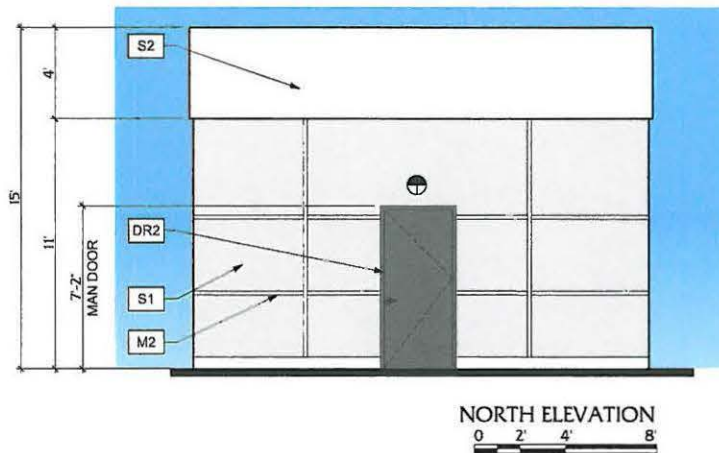
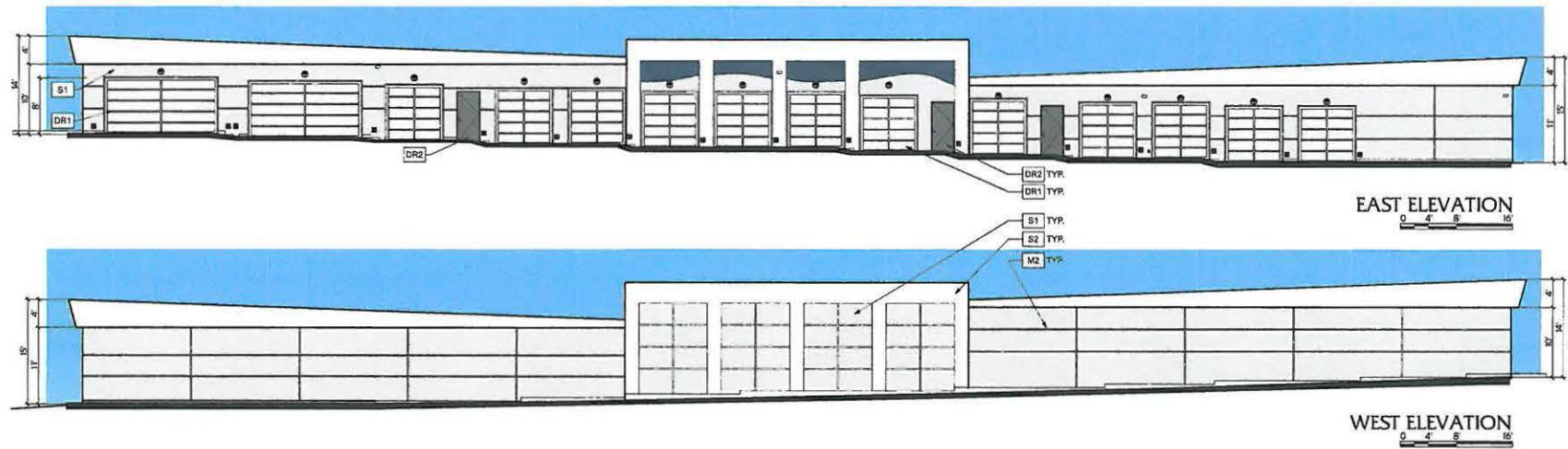
NORTH ELEVATION EXTERIOR ELEVATIONS

SHEET: A7 - NORTH ELEVATION



13555 FIJI WAY
MARINA DEL REY, CA 90292
PHONE: (310) 823-8964





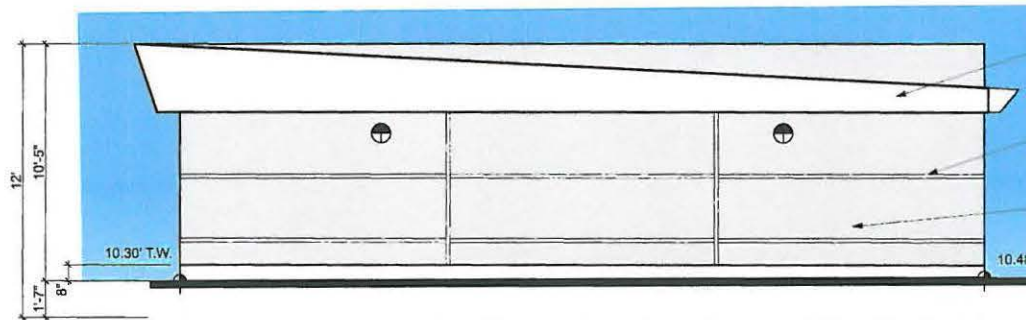
GARAGE BUILDING EXTERIOR ELEVATIONS



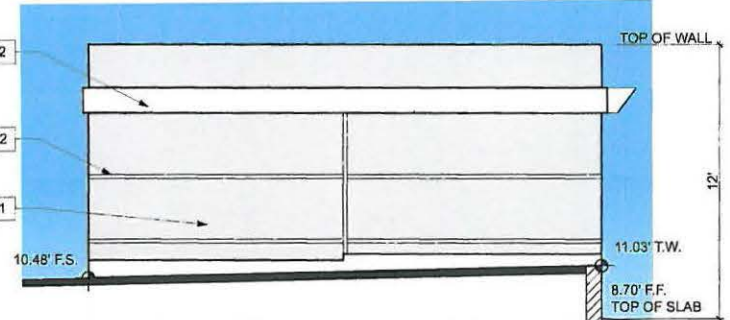
SHEET: A8 - GARAGE BUILDING

13555 FIJI WAY
MARINA DEL REY, CA 90292
PHONE: (310) 823-8964

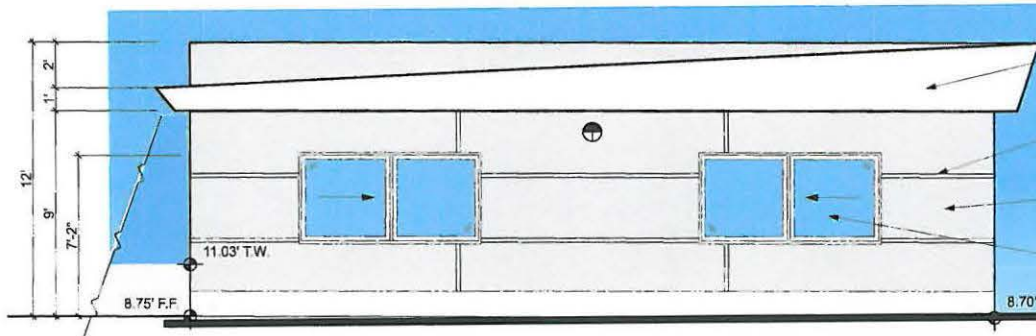




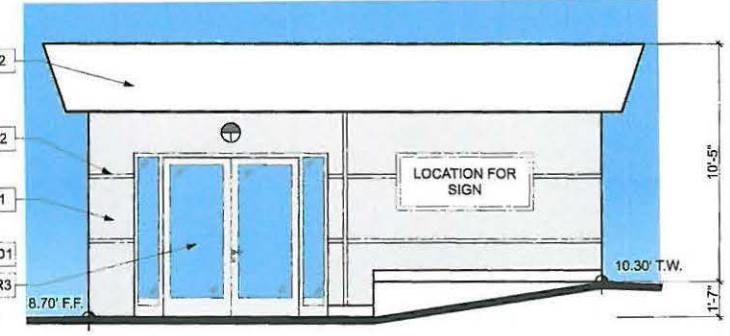
D. SOUTH ELEVATION
0 2' 4' 8'



C. EAST ELEVATION
0 2' 4' 8'



B. NORTH ELEVATION
0 2' 4' 8'



A. WEST ELEVATION
0 2' 4' 8'

COMMERCIAL LEASE BUILDING EXTERIOR ELEVATIONS



BEFORE



BEFORE

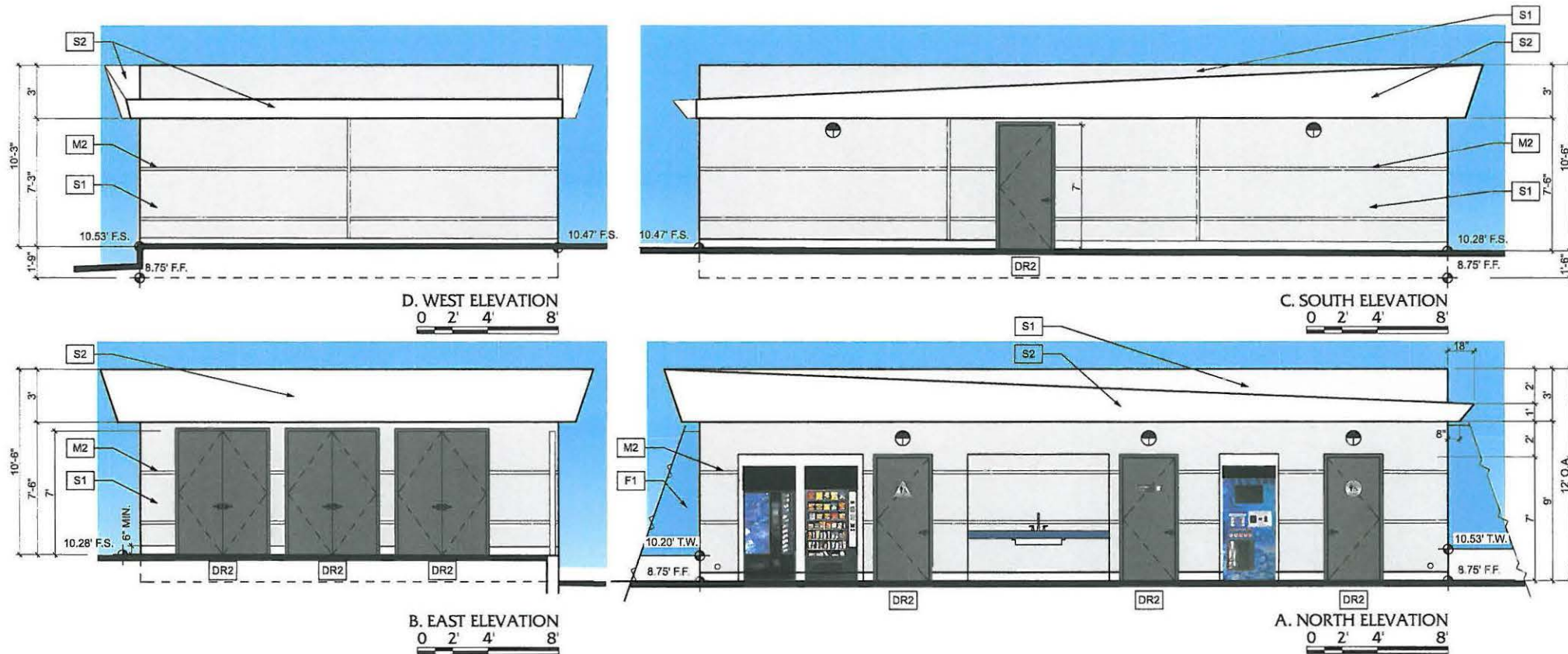


SHEET: A9 - COMMERCIAL LEASE BUILDING

13555 FIJI WAY
MARINA DEL REY, CA 90292
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FAX: 562-495-0611
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1415 GUYA AVENUE
LONG BEACH, CA 90803
COMMERCIAL / INDUSTRIAL / RESIDENTIAL ARCHITECTURE



RESTROOM BUILDING EXTERIOR ELEVATIONS



SHEET: A 10 - RESTROOM BUILDING

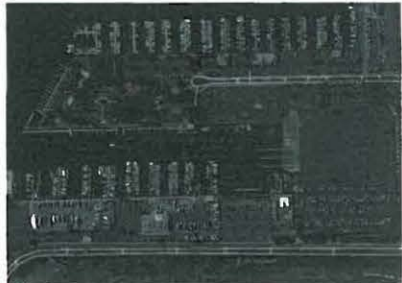
13555 FIJI WAY
 MARINA DEL REY, CA 90292
 PHONE: (310) 823-8964



35, 100, AND 135 TON RATED TRAVELIFT PIERS FOR THE BOATYARD RENOVATION MARINA DEL REY



VICINITY MAP



AREA MAP



LOCATION MAP

SCOPE OF WORK

DEMOLITION: REMOVE EXISTING DOCKS FROM AREA OF WORK.

NEW WORK: INSTALL THREE NEW TRAVELIFT PIERS PER THIS CONSTRUCTION SET

PROJECT DATA

OWNER

HARBOR REAL ESTATE GROUP
13555 FIJI WAY
MARINA DEL RAY, CA 90292

CIVIL ENGINEERING

GRANTHAM ENGINEERING
7807 HILLDALE DR
SAN DIEGO, CA 92120
PH: 619 994-0748
Bill@granthamengineering.com

CONTRACTOR:

TO BE DETERMINED

PROJECT LOCATION:

13555 FIJI WAY
MARINA DEL RAY, CA 90292

SHEET INDEX

- 1 TITLE SHEET
- 2 GENERAL NOTES
- 3 DEMOLITION PLAN
- 4 OVERALL LAYOUT ISOMETRIC VIEW
- 5 OVERALL LAYOUT
- 6 FRONT AND ELEVATION VIEWS
- 7 PILE LOCATIONS
- 8 PIER LOCATIONS
- 9 35 TON PIER DETAIL
- 10 135 TON PIER DETAIL
- 11 100 TON PIER DETAIL



9/18/2015

NO. 9/18/2015
REVISION DATE BY

TRAVELIFT PIERS FOR THE
BOATYARD RENOVATION

TITLE SHEET

GRANTHAM ENGINEERING
Civil & Mechanical Marine
7807 HILLDALE DR
SAN DIEGO, CA 92120
BILL@GRANTHAMENGINEERING.COM

Marina Del Rey
Boatyard
13555 FIJI WAY
MARINA DEL RAY, CA 90292

FOR CONSTRUCTION

DESIGN CRITERIA

1. LIVE LOAD:

TRAVELIFT: 35 TON (METRIC) CAPACITY MOBILE BOAT HOIST
CORNER WHEEL LOAD: 30.3 KIPS VERTICAL, 3.03 KIPS LATERAL
TRAVELIFT: 100 TON (METRIC) CAPACITY MOBILE BOAT HOIST
CORNER WHEEL LOAD: 90 KIPS VERTICAL, 9 KIPS LATERAL

2. FOUNDATION: PILE TYPE, PRECAST PRESTRESSED CONCRETE

35 TON PIER: 18" SQUARE PRECAST CONCRETE PILE

100 TON PIER: 18" SQUARE PRECAST CONCRETE PILE

135 TON PIER: 18" SQUARE PRECAST CONCRETE PILE

3. SEISMIC DESIGN CRITERIA

OCCUPANCY CATEGORY: II

DESIGN CATEGORY: D

SOIL SITE CLASS: E

IMPEDANCE FACTOR = 1

$S_{DS} = 1.50g$

$S_{D1} = 0.633g$

$S_{D5} = 0.34g$

RESPONSE MODIFICATION COEFFICIENT, $R = 2.0$

SEISMIC RESPONSE COEFFICIENT, $C_s = 0.47$

ANALYSIS PROCEDURE USED: EQUIVALENT LATERAL FORCE

SEISMIC FORCE RESISTING SYSTEM: INVERTED PENDULUM STRUCTURES (ALC 7-10, TABLE 15.4-2)

35 TON PIER DESIGN BASE SHEAR = 39.2 KIPS

100 TON PIER DESIGN BASE SHEAR = 82.3 KIPS

135 TON PIER DESIGN BASE SHEAR = 164.7 KIPS

GENERAL NOTES

1. ACCOMPLISH WORK IN ACCORDANCE WITH ACI 318 AND THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION (GREENBOOK 2000) EXCEPT AS MODIFIED HEREIN. CONSIDER THE ADDITIONAL OR RECOMMENDED PROVISIONS TO BE MANDATORY, AS THOUGH THE WORK "SHALL" HAD BEEN SUBSTITUTED FOR THE WORDS "SHOULD" OR "COULD" OR "MAY" WHEREVER THEY APPEAR. THE "STRUCTURAL ENGINEER", "ENGINEER", AND "ARCHITECT/ENGINEER" TO MEAN DESIGNATED REPRESENTATIVE OF THE OWNER.

2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ENSURING THAT ALL WORKMANSHIP, MATERIALS, AND CONSTRUCTION ARE IN COMPLIANCE WITH APPLICABLE CODES AND FEDERAL REGULATIONS.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE ENFORCEMENT OF FEDERAL AND STATE OF CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION REQUIREMENTS AND REGULATIONS.

4. NEITHER THE OWNER NOR THE ENGINEER WILL ENFORCE SAFETY MEASURES OR REGULATIONS. CONTRACTOR SHALL DESIGN, CONSTRUCT AND MAINTAIN ALL SAFETY DEVICES, INCLUDING SHORING AND BRACING, AND SHALL BE SOLELY RESPONSIBLE FOR CONFORMING TO ALL LOCAL, STATE AND FEDERAL SAFETY AND HEALTH STANDARDS, LAWS AND REGULATIONS.

5. DO NOT SCALE THESE DRAWINGS. FIELD VERIFY ALL SITE CONDITIONS AND DIMENSIONS PRIOR TO BEGINNING CONSTRUCTION.

6. ALL DIMENSIONS SHALL TAKE PRECEDENCE OVER SCALE SHOWN ON PLANS. SPECIFIC NOTES AND DETAILS SHALL TAKE PRECEDENCE OVER GENERAL NOTES AND TYPICAL DETAILS. IN THE EVENT OF A CONFLICT BETWEEN THESE DRAWINGS AND CODE REQUIREMENTS, CONTRACTOR SHALL NOTIFY ENGINEER BEFORE CONTINUING WORK.

7. ALL OMISSIONS AND CONFLICTS BETWEEN THE VARIOUS ELEMENTS OF THE WORKING DRAWINGS AND OR SPECIFICATIONS SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER BEFORE PROCEEDING. NO CHANGES SHALL BE MADE WITHOUT THE OWNER'S OR ENGINEER'S APPROVAL IN WRITING.

8. CONTRACTOR SHALL REVIEW THE DESIGN DOCUMENTS. MAKE A SITE VISIT TO FAMILIARIZE THEMSELVES WITH THE EXISTING SITE CONDITIONS AND SUBMIT A LIST OF OUTSTANDING QUESTIONS TO THE ENGINEER PRIOR TO COMMENCING WORK.

9. CONTRACTOR TO IDENTIFY AND PROTECT ALL EXISTING UTILITIES AND FACILITY PIPING IN THE PROJECT AREA. ALL PIPELINES TO REMAIN UNDISTURBED UNLESS OTHERWISE NOTED ON THE DRAWINGS. ANY DELAY, ADDITIONAL WORK, OR EXTRA COST TO THE CONTRACTOR CAUSED BY OR RESULTING FROM DAMAGE TO EXISTING INSTALLATIONS SHALL NOT CONSTITUTE A CLAIM FOR EXTRA WORK, ADDITIONAL PAYMENT, OR DAMAGES. ALL DAMAGES TO EXISTING UTILITIES OR PIPING SHALL BE REPAIRED BY AND AT THE EXPENSE OF THE CONTRACTOR.

10. DEMOLITION SHALL BE ACCOMPLISHED IN COORDINATION WITH NEW CONSTRUCTION WORK, UNLESS NOTED OTHERWISE. ALL DEMOLITION WASTE SHALL BECOME THE PROPERTY OF THE CONTRACTOR AND BE REMOVED FROM THE PROJECT SITE. ALL EXISTING ITEMS TO REMAIN UNLESS OTHERWISE NOTED. CARE SHALL BE TAKEN TO PROTECT ADJACENT ITEMS SCHEDULED TO REMAIN.

11. ANY TEMPORARY DISRUPTION OF ACCESS OR UTILITY SERVICE MUST BE COORDINATED AND APPROVED BY OWNER.

12. USING THIS PERMITTED CONSTRUCTION DRAWINGS FOR CONSTRUCTION/INSTALLATION OF THE WORK SPECIFIED HEREIN, YOU AGREE TO COMPLY WITH THE REQUIREMENTS OF THE CITY OF MARINA DEL RAY FOR SPECIAL INSPECTIONS, STRUCTURAL OBSERVATIONS AND CONSTRUCTION MATERIAL TESTING CONTAINED IN THE SPECIAL INSPECTION AS REQUIRED BY THE CALIFORNIA CONSTRUCTION CODES.

13. THE SPECIAL INSPECTOR MUST BE CERTIFIED BY THE CITY OF MARINA DEL RAY, DEVELOPMENT SERVICES IN THE CATEGORY OF WORK REQUIRED TO HAVE THE SPECIAL INSPECTION.

14. THE CONSTRUCTION MATERIALS TESTING MUST BE APPROVED BY THE CITY OF MARINA DEL RAY, DEVELOPMENT SERVICES IN THE CATEGORY OF WORK REQUIRED TO HAVE THE SPECIAL INSPECTION.

GENERAL NOTES (CONTINUED)

14. CONTRACTOR SHALL CONDUCT ALL OPERATIONS IN COMPLIANCE WITH ALL APPLICABLE REQUIREMENTS OF THE STATE WATER RESOURCE CONTROL BOARD, ARMY CORPS OF ENGINEERS, CALIFORNIA COASTAL COMMISSION, AND PORT AGENCIES.

15. SILT CURTAINS OR TURBIDITY BARRIERS SHALL BE INSTALLED AND MAINTAINED DURING THE ENTIRE WATER CONSTRUCTION PROCESS.

16. ANY CONFLICTS WITH THE DESIGN OR ANY CHANGES TO THE PLANS SHALL BE AUTHORIZED BY THE ENGINEER BEFORE CONTINUING WITH WORK.

17. THE CONTRACTOR SHALL PREPARE AS BUILTS AND SUBMIT THAT AT THE END OF THE CONSTRUCTION TO THE OWNER.

PIER NOTES

1. MATERIAL:

REINFORCED CONCRETE: 1" c = 5000 PSI @ 28 DAYS

REINFORCING STEEL ASTM 615 GRADE 60

PRESTRESSED CONCRETE: 1" c = 6000 PSI @ 28 DAYS

SEE PILE DATA SHEET FOR PILE SPECIFICATIONS

BOLTS: ASTM A307

PLATES AND SHAPES: ASTM A36

ALL MISC. METAL SHALL BE GALV AFTER FABRICATION

2. CONTRACTOR SHALL COORDINATE WITH PILE DRIVING SCHEDULE SO AS NOT TO INTERFERE WITH OR BE DETRIMENTAL TO THE CONCRETE PLACEMENT AND CURING OPERATIONS

3. PRIOR TO DRIVING PILES, EITHER REMOVE EXISTING SHORE PROTECTION ROCK OR USE SPUDDING PROCEDURE THROUGH EXISTING SHORE PROTECTION WHERE REQUIRED. SHORE PROTECTION TO BE RESTORED AFTER INSTALLATION OF PILES.

4. PIER TO BE POURED MONOLITHIC.

5. REINFORCING SPICES: LONGITUDINAL REINFORCING: BOTTOM BARS SHALL BE SPLICED ON BEND CENTERLINE. SPICES SHALL BE ALTERNATED AND NO MORE THAN ONE HALF OF THE REINFORCING SHALL BE SPLICED AT ONE PILE BENT. TOP BARS SHALL BE SPLICED MIDWAY BETWEEN BENTS. SPICES SHALL BE ALTERNATED AND NO MORE THAN ONE HALF OF THE REINFORCING SHALL BE SPLICED AT ANY LOCATION. LAP SPICES SHALL BE 45" FOR #7 BAR

PILE INSTALLATION:

1. PILES SHALL BE INSTALLED USING A HAMMER OF SUFFICIENT SIZE TO INSTALL THE PILES THROUGH THE SITE SOIL TO THE PENETRATION DEPTH SPECIFIED ON THE DRAWINGS.

2. PILES SHALL BE ACCURATELY LOCATED USING ANY MEANS NECESSARY SO THAT THE TOP OF THE PILES SHALL NOT VARY MORE THAN 4" FROM THE DESIGN LOCATION IN ANY DIRECTION. THE TOP OF THE PILES SHALL NOT VARY MORE THAN 1" FROM THE DESIGN ELEVATION TO ENSURE PROPER EMBEDMENT INTO THE PIER.

3. PULLING PILES INTO TOLERANCE AFTER DRIVING WILL NOT BE ALLOWED. LANDSIDE PILES SHALL BE DRIVEN IN 20 FT DEEP PREDRILLED HOLES.

4. IF NECESSARY TO ACHIEVE SPECIFIED PENETRATION, JETTING MAY BE USED UTILIZING AN INTERNAL JET TUBE ONLY. IF JETTING IS USED, IT SHALL BE TERMINATED 5 FT ABOVE THE SPECIFIED TIP ELEVATION AND PILE DRIVEN THE LAST 5 FEET WITH OUT JETTING.

5. PILES SHALL BE DRIVEN TO TOP OF PILE ELEVATION SHOWN ON SHEET 6 AND ATTAIN THE AXIAL CAPACITIES. AXIAL CAPACITIES WERE DETERMINED IN THE SUPPLEMENTAL GEOTECHNICAL RECOMMENDATIONS REPORT BY ASSOCIATED SOIL ENGINEERING DATED XXXX.

6. IF PILE AXIAL CAPACITY IS NOT REACHED, DRIVING SHALL BE CONTINUED UNTIL THE DRIVING FORMULA IN ITEM 3 BELOW IS ATTAINED. PILES DRIVEN BEYOND THE REQUIRED TOP OF PILE ELEVATION SHALL BE PROVIDED WITH GROUTED DOWELS AND BUILD-UPS TO FACILITATE APPROPRIATE CONNECTION TO THE PILE CAP.

7. THE AXIAL CAPACITY OF THE PILES SHALL BE ESTIMATED BY THE CONTRACTOR USING THE ENR PILE DRIVING FORMULA OR AN ALTERNATIVE METHOD APPROVED BY THE ENGINEER. $[Q_u = (W/Rn) + c]$

8. AT PILE CUT OFF, SAW CUT 1-1 1/2 INCH DEEP ON ALL SIDES PRIOR TO CONCRETE REMOVAL. THE REMAINING PILE SHALL BE SOUND AND UNDAUNAGED. AT THE CUT OFF SIDE STRANDS SHALL REMAIN UNDAUNAGED AND SHALL BE CLEANED BEFORE PLACING PILE-CAP CONCRETE.

SPECIAL INSPECTION AND STRUCTURAL OBSERVATION

1. STRUCTURAL OBSERVATION OF THE TRAVELIFT PIER CONSTRUCTION WILL BE PERFORMED BY GRANTHAM ENGINEERING ON A PERIODIC BASIS.

2. CONTINUOUS INSPECTION IS REQUIRED FOR BEARING PILE INSTALLATION. RECORD OF PILE DRIVING ACTIVITIES TO BE PERFORMED BY GRANTHAM ENGINEERING OR GEOTECHNICAL ENGINEERING FIRM TO CONFIRM BEARING PILE CAPACITIES.

3. SPECIAL INSPECTION FOR THE FOLLOWING ACTIVITIES:

- SIZE, GRADE, AND PLACEMENT OF REINFORCING STEEL
- CONCRETE PLACEMENT

STRUCTURAL CONCRETE

1. PORTLAND CEMENT: PORTLAND CEMENT SHALL BE TYPE II, LOW ALKALI, COMPLYING WITH ASTM C150. CONCRETE SHALL CONTAIN NO LESS THAN 688 LBS OF CEMENT FOR EACH CYCLO YARD OF CONCRETE.

2. FLY ASH: FLY ASH SHALL NOT BE GREATER THAN 10% BY MASS OF TOTAL CEMENTITIOUS MATERIAL. COMPRESSIVE STRENGTH: 5000 PSI @ 28 DAYS BASED ON COMPRESSIVE CYLINDER TESTS PERFORMED IN ACCORDANCE WITH ASTM C31 AND ASTM C39.

3. AIR-ENTRAINMENT: CONCRETE SHALL CONTAIN AN AIR ENTRAINING ADMIXTURE COMPLYING WITH THE REQUIREMENTS OF ASTM C260, IN SUFFICIENT QUANTITY TO ACHIEVE AN AIR-ENTRAINMENT OF 2% TO 4%.

4. WATER CEMENT RATIO: THE WATER CEMENT RATIO SHALL NOT EXCEED 0.38.

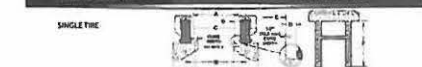
5. WATER REDUCING: CONCRETE MAY CONTAIN A WATER REDUCING ADMIXTURE COMPLYING WITH THE REQUIREMENTS OF ASTM C494, TYPE A IN SUFFICIENT QUANTITY TO OBTAIN THE SPECIFIED WATER CEMENT RATIO.

6. AGGREGATE GRADING: AGGREGATE GRADING FOR THIS PROJECT SHALL COMPLY WITH GRADING C, TABLE 201-1.3.2(A) OF THE STANDARD SPECIFICATIONS FOR PUBLIC CONSTRUCTION (GREENBOOK 2000) AND SHALL BE NON-REACTIVE BY TEST.

7. REINFORCING STEEL: REINFORCING STEEL SHALL BE ASTM A416 OR A706 GRADE 60. REINFORCING BARS TO BE WELDED SHALL CONFORM TO ASTM A706 GRADE 60.

TRAVELIFT INFORMATION

LAUNCHING PIERS MARINA TRAVELIFT

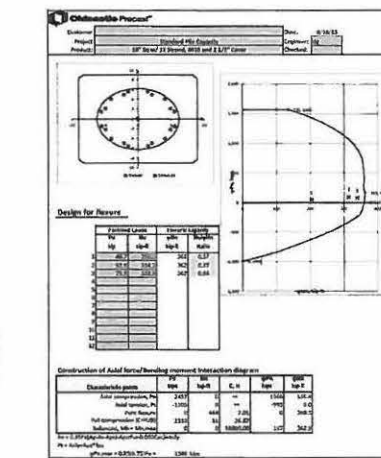
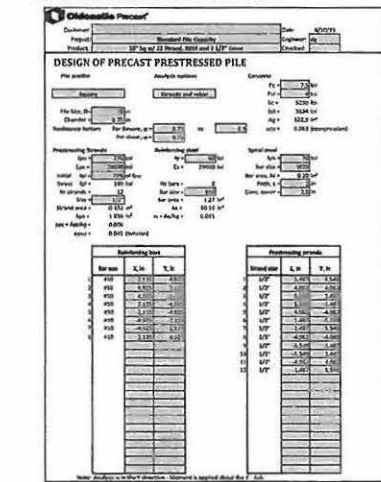


SINGLE PILE SPECIFICATIONS									
NO.	TYPE	SIZE	WALL	WALL	WALL	WALL	WALL	WALL	WALL
1	18"	18"	18"	18"	18"	18"	18"	18"	18"
2	18"	18"	18"	18"	18"	18"	18"	18"	18"
3	18"	18"	18"	18"	18"	18"	18"	18"	18"
4	18"	18"	18"	18"	18"	18"	18"	18"	18"
5	18"	18"	18"	18"	18"	18"	18"	18"	18"
6	18"	18"	18"	18"	18"	18"	18"	18"	18"
7	18"	18"	18"	18"	18"	18"	18"	18"	18"
8	18"	18"	18"	18"	18"	18"	18"	18"	18"
9	18"	18"	18"	18"	18"	18"	18"	18"	18"
10	18"	18"	18"	18"	18"	18"	18"	18"	18"

CONSTRUCTION OF ADDITIONAL/REPAIR/REINFORCEMENT DIAGRAM									
NO.	TYPE	SIZE	WALL	WALL	WALL	WALL	WALL	WALL	WALL
1	18"	18"	18"	18"	18"	18"	18"	18"	18"
2	18"	18"	18"	18"	18"	18"	18"	18"	18"
3	18"	18"	18"	18"	18"	18"	18"	18"	18"
4	18"	18"	18"	18"	18"	18"	18"	18"	18"
5	18"	18"	18"	18"	18"	18"	18"	18"	18"
6	18"	18"	18"	18"	18"	18"	18"	18"	18"
7	18"	18"	18"	18"	18"	18"	18"	18"	18"
8	18"	18"	18"	18"	18"	18"	18"	18"	18"
9	18"	18"	18"	18"	18"	18"	18"	18"	18"
10	18"	18"	18"	18"	18"	18"	18"	18"	18"

PILE DESIGN:

ALL PILES TO BE IDENTICAL FOR ALL PIERS TO PREVENT THEM FROM GETTING AXED UP DURING INSTALLATION. ALL PILES TO DOWEL TUBES PER THIS CONSTRUCTION DOCUMENT



FOR CONSTRUCTION



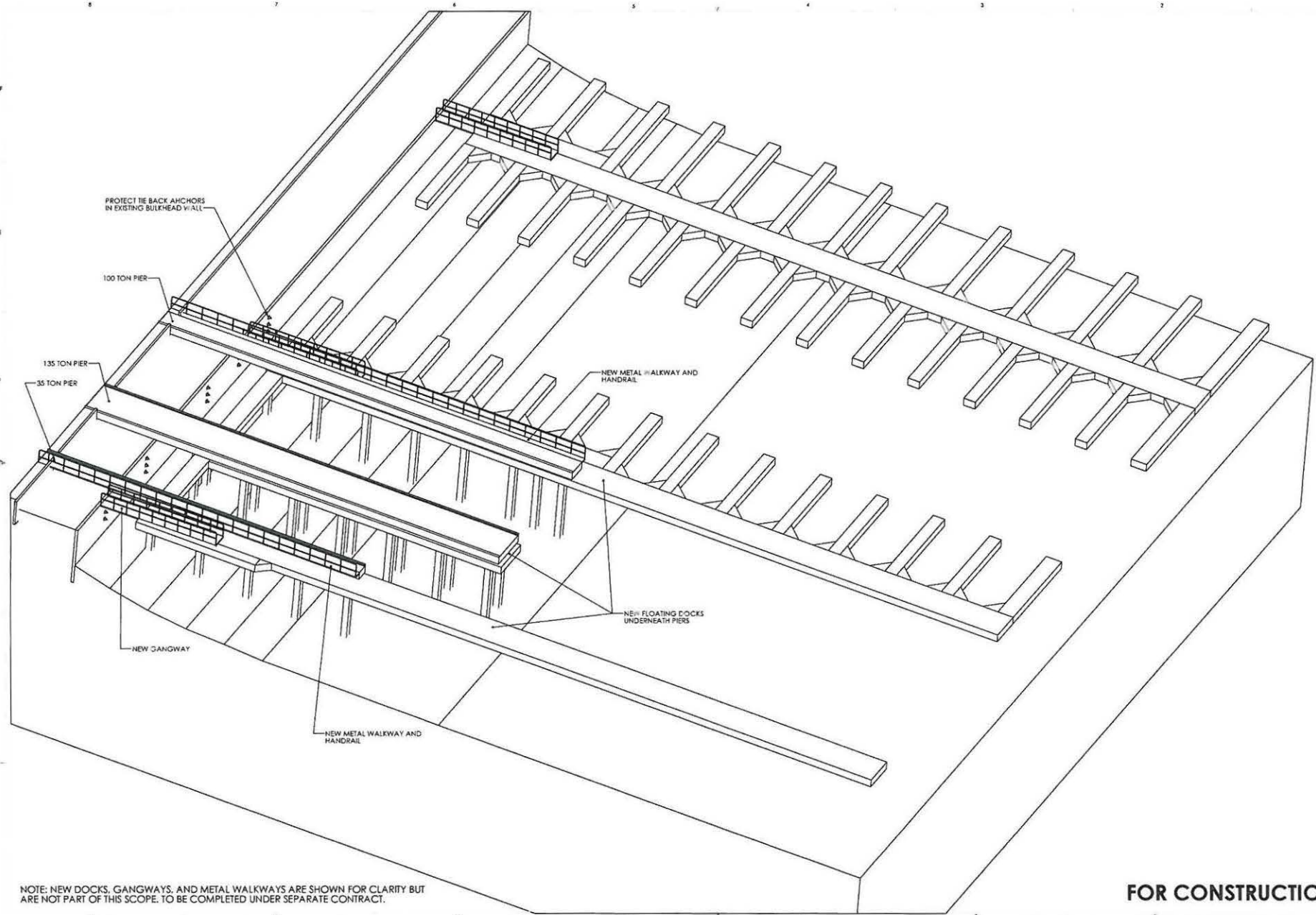
NO.	REVISION DATE	BY
1	7/1/2015	

TRAVELIFT PIERS FOR THE BOATYARD RENOVATION

GRANTHAM ENGINEERING
7807 HILAND AVE. DE
SAN DIEGO, CA 92121
TEL: 619-494-0748
WWW.GRANTHAMENGINEERING.COM

13555 FULWY
MARINA DEL RAY, CA 92022

2 11



NOTE: NEW DOCKS, GANGWAYS, AND METAL WALKWAYS ARE SHOWN FOR CLARITY BUT ARE NOT PART OF THIS SCOPE. TO BE COMPLETED UNDER SEPARATE CONTRACT.

FOR CONSTRUCTION



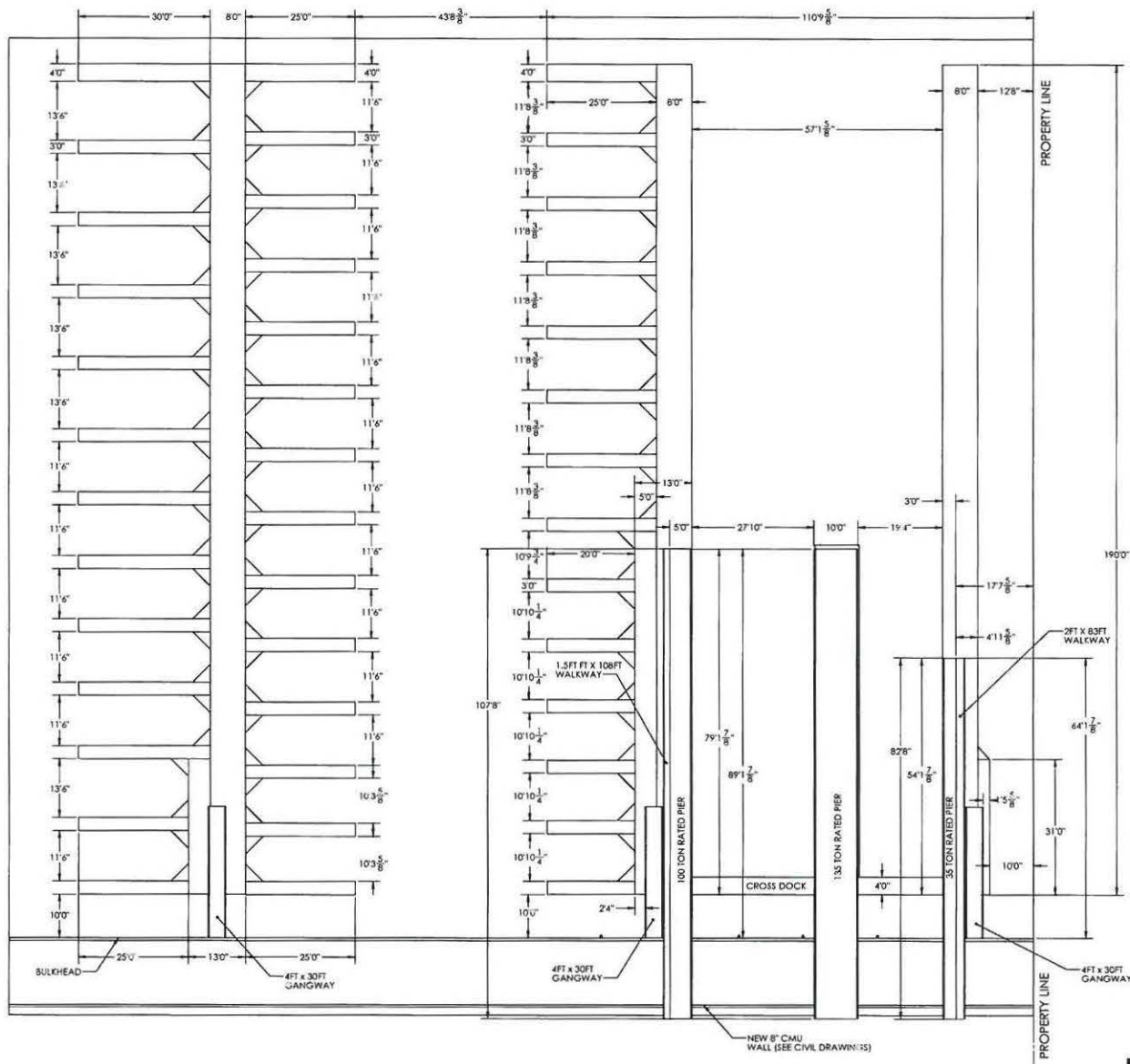
9/19/2015

NO. 9/18/2015
REVISION DATE BY

TRAVELIFT PIERS FOR THE
BOATYARD RENOVATION
OVERALL LAYOUT ISOMETRIC

GRANTTEAM ENGINEERING
7807 HILLANDALE DR
SAN DIEGO, CA 92120
BILL GRANTTEAM@GRANTTEAM.COM

13555 FILLWAY
MARINA DEL REY, CA 90272



ALL DIMENSIONS ARE IN FEET
SCALE: 1/8"=1'-0"

PLAN VIEW

FOR CONSTRUCTION



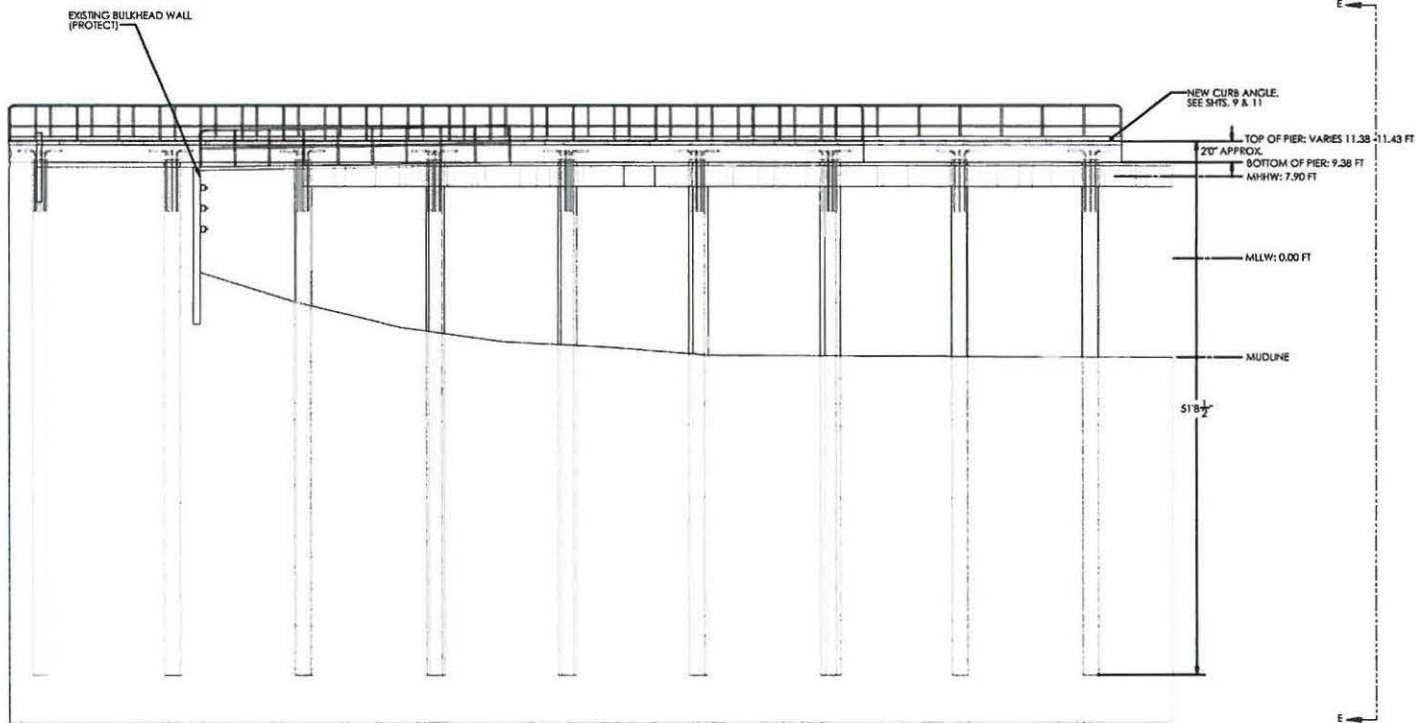
9/18/2015
REVISION DATE BY

TRAVELIFT PIERS FOR THE
BOATYARD RENOVATION
OVERALL LAYOUT

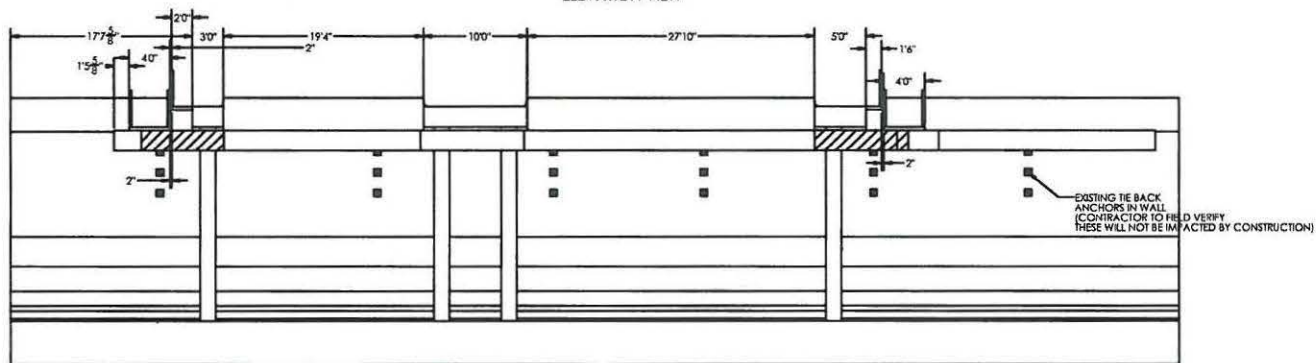
GRANTHAM ENGINEERING
Chief Mechanical Marine
7807 HILLANDALE DR
SAN DIEGO, CA 92121
TEL: 619 444 0748
WWW.GRANTHAMENGINEERING.COM



5 11



ELEVATION VIEW



FRONT VIEW
SECTION E-E

ALL DIMENSIONS ARE IN FEET

FOR CONSTRUCTION



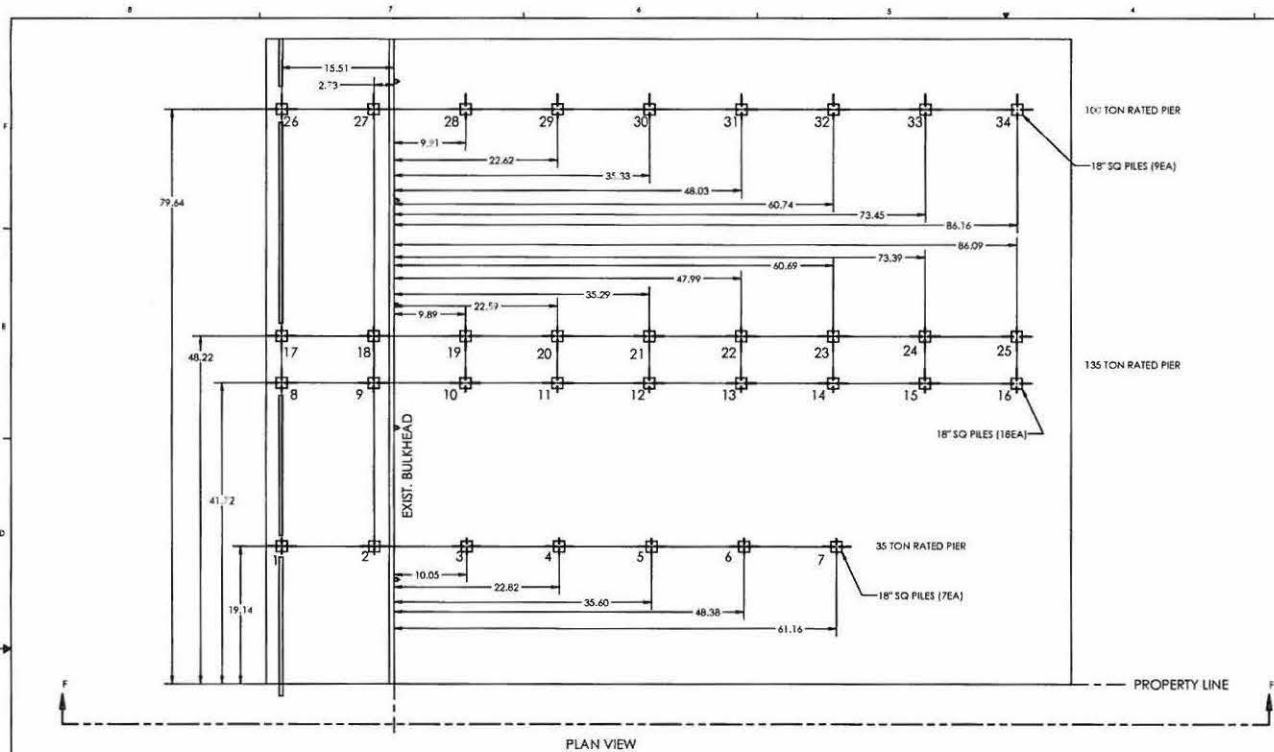
ORIGINAL DATE: 9/18/2015
NO. 5231
REVISION DATE: BY: DATE: BY: DATE: BY:

PROJECT NAME: TRAVELIFT PIERS FOR THE BOATYARD RENOVATION
DRAWING TITLE: FRONT AND ELEVATION VIEWS

EXCHANGED RECORD
GRANTHAM ENGINEERING
Civil & Mechanical Engineering
7107 HILAND AVE. SUITE 100
SAN JOSE, CA 95128
TEL: 415.941.0748
WWW.GRANTHAMENGINEERING.COM

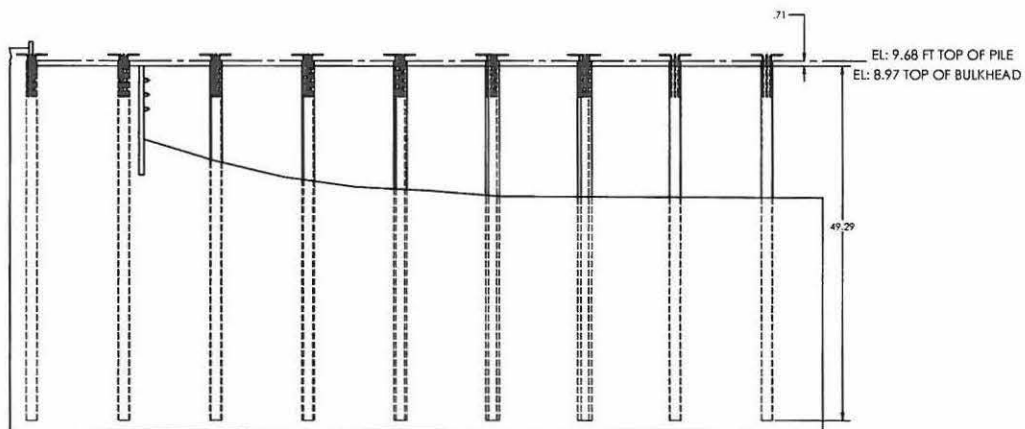
13555 FULWY WAY
MARINA DEL REY, CA 90272

SHEET: 6 OF 11



PILE SCHEDULE

PILE NUMBER	PILE TYPE	REQUIRED COMPRESSIVE AXIAL CAPACITY (KIPS)	PILE LENGTH (FT)
35 TON RATED PIER 1-7	18" SQUARE	165	SOFT
135 TON RATED PIER 8-25	18" SQUARE	228.5	SOFT
100 TON RATED PIER 26-34	18" SQUARE	228.5	SOFT



ALL DIMENSIONS ARE IN FEET

FOR CONSTRUCTION



7/1/2015

DATE: 7/1/2015

BY: [Signature]

REVISION DATE: [Blank]

NO: [Blank]

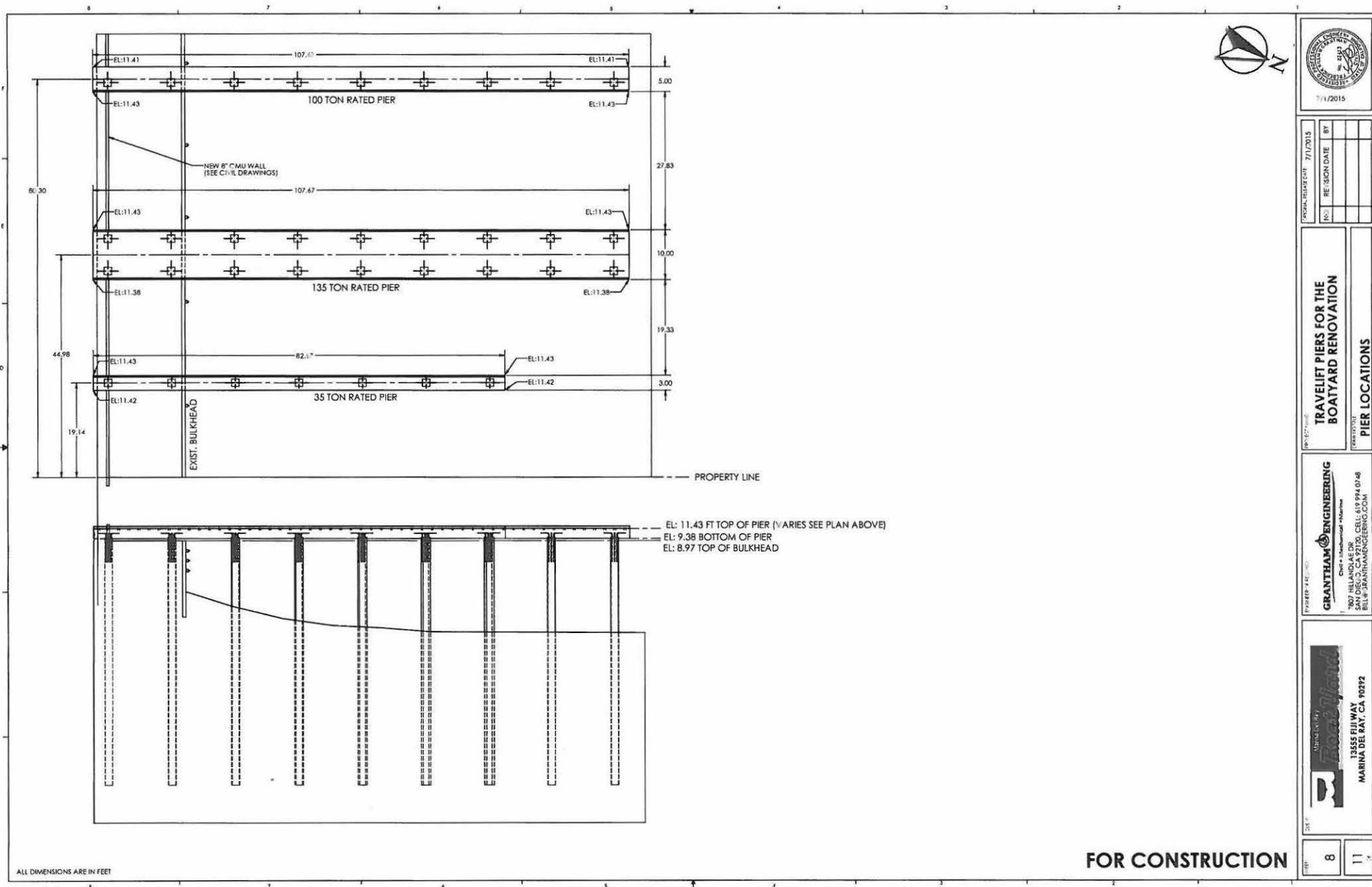
TRAVELIFT PIERS FOR THE
BOATYARD RENOVATION

PILE LOCATIONS

GRANTHAM ENGINEERING
Civil - Mechanical - Marine
7807 HILAND AVE. SUITE 100
SAN JOSE, CA 95128
TEL: 415.944.0748
WWW.GRANTHAMENGINEERING.COM

BOATYARD RENOVATION
13555 FUJIMAY
MARINA DEL RAY, CA 92072

7 11



PROJECT RELEASE DATE		7/1/2015
NO.	REVISION DATE	BY

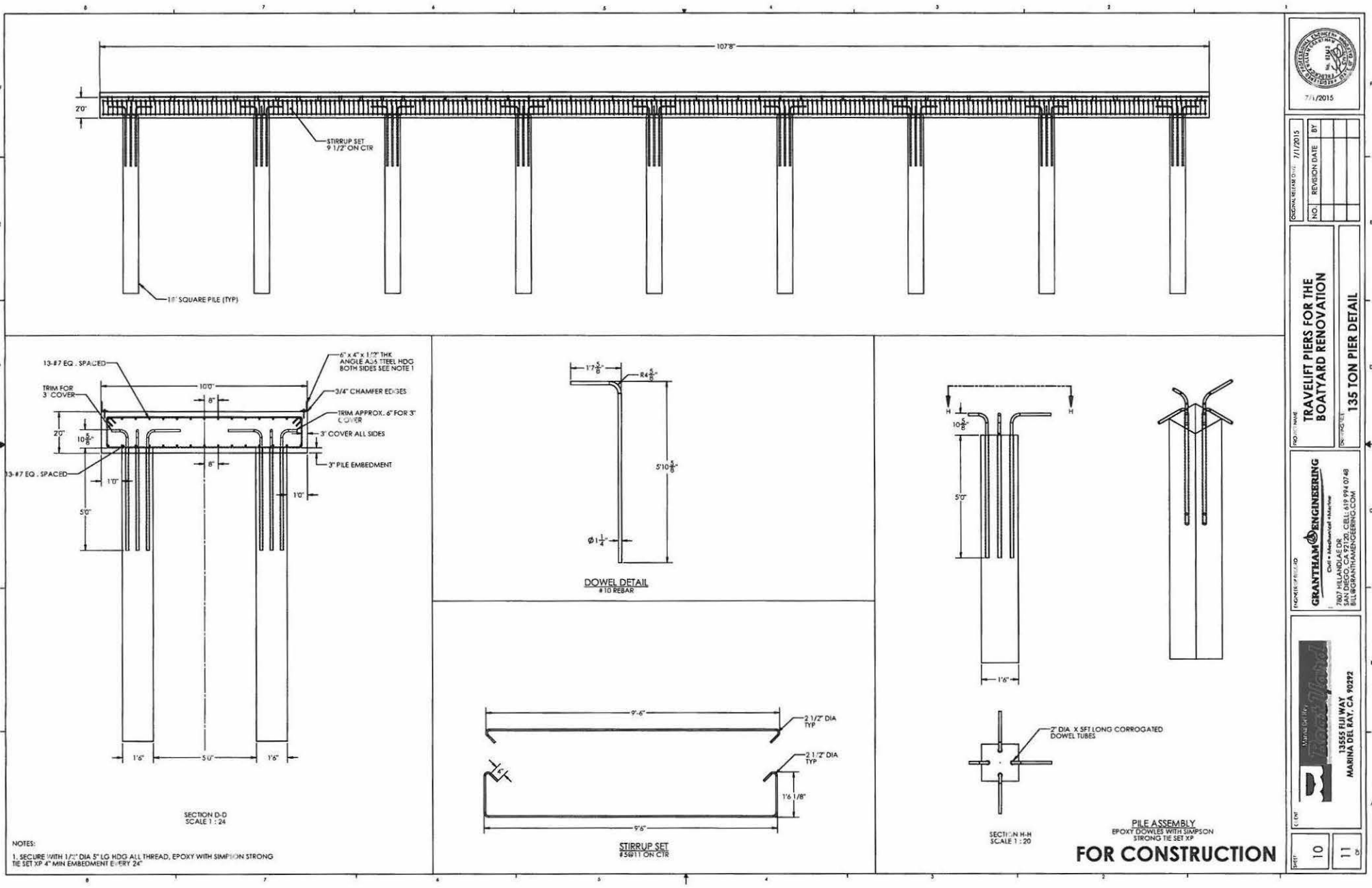
**TRAVELIFT PIERS FOR THE
BOATYARD RENOVATION**

PIER LOCATIONS

GRANTHAM ENGINEERING
Civil & Mechanical Engineers
1807 HILAND AVE. SUITE 100
OAKLAND, CA 94612
TEL: 415.994.0748
WWW.GRANTHAMENGINEERING.COM

Boatyard
13555 FIJI WAY
MARINA DEL RAY, CA 92072

8	11
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NO.	BY
REVISION DATE	11/1/2015

PROJECT NAME
TRAVELIFT PIERS FOR THE BOATYARD RENOVATION

DATE
11/1/2015

ENGINEER
GRANTHAM ENGINEERING
Civil & Mechanical Engineering
7807 HILAND AVE. DR.
SAN DIEGO, CA 92120, CELL: 619 944 0748
BILL@GRANTHAMENGINEERING.COM

13555 RUI WAY
MARINA DEL REY, CA 90232



7/1/2015

ISSUED FOR RECORD DATE: 7/1/2015

NO. BY

REVISION DATE

TRAVELT PERS FOR THE
BOATYARD RENOVATION

100 TON PIER DETAIL

PROJECT NO. 4

NO. OF RECORD

GRANTHAM & ENGINEERING

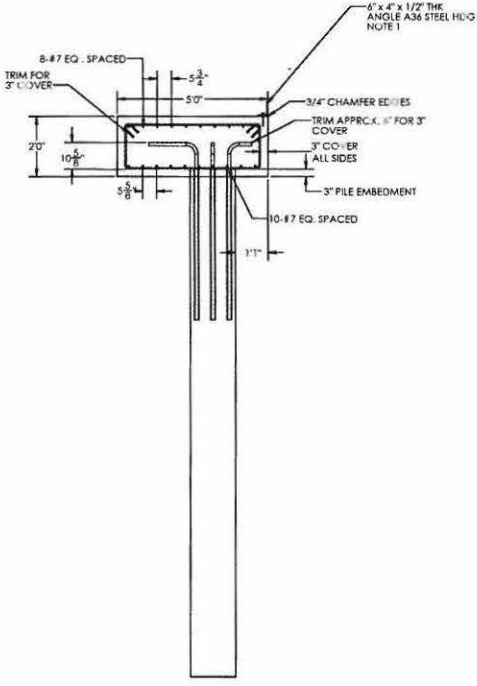
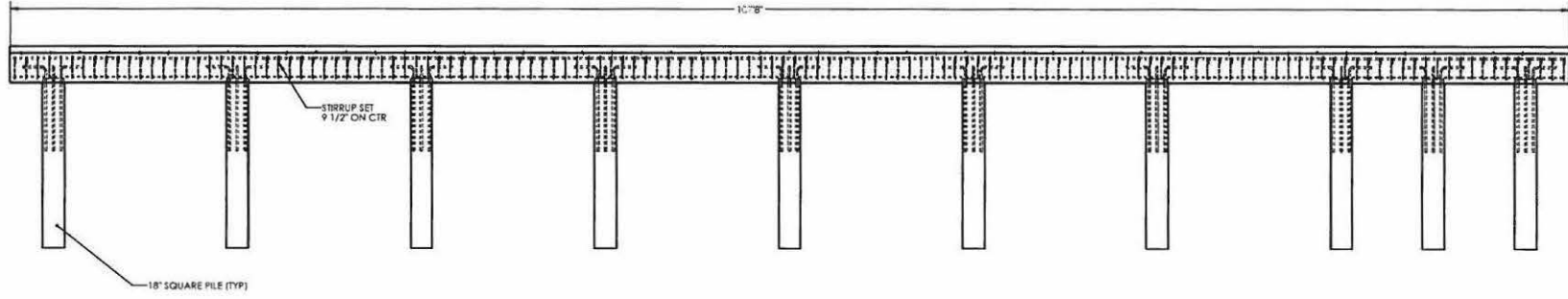
7807 HELAND AVE DR
SAN DIEGO, CA 92120
TEL: 619 944 0748
WWW.GRANTHAMENGINEERING.COM

13555 FULWY WAY
MARINA DEL REY, CA 90222

11

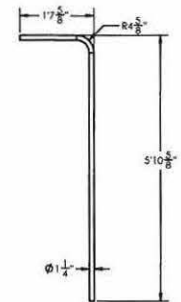
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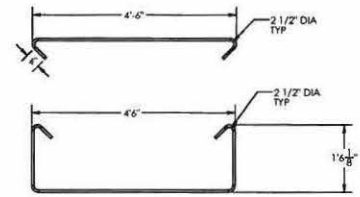


SECTION B-B
SCALE 1:24

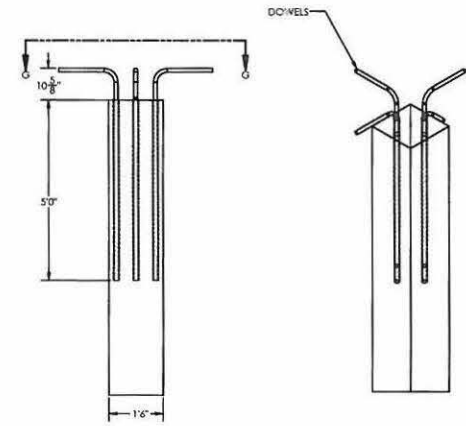
NOTES:
1. SECURE WITH 1/2" DIA 5" LG HDG ALL THREAD, EPOXY WITH SIMPSON STRONG TIE SET XP 4" MIN EMBEDMENT EVERY 24"



DOWEL DETAIL
#10 REBAR



STIRRUP SET
#5@11



SECTION G-G

PILE ASSEMBLY
EPOXY DOWELS WITH SIMPSON
STRONG TIE SET XP

FOR CONSTRUCTION

EXHIBIT C

ASSIGNMENT STANDARDS

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

1. The proposed lessee and Major Sublessee (if applicable) must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (or with respect to the portion of the Subleased Premises in the case of a Major Sublease), which net worth must be equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County under this Lease (or with respect to the Subleased Premises in the case of a Major Sublease) for the most recent fiscal year. A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth or similar security satisfactory to the County may be substituted for the net worth requirement. If the proposed transferee's net worth is materially less than the transferor's, County may disapprove the assignment or require additional security such as that described in the previous sentence.
2. The proposed lessee (or Major Sublessee, if applicable) must have significant experience in the construction (if contemplated), operation and management of the type(s) of Improvements existing on or to be constructed on the Premises (or on the portion of the proposed Subleased Premises in the case of a Major Sublease) or provide evidence of contractual arrangements for these services with providers of such services satisfactory to the County. Changes in the providers of such services and changes to the contractual arrangements must be approved by the County. All approvals of the County will not be unreasonably withheld or delayed.
3. The individual or individuals who will acquire Lessee's interest in this Lease or the Premises, or own the entity which will so acquire Lessee's interest, irrespective of the tier at which individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (1) discriminatory employment practices which violate any federal, state or local law; or (2) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of the County.
4. The price to be paid in connection with the transaction shall not result in a financing obligation which jeopardizes the Lessee's (or Major Sublessee's) ability to meet its rental obligations under the Lease or the Major Sublease. Market debt

service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.

5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the assignee must agree that) the County will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the Lease as required under the Lease (excluding any Excluded Transfer); provided however, that a transfer of ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to County approval.
6. The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Premises or any Improvements thereon.
7. The proposed transferee does not have interests which, when aggregated with all other interests granted by County to such transferee, would violate any policy formally adopted by County restricting the economic concentration of interests granted in the Marina del Rey area, which is uniformly applicable to all Marina del Rey lessees.
8. The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the County Department of Beaches and Harbors and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Marina del Rey.

EXHIBIT D

TREE TRIMMING POLICY

Policy No. 23 and Policy No. 34 of the Marina del Rey Land Use Plan dated February 8, 2012, as such policies are updated, modified or replaced from time to time by County.

AMENDED AND RESTATED LEASE AGREEMENT

by and between

County of Los Angeles

and

HARBOR REAL ESTATE LIMITED PARTNERSHIP,
a Delaware limited partnership

(Parcel 53 — Lease No. _____)

Dated as of _____, 2016

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Environmental Checklist Form (Initial Study)
County of Los Angeles, Department of Regional Planning



Project title: Boat Yard Renovation/ Project No. R2013-02884-(4)/Case No(s) RDCP201300002

Lead agency name and address: Los Angeles County, 320 West Temple Street, Los Angeles, CA 90012

Contact Person and phone number: Anita D. Gutierrez, Special Projects Section, (213) 974-4813

Project sponsor's name and address: Harbor Real Estate, LP c/o Greg Schem
13555 Fiji Way, Marina del Rey, CA 90292

Project location: 13555 Fiji Way, Marina del Rey, 90292 (Lease Parcel 53)
APN: 4224 010 900 USGS Quad: Venice (T2S, R15W)

Gross Acreage: 7.218 acres (Total), 4.234 acres (Landside) and 2.984 (Water)

General plan designation: Marina del Rey Local Coastal Program

Community/Area wide Plan designation: Marina del Rey Local Coastal Program

Zoning: The Project is within the Marina del Rey Specific Plan "Mindanao Area" and is designated as Marine Commercial and Water with a Waterfront Overlay.

Description of project: The proposed project consists of demolition of one 770 square foot restroom facility located at the north eastern portion of the site to be replaced with a new 921 square foot restroom facility just east of the fire lane closest to the water. The second existing 770 square foot restroom located on the west side of the fire lane would be converted marine commercial space. The project also includes construction of a new storage garage totaling 4,383 to accommodate sixteen cars (3,916 square feet) and six boater storage units (467 square feet) along the western parcel edge.

Surrounding land uses and setting: The project site is an existing boat yard consisting of a large open areas for boat repair, two restroom structures and one main building approximately 17,664 square feet, which houses various uses including; commercial, yacht sales, office and warehouse. To the north is Basin H and Chase Park across the Basin, Parcel 52 is located directly to the east which is currently developed with a parking lot and temporary County office buildings, which entitled to be developed with a dray stack storage facility. To the South is the Ballona Wetlands and to the west is a boat yard operation.

Other public agencies whose approval may be required (e.g., permits, financing approval, or participation agreement):

Public Agency

California Coastal Commission

Approval Required

Coastal Commission review would only be required in the event the County's Coastal Development Permit decision for the permit or the project is appealed to the Coastal Commission; the Coastal Commission otherwise retains no permitting authority over

the project.

Los Angeles County Board of Supervisors

For parcel lease extension documentation approval.

Los Angeles County Public Works, Division of Building and Safety

For Building Permit and related approvals.

Major projects in the area:

R2012-00340/
PKP201200004/
RPP201200152

Parcels 42 and 43 (APN No. 4224-008-900): Rehabilitation of the Marina del Rey Hotel, an existing 154-room hotel and parking permit for less than required parking. Approved July 19, 2012

R2006-03647/
CDP200600008

Parcel 10R (APN No. 4224-003-900): Coastal Development Permit to authorize the demolition of an existing 136-unit apartment complex and the development of a 400-unit complex (including a total of 62 affordable housing units). Approved May 15, 2012.

R2006-03652/
CDP200600009

Parcel 14 (APN No. 4224-003-900): Pending Coastal Development Permit to authorize the demolition of an existing parking lot and the development of a 126-unit apartment complex. Approved May 15, 2012.

TR067861/
CDP200600007

Parcel 9U, Northern Portion (APN No. 4224-002-900): Pending Coastal Development Permit to authorize the construction of a 6 and 5-story, 288-unit hotel with a restaurant and other auxiliary facilities.

R2006-03643/
CDP200600006

Parcel 9U, Southern Portion (APN No. 4224-002-900): Coastal Development Permit to authorize the development of a public wetland and upland park. Approved December 12, 2012.

R2007-01480/
CDP200700001

Parcels 55, 56 & W (APN No. 4224-011-901): Pending Coastal Development Permit to authorize the demolition of Fisherman's Village and all existing parking, landscaping, and hardscaping, and the development of a new mixed-use commercial plaza and multi-story parking structure.

R2006-01510/R2006-02726
CDP200600002 &
CDP 200600003

Parcels 147 & 21 (APN No. 4224-006-900): Coastal Development Permit to authorize the demolition of all existing landside improvements and the construction of a 114 unit senior accommodations facility (Parcel 147) 5000 square feet of retail space and other site amenities and facilities; & 447-space parking structure, marine commercial & community park (Parcel 21) Approved in 2001 and 2012

R2008-02340/ CDP200800007

Parcel 52 (APN No. 4224-003-900): Coastal Development Permit to authorize a dry stack boat storage facility, with capacity for 345 boats, along with appurtenant office space and customer lounge, 30 mast up storage spaces, parking, and a new Sheriff's Department/Lifeguard Boatwright facility. Approved April 24, 2013.

Reviewing Agencies:*Responsible Agencies*

- ☒ None
Regional Water Quality Control
Board:
☒ Los Angeles Region
☐ Lahontan Region
☒ Coastal Commission
☐ Army Corps of Engineers

Special Reviewing Agencies

- ☐ None
☐ Santa Monica Mountains
Conservancy
☐ National Parks
☐ National Forest
☐ Edwards Air Force Base
☐ Resource Conservation
District of Santa Monica
Mountains Area
☐

Regional Significance

- ☒ None
☐ SCAG Criteria
☐ Air Quality
☐ Water Resources
☐ Santa Monica Mtns. Area

Trustee Agencies

- ☐ None
☐ State Dept. of Fish and
Wildlife
☐ State Dept. of Parks and
Recreation
☐ State Lands Commission
☐ University of California
(Natural Land and Water
Reserves System)

County Reviewing Agencies

- ☒ DPW:
- Land Development Division
(Grading & Drainage)
- Geotechnical & Materials
Engineering Division
- Watershed Management
Division (NPDES)
- Traffic and Lighting Division
- Environmental Programs
Division
- Waterworks Division
- Sewer Maintenance Division

- ☒ Fire Department
- Forestry, Environmental
Division
- Planning Division
- Land Development Unit
- Health Hazmat
☒ Sanitation District
☒ Public Health/Environmental
Health Division: Land Use
Program (OWTS), Drinking
Water Program (Private
Wells), Toxics Epidemiology
Program (Noise)
☒ Sheriff Department
☒ Parks and Recreation
☐ Subdivision Committee

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project.

- | | | |
|---|--|---|
| ☐ Aesthetics | ☐ Greenhouse Gas Emissions | ☐ Population/Housing |
| ☐ Agriculture/Forest | ☐ Hazards/Hazardous Materials | ☐ Public Services |
| ☐ Air Quality | ☐ Hydrology/Water Quality | ☐ Recreation |
| ☐ Biological Resources | ☐ Land Use/Planning | ☐ Transportation/Traffic |
| ☐ Cultural Resources | ☐ Mineral Resources | ☐ Utilities/Services |
| ☐ Energy | ☐ Noise | ☐ Mandatory Findings of Significance |
| ☒ Geology/Soils | | |

DETERMINATION: (To be completed by the Lead Department.)
On the basis of this initial evaluation:

- ☒ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- ☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- ☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature (Prepared by)

Date

Signature (Approved by)

Date

EVALUATION OF ENVIRONMENTAL IMPACTS:

- 1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources the Lead Department cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the Lead Department has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
- 4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level. (Mitigation measures from Section XVII, "Earlier Analyses," may be cross-referenced.)
- 5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA processes, an effect has been adequately analyzed in an earlier EIR or negative declaration. (State CEQA Guidelines § 15063(c)(3)(D).) In this case, a brief discussion should identify the following:
 - a) Earlier Analysis Used. Identify and state where they are available for review.
 - b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of, and adequately analyzed in, an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 6) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
- 7) The explanation of each issue should identify: the significance threshold, if any, used to evaluate each question, and; mitigation measures identified, if any, to reduce the impact to less than significance. Sources of thresholds include the County General Plan, other County planning documents, and County ordinances. Some thresholds are unique to geographical locations.
- 8) Climate Change Impacts: When determining whether a project's impacts are significant, the analysis should consider, when relevant, the effects of future climate change on : 1) worsening hazardous conditions that pose risks to the project's inhabitants and structures (e.g., floods and wildfires), and 2) worsening the project's impacts on the environment (e.g., impacts on special status species and public health).

1. AESTHETICS

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Have a substantial adverse effect on a scenic vista?	☐	☐	☒	☐
b) Be visible from or obstruct views from a regional riding or hiking trail?	☐	☐	☒	☐
c) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒
d) Substantially degrade the existing visual character or quality of the site and its surroundings because of height, bulk, pattern, scale, character, or other features?	☐	☐	☒	☐
e) Create a new source of substantial shadows, light, or glare which would adversely affect day or nighttime views in the area?	☐	☐	☐	☐

EVALUATION OF ENVIRONMENTAL IMPACTS:

Official State Scenic Highways are designated by the California Department of Transportation (CalTrans). According to CalTrans, “[t]he stated intent (Streets and Highway Code Section 260) of the California Scenic Highway Program is to protect and enhance California’s natural beauty and to protect the social and economic values provided by the State’s scenic resources” (State of California Department of Transportation, California Scenic Highway Program, website: <http://www.dot.ca.gov/dist3/departments/mtce/scenic.htm>, accessed October 6, 2011). While there are numerous designated Scenic Highways across the state, the following have been designated in Los Angeles County: Angeles Crest Highway (Route 2) from just north of Interstate 210 to the Los Angeles/San Bernardino County Line, two segments of Mulholland Highway from Pacific Coast Highway to Kanan Dume Road and from west of Cornell road to east of Las Virgenes Road, and Malibu Canyon-Las Virgenes Highway from Pacific Coast Highway to Lost Hills Road.

The project site is not located adjacent to or in close proximity to any designated or eligible scenic highway. The closest eligible scenic highway is the section of Pacific Coast Highway (Highway 1) extending from the Venture County/L.A. County line to Venice Boulevard, approximately two miles north of the site. The Pacific Coast Highway at Venice Boulevard intersection is not directly visible from the project. There are no other scenic highway corridors visible to or from the site.

The Marina del Rey Land Use Plan identifies Fiji Way as a particular significant vantage points within Marina of the harbor. The project proposes to renovate an existing restroom facility into a marine

commercial building and construct a new restroom facility and storage garage. The storage garage would be 14 feet high and 21'5" wide but would still leave the project site with 177 linear feet clear views to the water which equates to a view corridor representing 27% of the linear width of the site, which is more than the 20% required under the Local Coastal Program. Thus, no mitigation measures are required.

The proposed landscape and other building improvements will not have any significant impacts to the scenic features associated with the project from the Marina area. The existing main commercial building on site is approximately 38 feet in height, buildings on adjacent properties to the west and east) have one story buildings (approximately 14-15 feet). The proposed storage garage and bathroom building would be approximately 14 feet in height. The exterior improvements proposed by the project will not include any building materials that will substantially increase glare or light. The height of the storage garage is approximately 14 feet high and would not create significant shade or shadow impacts.

The project is located in an urban community. The Ballona Creek Wetlands is located east of the site, which is a 600-acre area designated as a significant ecological area. The Ballona Creek Wetlands is an undisturbed significant ecological area with unique aesthetic and biological features. The site is separated from Ballona Creek Wetlands by a surface road (Fiji Way) along eastern project boundary. The project is located in Basin H of the Marina del Rey Harbor and has a view to the water. The proposed renovation and construction will not significantly change or alter any of the aesthetic features directly associated with the Ballona Creek Wetlands or the Basin H. The project will not have any significant aesthetic impacts to either the Ballona Creek Wetlands or the Marina Del Rey Harbor. Thus, no mitigation measures are required.

The proposed project is not out of character with the adjacent uses which is primarily boat storage, boat repair and marine commercial uses. The project proposes to renovate an existing restroom facility into a marine commercial building and construct a new restroom facility and storage garage. The proposed improvements and addition will be compatible with other development in the area and not out of character with development in the marina. The marina area is dominated with urban development and the improvements and amenities proposed will not impact the aesthetics of this area of Marina del Rey.

2. AGRICULTURE / FOREST

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, with a designated Agricultural Opportunity Area, or with a Williamson Act contract?	☐	☐	☐	☒
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code § 12220 (g)), timberland (as defined in Public Resources Code § 4526), or timberland zoned Timberland Production (as defined in Government Code § 51104(g))?	☐	☐	☐	☒
d) Result in the loss of forest land or conversion of forest land to non-forest use?	☐	☐	☐	☒
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	☐	☐	☐	☒

EVALUATION OF ENVIRONMENTAL IMPACTS:

The Farmland Mapping and Monitoring Program (FMMP) produces maps and statistical data that are used for analyzing impacts on California's agricultural resources. Agricultural land is rated according to soil quality and irrigation status; the best quality land is called *Prime Farmland*. The maps are updated every two years with the use of a computer mapping system, aerial imagery, public review, and field reconnaissance. FMMP produces *Important Farmland Maps*, which are a hybrid of resource quality (soils) and land use information.

The California Land Conservation Act of 1965--commonly referred to as the Williamson Act--enables local governments to enter into contracts with private landowners for the purpose of restricting specific parcels of land to agricultural or related open space use. In return, landowners receive property tax assessments which are much lower than normal because they are based upon farming and open space uses as opposed to

full market value. Local governments receive an annual subvention of forgone property tax revenues from the state via the Open Space Subvention Act of 1971. The only Williamson Act contract lands in the County are located on Catalina Island and held by the Catalina Island Conservancy as set asides for open space and recreational purposes. Therefore, there are no agricultural Williamson Act contracts in the remainder of the unincorporated County.

Agricultural Opportunity Areas (AOAs) are a County identification tool that indicates land where commercial agriculture is taking place and/or is believed to have a future potential based on the presence of prime agricultural soils, compatible adjacent land uses, and existing County land use policy. In addition to AOAs, the County has two agricultural zones: A-1 (Light Agriculture) and A-2 (Heavy Agriculture).

California Public Resources Code section 12220(g) defines forest land as “land that can support 10-percent native tree cover of any species, including hardwoods, under natural conditions, and that allows for management of one or more forest resources, including timber, aesthetics, fish and wildlife, biodiversity, water quality, recreation, and other public benefits.” California Public Resources Code section 4526 defines timberland as land, other than land owned by the federal government and land designated by the State Board of forestry and Fire Protection as experimental forest land that is available for, and capable of, growing a crop of trees of any commercial species used to produce lumber and other forest products, including Christmas trees. Commercial species shall be determined by the State Board of Forestry and fire Protection for each district after consultation with the respective forest district communities. California Public Resources Code section 51104(g) defines Timberland production zones" or "TPZ" as an area which has been zoned and is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses.

The County contains important and prime farmland, and the Angeles National Forest and a portion of the Los Padres National forest are also located in the County. The County does not have any zone that is strictly used for forest uses or timberland production. However, the Angeles National Forest, and a portion of the Los Padres National forest are located in the County, and the Watershed Zone allows for any use owned and maintained by the Forest Service of the United States Department of Agriculture, and any authorized leased use designated to be part of the Forest Service overall recreational plan of development, including logging. In addition, Los Angeles County has been mapped by the California Department of Forestry and Fire Protection to identify the different categories of land cover capable of being sustained therein, including forests, woodlands, wetlands, and shrubs, for example

The project site is located in the County unincorporated community of Marina del Rey, which is designated as Specific Plan Zone as zoned under the County of Los Angeles. Parcel 53's land use designations per the certified Local Coastal Program (LCP) are Marine Commercial and Water with a Waterfront Overlay Zone. The project site does not support and is not zoned for, nor is it located near an area that is zoned for or developed with, forestland or timberland. Therefore, no impacts would occur to agricultural land uses or conflict with any agricultural zones. The project site is not located in an area that is designated as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance pursuant to the Farmland Mapping and Monitoring Program of the California Department of Conservation. Further analysis regarding this topic is not required (Source: Farmland Mapping and Monitoring Program, California Department of Conservation).

3. AIR QUALITY

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Conflict with or obstruct implementation of applicable air quality plans of either the South Coast AQMD (SCAQMD) or the Antelope Valley AQMD (AVAQMD)?	☐	☐	☒	☐
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☐	☒
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	☐	☐	☒	☐
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☐	☒
e) Create objectionable odors affecting a substantial number of people?	☐	☐	☒	☐

EVALUATION OF ENVIRONMENTAL IMPACTS:

The Federal government and the State of California have established air quality standards designed to protect public health from these criteria pollutants. Among the federally identified criteria pollutants, the levels of ozone, particulate matter, and carbon monoxide in Los Angeles County continually exceed federal and state health standards and the County is considered a non-attainment area for these pollutants.

In response to the region's poor air quality, the South Coast Air Quality Management District (SCAQMD) & the Antelope Valley Air Quality Management District (AVAQMD) were created. The SCAQMD and the AVAQMD are responsible for monitoring air quality as well as planning, implementing, and enforcing programs designed to attain and maintain state and federal ambient air quality standards in the region. The SCAQMD implements a wide range of programs and regulations, most notably, the Air Quality Management Plan (AQMP). The SCAQMD jurisdiction covers approximately 10,743 square-miles and includes all of Los Angeles County except for the Antelope Valley, which is covered by the Antelope AVAQMD.

Sensitive receptors are uses such as playgrounds, schools, senior citizen centers, hospitals or other uses that would be more highly impacted by poor air quality. AQMD Rule 402, which states "A person shall not

discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property. The provisions of this rule shall not apply to odors emanating from agricultural operations necessary for the growing of crops or the raising of fowl or animals.”

The proposed project consists of demolition of one 770 square foot restroom facility located at the north eastern portion of the site to be replaced with a new 921 square foot restroom facility just east of the fire lane closest to the water. The second existing 770 square foot restroom located on the west side of the fire lane would be converted marine commercial space. The project also includes construction of a new storage garage totaling 4,383 to accommodate sixteen cars (3,916 square feet) and six boater storage units (467 square feet) along the western parcel edge.

The proposed project is located in the South Coast Air Basin (Basin), which is under the jurisdiction of the SCAQMD. Potential impacts on local and regional air quality are anticipated to be less than significant, falling below SCAQMD thresholds as a result of the nature and small scale of the proposed project. Implementation of the proposed project would fall below the SCAQMD significance thresholds for both short-term construction and long-term operation emissions. Because construction and operation of the project would not exceed the SCAQMD significance thresholds, the proposed project would not increase the frequency or severity of existing air quality violations, neither cause or contribute to new air quality violations, not delay timely attainment of air quality standards or the interim emission reductions specified in the AQMP. The proposed project would not conflict with applicable regional plans or policies adopted by agencies with jurisdiction over the project. Therefore, the proposed project would be consistent with the AQMP and would have a less than significant impact with respect to this criterion. The proposed project would redevelop less than 7,000 square feet of space, to include restrooms, marine commercial and a storage garage. The project does not propose the addition of new dwelling units or substantial extension of its existing facilities. Therefore, the proposed project would not exceed the state’s criteria for regional significance and would have no impact. Emissions associated with construction and operation of the proposed project would not exceed any of the SCAQMD-recommended significance thresholds and would not cause an individually significant impact. There is no other pertinent information that would suggest that the project could have a cumulatively considerable net increase in emissions. Since both construction and operation emissions are below the thresholds of significance, the proposed project would result in a less than significant cumulative impact. The SCAQMD considers a sensitive receptor to be a receptor where it is possible that an individual could remain for 24 hours. The proposed project is not considered to be a sensitive use and would have no impact with respect to this criterion. The proposed project consists of the minor renovation to the existing land uses and would not intensify the land use. The land uses associated with the proposed project are not expected to cause odor nuisances, dust, and hazardous emissions. Construction of the project is temporary and is not expected to cause an odor nuisance. Refuse associated with operation of the proposed project will continue to be disposed of in accordance with applicable regulations. Therefore, the proposed project would not have a significant impact on air quality with respect to this criterion.

4. BIOLOGICAL RESOURCES

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife (CDFW) or U.S. Fish and Wildlife Service (USFWS)?	☐	☐	☒	☐
b) Have a substantial adverse effect on any sensitive natural communities (e.g., riparian habitat, coastal sage scrub, oak woodlands, non-jurisdictional wetlands) identified in local or regional plans, policies, regulations or by CDFW or USFWS?	☐	☐	☐	☒
c) Have a substantial adverse effect on federally or state protected wetlands (including, but not limited to, marshes, vernal pools, coastal wetlands, and drainages) or waters of the United States, as defined by § 404 of the federal Clean Water Act or California Fish & Game code § 1600, et seq. through direct removal, filling, hydrological interruption, or other means?	☐	☐	☐	☒
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☐	☐	☒
e) Convert oak woodlands (as defined by the state, oak woodlands are oak stands with greater than 10% canopy cover with oaks at least 5 inch in diameter measured at 4.5 feet above mean natural grade) or otherwise contain oak or other unique native trees (junipers, Joshuas, southern California black walnut, etc.)?	☐	☐	☐	☒
f) Conflict with any local policies or ordinances protecting biological resources, including Wildflower	☐	☐	☐	☒

Reserve Areas (L.A. County Code, Title 12, Ch. 12.36), the Los Angeles County Oak Tree Ordinance (L.A. County Code, Title 22, Ch. 22.56, Part 16), the Significant Ecological Areas (SEAs) (L.A. County Code, Title 22, § 22.56.215), and Sensitive Environmental Resource Areas (SERAs) (L.A. County Code, Title 22, Ch. 22.44, Part 6)?

g) Conflict with the provisions of an adopted state, regional, or local habitat conservation plan?

☐☐☐☒

EVALUATION OF ENVIRONMENTAL IMPACTS:

Biological resources are identified and protected through various federal, state, regional, and local laws and ordinances. The federal Endangered Species Act and the California Endangered Species Act (CESA) state that animals and plants that are threatened with extinction or are in a significant decline will be protected and preserved. The State Department of Fish and Wildlife created the California Natural Diversity Database (CNDDB), which is a program that inventories the status and locations of rare plants and animals in California.

Section 404 of the Clean Water Act defines wetlands as “those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.”

The County’s primary mechanism to conserve biological diversity is an identification tool and planning overlay called Significant Ecological Areas (SEA). SEAs are ecologically important land and water systems that are valuable as plant and/or animal communities, often integral to the preservation of threatened or endangered species, and conservation of biological diversity in the County. These areas also include nearly all of the wildlife corridors in the County, as well as oak woodlands and other unique and/or native trees.

The project site is currently developed with marine commercial uses and surface parking lots without any common or sensitive natural habitat areas. There are no habitat areas that may support any federally or state-listed endangered or threatened species, such as the least tern that may occur at Venice Beach or foraging over the marina waters. Since the project site does not have any natural habitat areas that can be affected by project construction or infrastructure improvements, the proposed project would not have a substantial adverse effect to a species regulated by the California Department of Fish and Game or the U.S. Fish and Wildlife Service. No nesting trees have been found on the project site (Source: May 2014 Interim Report on Nesting Waterbirds and Raptors, Marina del Rey). However, in the event that any special-status birds nest in the landscape trees within or adjacent to the project site the applicant is required to comply with all applicable policies contained in LCP Policy Nos. 23 (“Marina del Rey Tree Pruning and Tree Removal Policy”), 34 (“Marina del Rey Leasehold Tree Pruning and Tree Removal Policy”), and 37 (“Biological Report & Construction Monitoring Requirements”). The Coastal Development Permit conditions of approval will require an updated bird survey be completed prior to commencement of any construction as required by LCP Policy Nos. 23 and 34.

The project site is not located within a designated SEA, coastal Sensitive Environmental Resource Area (SERA) or ESHA. The closest SEA to the project site is the Ballona Creek SEA, located to the south of the project site. The proposed project consists of demolition of one 770 square foot restroom facility located at

the north eastern portion of the site to be replaced with a new 921 square foot restroom facility just east of the fire lane closest to the water. The second existing 770 square foot restroom located on the west side of the fire lane would be converted marine commercial space. The project also includes construction of a new storage garage totaling 4,383 to accommodate sixteen cars (3,916 square feet) and six boater storage units (467 square feet) along the western parcel edge. No impacts would occur from implementation of the proposed project. Moreover, there are no known “important biological resources” located on the subject property, as defined in the certified Local Coastal Program for Marina del Rey.

There are no sensitive natural habitat areas, including wetlands or waters of the United States on the project site. Since the project site does not have any natural jurisdictional habitat areas that can be affected, removed, or filled by construction, fire clearance, or flood related improvements, there would be no impacts. The project site is not adjacent to or located in a wildlife corridor, nor is it adjacent to an open space linkage, there would be no impact on wildlife movement corridors. There are no habitat areas that support oak woodlands and no native trees occur on the project site. Therefore, no oak resources would be impacted. There are no habitat areas that support oak resources on the project site, so the Oak Tree Ordinance would not apply to the proposed project. The project site is not located in or near a Wildflower Reserve Area. Therefore, the proposed project would not conflict with any local policies or ordinances protecting biological resources.

5. CULTURAL RESOURCES

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines § 15064.5?	☐	☐	☐	☒
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines § 15064.5?	☐	☐	☐	☒
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature, or contain rock formations indicating potential paleontological resources?	☐	☐	☐	☒
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☐	☐	☒

EVALUATION OF ENVIRONMENTAL IMPACTS:

The project site is not considered a historical site nor does it contain historical structures. The proposed project site does not contain known historic structures and is not considered a historic site according to of the Office of Historic Preservation website (Source: Office of Historic Preservation, California State Parks, California Historical Resources, http://ohp.parks.ca.gov/listed_resources) Furthermore, the Marina del Rey Land Use Plan does not identify any known historical structures or sites within the community of Marina Del Rey (Source: Marina del Rey Certified Local Coastal Program, 2012.) Implementation of the proposed project would not include renovation of a historic structure or historic site. Therefore, the proposed project would have no impact on historical resources. The proposed project site is located in an area of Marina del Rey that is currently developed and has been developed for the past 50 years. The project site does not contain known archaeological resources, drainage courses, springs, knolls, rock outcroppings, or oak trees that indicate potential archaeological sensitivity. Demolition and minor surface grading would take place during the renovation process. The closest area containing known archaeological resources is the Ballona Creek Watershed area, to the south of the project site, where remnants of past human activity have been located. Any resources on Marina del Rey land already altered or designated for development have been or have already been impacted. The proposed project would have no impact on archaeological resources. The proposed project would not directly or indirectly destroy a unique paleontological resource or site or unique geologic feature, therefore there would be no impacts to paleontological resources. The project site is not known to contain any human remains. Furthermore, the proposed project entails only minor surface grading, therefore the proposed project would have no impact on human remains.

6. ENERGY

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Conflict with Los Angeles County Green Building Ordinance (L.A. County Code Title 22, Ch. 22.52, Part 20 and Title 21, § 21.24.440) or Drought Tolerant Landscaping Ordinance (L.A. County Code, Title 21, § 21.24.430 and Title 22, Ch. 22.52, Part 21)?	☐	☐	☐	☒
b) Involve the inefficient use of energy resources (see Appendix F of the CEQA Guidelines)?	☐	☐	☐	☒

EVALUATION OF ENVIRONMENTAL IMPACTS:

Per Appendix F of CEQA guidelines, the goal of conserving energy implies decreasing overall per capita energy consumption, decreasing reliance on fossil fuels such as coal, natural gas and oil, and increasing reliance on renewable energy sources. In 2008, the County adopted a Green Building Program to address these goals. Section 22.52.2100 of Title 22 (Los Angeles County Code) states that the purpose of the County's Green Building Program was to establish green building development standards for new projects with the intent to, conserve water; conserve energy, conserve natural resources, divert waste from landfills, minimize impacts to existing infrastructure, and promote a healthier environment. The Green Building Program includes Green-Building Standards, Low-Impact Development standards, and Drought Tolerant Landscaping requirements. In January 2011, the State of California adopted the *CALGreen* Building Code with mandatory measures that establish a minimum for green construction practices.

The proposed project would comply with the County Green Building Ordinance and would be designed in compliance with the County of Los Angeles Green Building Standards. Further, the project would be developed in compliance with all state and local regulations related to energy conservation.

7. GEOLOGY AND SOILS

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known active fault trace? Refer to Division of Mines and Geology Special Publication 42.	☐	☐	☒	☐
ii) Strong seismic ground shaking?	☐	☐	☒	☐
iii) Seismic-related ground failure, including liquefaction and lateral spreading?	☐	☒	☐	☐
iv) Landslides?	☐	☐	☐	☒
b) Result in substantial soil erosion or the loss of topsoil?	☐	☐	☐	☒
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☒	☐	☐
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☒	☐
e) Have soils incapable of adequately supporting the use of onsite wastewater treatment systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	☒
f) Conflict with the Hillside Management Area Ordinance (L.A. County Code, Title 22, § 22.56.215) or hillside design standards in the County General Plan Conservation and Open Space Element?	☐	☐	☐	☒

EVALUATION OF ENVIRONMENTAL IMPACTS:

The Alquist-Priolo Earthquake Fault Zoning Act of 1972 prohibits the location of most structures for human occupancy across the traces of active faults, and lessens the impacts of fault rupture. The Seismic Hazards Mapping Act requires the California Geological Survey to prepare Seismic Hazard Zone Maps that show areas where earthquake induced liquefaction or landslides have historically occurred, or where there is a high potential for such occurrences. Liquefaction is a process by which water saturated granular soils transform from a solid to a liquid state during strong ground shaking. A landslide is a general term for a falling, sliding or flowing mass of soil, rocks, water and debris. The County General Plan prohibits new developments, as defined by the Alquist-Priolo Act, within fault traces until a comprehensive geological study has been completed.

More than 50 percent of the unincorporated areas are comprised of hilly or mountainous terrain. The vast majority of hillside hazards include mud and debris flows, active deep seated landslides, hillside erosion, and man induced slope instability. These geologic hazards include artificially-saturated or rainfall saturated slopes, the erosion and undercutting of slopes, earthquake induced rock falls and shallow failures, and natural or artificial compaction of unstable ground. The General Plan Hillside Management Area (HMA) Ordinance regulates development in hillsides of 25 percent slope or greater to address these potential hazards.

The project site is located in Southern California, which is considered an active seismic area. The proposed project is not located in an active or potentially active fault zone, Seismic Hazards Zone, or Alquist-Priolo Earthquake Fault Zone. However, the Charnock Fault and Overland Fault, which lie respectively 2.75 miles and 5.5 miles to the east of Marina del Rey, are part of the major Newport-Inglewood Fault Zone. Furthermore, the Malibu Coast Fault lies approximately 7 miles to the northwest of Marina del Rey and is considered a potentially active fault. Both of these faults are capable of producing earthquakes up to a magnitude of 7.0 (Source: Marina del Rey Lang Use Plan, page 10-2). Since the proposed project is not located in an active or potentially active fault zone, Seismic Hazards Zone, or Alquist-Priolo Earthquake Fault Zone, impacts, including seismic ground shaking would be less than significant. The structural engineering of all proposed project structures will be required to comply with all applicable seismic engineering standards enforced by LA County Division of Building & Safety. The proposed project site is located within potentially liquefiable areas per the State of California Seismic Hazard Zones Map – Venice Quadrangle and has been designated as a liquefiable area (Source: GIS-NET3 –Liquefaction Zone layer). Furthermore, the proposed project is located within an area having a high groundwater level (Source:GIS-NET3-County General Plan Safety Element, Plate 3, Shallow and Perched Groundwater). To provide acceptable bearing support without triggering significant long-term settlement within the underlying clayey and silty soil deposits for the reinforced concrete mat foundation supporting the restroom building, it is recommended that on-site soils be overexcavated and removed uniformly to a minimum depth of four (4) feet below foundation bottom, and replaced with lightweight geofoam material (Insulfoam EPS 15 or equivalent; see Exhibit 1 in Appendix C for product information) such that the building foundation is supported by a competent geofoam layer. By implementing this scheme, the overall surcharge loading imposed on deeper, soft clay and silt layers does not increase with the placement of the geofoam material, thus not triggering new consolidation of these soft soil layers. As noted, the proposed project involves minor renovation of existing marine commercial uses and small addition of appurtenant facilities (storage garage). The project will be developed in accordance with the recommendations presented in the reviewed geotechnical reports (dated 6/28/13 and 12/16/14), submitted to the Department of Public Works, consistent with the LA County Building Code and would not have adverse impact on the geologic stability of adjacent properties or cause future landsliding, settlement, or slippage.

The project site is located on land that is topographically flat. There are no hills, mounds, or mountains located on the proposed project site. Furthermore, the surrounding area of the project site is topographically flat as well. The proposed project is not located in an area containing a major landslide; therefore, there would be no impacts. The proposed project is currently developed with a Boat Yard (including commercial a commercial building and paved parking and boat repair area) an adequate drainage system currently exists on the project site; since the proposed project site is currently developed with non-permeable surfaces and would remain so developed after the proposed renovation project, the project site would not be subject to high erosion. Because the proposed project is not located in an area containing easily erodible soil, there would be no impacts. Moreover, the applicant will be required to comply with all applicable NPDES and low-impact development building requirements affecting site drainage to the satisfaction of LA County Division of Building & Safety. The possibility does exist that the proposed project is located on an area of expansive soils due to the proposed project site being located in a liquefaction area per the Los Angeles County General Plan. However, the proposed project would cause only minor disturbance to the existing soils that are beneath the project site including the above-noted surface demolition and construction of the restroom structure and storage garage. There would be no additional excavation or grading associated with renovation activities. The applicant would submit expansive soil data as part of any Geotechnical Report that may be required by DPW. The proposed project does not include the use of a septic system as sanitary sewers are used in the project area. The proposed project site is located on land that is topographically flat and therefore the project site is not located within a Hillside Management Area and therefore there would be no impact to hillsides.

8. GREENHOUSE GAS EMISSIONS

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Generate greenhouse gas (GHGs) emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☒	☐
b) Conflict with any applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☐	☒	☐

EVALUATION OF ENVIRONMENTAL IMPACTS:

The proposed project consists of demolition of one 770 square foot restroom facility located at the north eastern portion of the site to be replaced with a new 921 square foot restroom facility just east of the fire lane closest to the water. The second existing 770 square foot restroom located on the west side of the fire lane would be converted marine commercial space. The project also includes construction of a new storage garage totaling 4,383 to accommodate sixteen cars (3,916 square feet) and six boater storage units (467 square feet) along the western parcel edge.

Construction of the proposed project would result in one-time emissions of greenhouse gases (GHGs). These emissions, primarily carbon dioxide (CO₂), methane (CH₄), and nitrous oxide (N₂O), are the result of fuel combustion by construction equipment and motor vehicles. The other primary GHGs (hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride) are typically associated with specific industrial sources and are not expected to be emitted by the proposed project. The SCAQMD's threshold of significance for all land use projects, which is 3,000 metric tons of CO₂ equivalent (MTCO₂e) per year. The project would result in minor amounts of construction-related GHG emissions and would not increase operational GHG emissions, the project would not exceed the draft SCAQMD threshold of significance. The proposed project would result in a less than significant impact with respect to GHG emissions.

The County of Los Angeles has an adopted green building program; it applies to new buildings or first-time initial tenant improvements greater than or equal to 10,000 square feet. The LID ordinance applies to residential (5 units or greater) and non-residential projects that alter existing impervious surfaces. Projects that alter less than 50 percent of the existing impervious surface must comply with LID best management practices that promote infiltration and beneficial use of stormwater runoff for the altered portion. If greater than 50 percent of the existing impervious surface is altered, the entire site must comply with LID best management practices. The LID ordinance requires the use of LID principles in development projects and encourages site sustainability and smart growth in a manner that respects and preserves the characteristics of the County's watersheds, drainage paths, water supplies, and natural resources. The project would comply

with the LID ordinance, in the event the County determines the project is eligible for compliance with the ordinance.

In addition to complying with County of Los Angeles requirements, lead agencies, under the California Environmental Quality Act (CEQA), may look to and assess general compliance with comparable regulatory schemes¹. The goal of Assembly Bill 32, The Global Warming Solutions Act of 2006, is to reduce statewide GHG emissions to 1990 levels by 2020. In order to achieve the state mandate of AB 32, CARB has been tasked with implementing statewide regulatory measures to reduce GHG emissions from all sectors.

In December 2008, CARB adopted the Climate Change Scoping Plan, which details strategies to meet that goal. The Scoping Plan instructs local governments to establish sustainable community strategies to reduce GHG emissions associated with transportation, energy, and water, as required under Senate Bill 375. The Climate Change Scoping Plan recommends energy-efficiency measures in buildings such as maximizing the use of energy-efficient appliances and lighting as well as complying with green building standards that result in decreased energy consumption compared to Title 24 building codes.

The purpose of the proposed project is to construct a new storage garage and replace an existing bathroom facility. The project would not increase the number of vehicle trips to or from the site. The project incorporates design standards and measures that are both feasible and consistent with many of the GHG reduction measures recommended for new projects. The proposed project would install energy-efficient lighting and low flow fixtures. Additionally, any renovation and demolition debris that would be generated by the proposed project would be subject to the diversion rate of Unincorporated Los Angeles County.

9. HAZARDS AND HAZARDOUS MATERIALS

Would the project:	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Create a significant hazard to the public or the environment through the routine transport, storage, production, use, or disposal of hazardous materials?	☐	☐	☒	☐
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials or waste into the environment?	☐	☐	☒	☐
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of sensitive land uses?	☐	☐	☒	☐
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code § 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☐	☒
e) For a project located within an airport land use plan, or where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒
g) Impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan?	☐	☐	☐	☒
h) Expose people or structures to a significant risk of loss, injury or death involving fires, because the project is located:				
i) within a Very High Fire Hazard Severity Zones (Zone 4)?	☐	☐	☐	☒
ii) within a high fire hazard area with inadequate access?	☐	☐	☐	☒

- | | | | | |
|--|--------------------------|--------------------------|-------------------------------------|-------------------------------------|
| iii) within an area with inadequate water and pressure to meet fire flow standards? | ☐ | ☐ | ☐ | ☒ |
| iv) within proximity to land uses that have the potential for dangerous fire hazard? | ☐ | ☐ | ☒ | ☐ |
| i) Does the proposed use constitute a potentially dangerous fire hazard? | ☐ | ☐ | ☒ | ☐ |

EVALUATION OF ENVIRONMENTAL IMPACTS:

Hazardous materials are generally defined as any material that because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or future hazard to human health and safety or to the environment, if released into the workplace or the environment (Health and Safety Code (H&SC), §25501(o)). The California Department of Toxic Substances (DTSC) is responsible for classifying hazardous materials in the state of California. Hazardous materials are commonly stored and used by a variety of businesses and are commonly encountered during construction activities.

DTSC oversees the cleanup of disposal and industrial sites that have resulted in contamination of soil and groundwater. In close cooperation with the United States Environmental Protection Agency, DTSC administers both state and federal hazardous waste programs including The Resource Conservation and Recovery Act (RCRA) the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. § 9601–9675), the Toxic Substances Control Act (TSCA) and a number of other State and Federal bodies of law dealing with hazardous materials and the environment. The Envirostar database lists properties regulated by DTSC where extensive investigation and/or cleanup actions are planned or have been completed at permitted facilities and clean-up sites. No hazardous materials sites or properties listed in compliance with California Government Code, Section 65962.5 (e.g., Comprehensive Environmental Response, Compensation and Liability Information System [CERCLIS], Resource Conservation and Recovery Act [RCRA]) are located on the project site. Any sites within the general vicinity are not likely to have contaminated the project site.

Projects in close proximity to airports are within the jurisdiction of the Airport Land Use Commission (ALUC). The Regional Planning Commission meets in the capacity of the ALUC to consider projects requiring ALUC review and it makes a determination of the compatibility of the proposed project with the nearby airport.

The Office of Emergency Management is responsible for organizing and directing the preparedness efforts of the Emergency Management Organization of Los Angeles County. The OEM is the day-to-day Los Angeles County Operational Area coordinator for the County. The emergency response plan for the unincorporated areas is the Operational Area Emergency Response Plan (OAERP), which is prepared by OEM. The OAERP strengthens short and long-term emergency response and recovery capability, and identifies emergency procedures and emergency management routes in the County. The disaster response plan is the County Local All Hazards Mitigation Plan.

The proposed project includes renovations to an existing boat yard, the boat yard operations includes use and storage of some potentially hazardous materials. The Boat yard uses an existing underground storage tank for the diesel fuel and paints, solvents and cleaners are used on site to clean and repair boats. Types of repair for vessels includes, wood work, running gear, fiber glass work, painting, and sanding. Waste products include, sanding dust, paint chips, metal or fiberglass from grinding operations, which are all captured in a clarifier and periodically collected by a certified hazardous waste disposal company. Compressed air is also used on site for boat repair. Any amount of hazardous materials that would be stored would be subject to federal and state laws pertaining to the storage, generation and disposal of hazardous waste materials. Furthermore, the County of Los Angeles is authorized to inspect on-site uses and to enforce state and federal laws pertaining to the storage, use, transportation and disposal of hazardous wastes and materials. The County of Los Angeles also requires that commercial uses submit an annual inventory of hazardous materials in use on site, as well as business emergency plans, submitted annually for review. Since the project stores hazardous materials on site pertaining to boat repair as well as janitorial services and other

cleaning services, the project site would be governed by federal, state, and local laws to ensure the proper use, storage and transport of such materials. The restroom renovations and addition of a storage garage would not increase the storage of hazardous materials. Impacts would be less than significant.

All uses and storage of these materials would be subject to federal, state, and local laws pertaining to the use, storage and transportation of these hazardous materials. Most of the hazardous materials indicated above are allowed to be disposed of at the local Class II and Class III landfills that serve the proposed project site and community of Marina del Rey. Since the proposed project would be required to abide by federal, state, and local laws pertaining to the use, storage, and transportation of these materials, the likelihood of an accidental release occurring and creating a significant hazard to the public would be minimal. Therefore, impacts would be less than significant. The project site is not located within a quarter mile of sensitive land uses, therefore there are no impacts.

The project site is not located on a parcel of land that has been included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5. The closest site that is included on a list of hazardous materials sites is located at 4144 Glencoe Avenue (Cornell-Dubilier Electronics), approximately 1.3 miles east of the project site (Envirostor Database, Hazardous Waste and Substances Site List, Accessed May 5, 2014). Since the proposed project site is not located on a site that is listed as a hazardous materials site, there would be no impacts.

The project site is located approximately 4 miles to the northwest of Los Angeles International Airport (LAX) and approximately 4 miles southeast of the Santa Monica Airport. The project site is not located within 2 miles of LAX, is not located within the Santa Monica Airport Influence Area, is not located in the LAX Airport Influence Area and would not result in a safety hazard for people in the project area. No impacts would occur. There are no private airstrips in the project site vicinity and no safety hazard impact would occur.

The project site is located in Marina del Rey, which is an unincorporated portion of the County of Los Angeles. The project site would be subject to the Operational Area Emergency Response Plan (the OAERP), which is prepared by the Office of Emergency Management. Implementation of the proposed project would not change current evacuation routes from off the project site. Furthermore, renovation of the proposed project would not physically interfere with the OAERP. No impacts would occur.

The project site is not located within a Very High Fire Hazard Severity Zone or a high fire hazard zone and there is adequate emergency access. The proposed project will be required to meet all fire safety requirements including the need to provide adequate fire flow in the event of a fire hazard. The project consists of marine commercial uses the majority of which would not constitute a potentially dangerous fire hazard. The project plans will be reviewed by Fire Department staff during the application review process and project design features, if necessary, will be incorporated into the plans, prior to their approval by the County, to mitigate potential fire hazards. The project site is located in proximity to land uses with the potential for dangerous fire hazard. The project site is located in area reserved for marine commercial and boat storage uses. Surrounding uses are subject to County Fire standards. Therefore, the proposed project will result in less than significant impacts related to a potentially dangerous fire hazard.

10. HYDROLOGY AND WATER QUALITY

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☒	☐
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☒
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	☐	☐	☒	☐
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	☐	☐	☐	☒
e) Add water features or create conditions in which standing water can accumulate that could increase habitat for mosquitoes and other vectors that transmit diseases such as the West Nile virus and result in increased pesticide use?	☐	☐	☐	☒
f) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☒	☐
g) Generate construction or post-construction runoff that would violate applicable stormwater NPDES permits or otherwise significantly affect surface water or groundwater quality?	☐	☐	☒	☐
h) Conflict with the Los Angeles County Low Impact	☐	☐	☐	☒

Development Ordinance (L.A. County Code, Title 12, Ch. 12.84 and Title 22, Ch. 22.52)?

i) Result in point or nonpoint source pollutant discharges into State Water Resources Control Board-designated Areas of Special Biological Significance?	☐	☐	☐	☒
j) Use onsite wastewater treatment systems in areas with known geological limitations (e.g. high groundwater) or in close proximity to surface water (including, but not limited to, streams, lakes, and drainage course)?	☐	☐	☐	☒
k) Otherwise substantially degrade water quality?	☐	☐	☒	☐
l) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map, or within a floodway or floodplain?	☐	☐	☒	☐
m) Place structures, which would impede or redirect flood flows, within a 100-year flood hazard area, floodway, or floodplain?	☐	☐	☐	☒
n) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☒	☐
o) Place structures in areas subject to inundation by seiche, tsunami, or mudflow?	☐	☐	☒	☐

EVALUATION OF ENVIRONMENTAL IMPACTS:

Los Angeles County is split between two water quality regions: the Los Angeles Region and the Lahontan Region. Each regional board prepares and maintains a Basin Plan which identifies narrative and numerical water quality objectives to protect all beneficial uses of the waters of that region. The Basin Plans achieve the identified water quality objectives through implementation of Waste Discharge Requirements (WDRs) and by employing three strategies for addressing water quality issues: control of point source pollutants, control of nonpoint source pollutants, and remediation of existing contamination.

Point sources of pollutants are well-defined locations at which pollutants flow into water bodies (discharges from wastewater treatment plants and industrial sources, for example). These sources are controlled through regulatory systems including permitting under California's Waste Discharge Requirements and the National Pollutant Discharge Elimination System (NPDES) program; permits are issued by the appropriate Regional Water Quality Control Board and may set discharge limitation or other discharge provisions.

Nonpoint sources of pollutants are typically derived from project site runoff caused by rain or irrigation and have been classified by the United States Environmental Protection Agency (USEPA) into one of the following categories: agriculture, urban runoff, construction, hydromodification, resource extraction,

silviculture, and land disposal, according to the Basin Plan for the Los Angeles Regional Water Quality Control Board. This type of pollution is not ideally suited to be addressed by the same regulatory mechanisms used to control point sources. Instead, California's Nonpoint Source Management Plan describes a three-tiered approach including the voluntary use of Best Management Practices, the regulatory enforcement of the use of Best Management Practices, and effluent limitations. Generally speaking, each Regional Water Quality Control Board implements the least restrictive tier until more stringent enforcement is necessary.

The Los Angeles Regional Water Quality Control Board addresses on-site drainage through its construction, industrial, and municipal permit programs. These permits require measures to minimize or prevent erosion and reduce the volume of sediments and pollutants in a project's runoff and discharges based upon the size of the project site

During the construction phase of a proposed project, the pollutants of greatest concern are sediment, which may run off the project site due to site grading or other site preparation activities, and hydrocarbon or fossil fuel remnants from the construction equipment. Construction runoff is regulated by the National Pollutant Discharge Elimination System (NPDES) Construction General Permit. This permit applies to all construction which disturbs an area of at least one acre.

The Los Angeles County Low Impact Development Ordinance is designed to promote sustainability and improve the County's watersheds by preserving drainage paths and natural water supplies in order to '...retain, detain, store, change the timing of, or filter stormwater or runoff.'

Areas of Special Biological Significance are "...those areas designated by the State Water Board as ocean areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. All Areas of Special Biological Significance are also classified as a subset of STATE WATER QUALITY PROTECTION AREAS." Note that all of these areas are located off the coast of California and not within any inland water courses or bodies.

FEMA, the Federal Emergency Management Agency, prepares hydrological studies throughout the country, called Flood Insurance Studies, in order to identify areas that are prone to flooding. From the results of these studies, FEMA prepares Flood Insurance Rate Maps (FIRMs) that are designed to geographically depict the location of areas prone to flooding for purposes of determining risk assessment for flood insurance. An area that has been designated a 100-year flood plain is considered likely to flood under the 100-year storm event.

Dam inundation areas are areas that have been identified as being potentially susceptible to flooding from a catastrophic failure of one or more of the dams in Los Angeles County. These areas were mapped in accordance with California Government Code Section 8589.5 and do not suggest with certainty that a particular plot of land would be inundated given a catastrophic dam failure.

A seiche is the sudden oscillation of water that occurs in an enclosed, landlocked body of water due to wind, earthquake, or other factors. A tsunami is an unusually large wave or set of waves that is triggered in most cases by a seaquake or an underwater volcanic eruption. A mudflow is flow consisting predominantly of earthen materials/soil and water.

The project site is currently an urbanized development with marine commercial buildings and surface parking areas. Best management practices (BMPs) would be applied during demolition, construction, and renovation activities to ensure that pollutants associated with the construction activities are not introduced into the storm drain system. With BMPs in place during renovation and redevelopment activities, water

quality standards would remain similar to the existing conditions, and the proposed project would not violate any water quality standards. Impacts to any water quality standards or waste discharge requirements would be less than significant. There is currently no groundwater recharge on the project site and this condition will not change with the implementation of the proposed project. The project does not propose any extraction of groundwater and therefore the proposed project would not cause any impacts to groundwater resources or to groundwater recharge.

The project will comply with the County's Low Impact Development (LID) Program. An approved Hydrology, Drainage and Grading plans from DPW will be required prior to the issuance of any project grading or building permits. The proposed project would have the same or less runoff entering the stormwater drainage system as the current site condition. The project would not cause runoff that would exceed the capacity of the stormwater system. Consequently, there would be no impact to the stormwater drainage system.

The proposed demolition, renovation and construction of the restrooms, marine commercial building and storage garage could introduce pollutants from construction activities into the storm water flow that empties into Marina del Rey small craft harbor. The Applicant would use BMPs during the renovation and redevelopment process to ensure that a minimal amount of pollutants enter into the stormwater flow from the proposed project site. The project proponent would be required to comply with the California Regional Water Quality Control Board (CRWQCB) and the County National Pollutant Discharge Elimination System (NPDES) permit discharge requirements. Impacts from construction and operational runoff would be less than significant.

The project site is not located within an area designated as an Area of Special Biological Significance (ASBS). Therefore, the proposed project would not impact an ASBS. The project does not propose to use septic systems or private sewage disposal systems. The proposed project would have no impact on septic limitations.

The proposed demolition, renovation and construction of the restrooms, marine commercial building and storage garage would not substantially degrade water quality through compliance with NPDES and implementation of an Stormwater Pollution Prevent Plan (SWPPP). Impacts from the proposed project would be less than significant on water quality. The project site is not located within a floodway, floodplain, or other flood hazard area and no structures would be placed within a floodway, floodplain, or other flood hazard area. Therefore, the proposed project would not impact or impeded a flood hazard area.

The proposed project is located within the Marina del Rey Harbor, along the Southern California coastline. The potential exists for communities along low-lying areas of the Southern California coastline to experience flooding due to tsunamis caused by earthquakes or underwater landslides. The maximum expected run-up of a tsunami in the local area of the project site is 9.6 feet in a 100-year interval and 15.3 feet in a 500-year interval (Marina del Rey Land Use Plan, pg. 10-4) Tsunamis generated from local earthquakes may be larger than distant earthquakes but are less likely to occur. Furthermore, the proposed project has been developed with a finished pad and street elevation between 10 and 20 feet above mean sea level. Therefore, potential for the proposed project to be inundated by a tsunami is less than significant. The proposed project is not located near a closed body of water where a seiche could occur due to geological hazards.

11. LAND USE AND PLANNING

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Physically divide an established community?	☐	☐	☐	☒
b) Be inconsistent with the applicable County plans for the subject property including, but not limited to, the General Plan, specific plans, local coastal plans, area plans, and community/neighborhood plans?	☐	☐	☐	☒
c) Be inconsistent with the County zoning ordinance as applicable to the subject property?	☐	☐	☐	☒
d) Conflict with Hillside Management criteria, Significant Ecological Areas conformance criteria, or other applicable land use criteria?	☐	☐	☐	☒

EVALUATION OF ENVIRONMENTAL IMPACTS:

The project site is located in an area of Marina del Rey that is highly urbanized. Existing marine commercial structures, boat storage, parking lots, and boating uses are located around the proposed project site. The proposed project would not divide an established community; therefore, there would be no impacts. The subject site is zoned Specific Plan and designated Marine Commercial, which permits boat repair and accessory buildings. The renovation of restrooms and addition of the storage garage related to the marine commercial use are therefore consistent with the plan and zoning designations on the project site.

The project site is not located in or adjacent to a Hillside Management Area. Therefore, the proposed project would not be required to abide by the criteria of the Hillside Management Areas. The project site is not located adjacent or within an SEA. Therefore, the proposed project would not have to conform to SEA Criteria. There would be no impacts.

12. MINERAL RESOURCES

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☐	☒
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☐	☒

EVALUATION OF ENVIRONMENTAL IMPACTS:

The County depends on the State of California's Geological Survey (State Department of Conservation, Division of Mines and Geology) to identify deposits of regionally- significant aggregate resources. These clusters or belts of mineral deposits are designated as Mineral Resources Zones (MRZ-2s), and there are four major MRZ-2s are designated in the County: the Little Rock Creek Fan, Soledad Production Area, Sun Valley Production Area, and Irwindale Production Area. The California Department of Conservation protects mineral resources to ensure adequate supplies for future production.

The California Surface Mining and Reclamation Act of 1975 (SMARA) was adopted to encourage the production and conservation of mineral resources, prevent or minimize adverse effects to the environment, and protect public health and safety. In addition, Title 22 of the Los Angeles County Code (Part 9 of Chapter 22.56) requires that applicants of surface mining projects submit a Reclamation Plan prior to receiving a permit to mine, which must describe how the excavated site will ultimately be remediated and transformed into another use.

Small-scale oil production still occurs in many parts of the County, including the Baldwin Hills and the Santa Clarita Valley. The California Division of Oil, Gas, and Geothermal Resources (DOGGR) permits and tracks each operating production well and natural gas storage well and ultimately monitors the decommissioning process.

The project site is not located within a Mineral Resource Zone as mapped by the County of Los Angeles. The proposed project would not impact a known mineral resource area. The project site is located within an Oil and Gas Resource Zone. The project site is developed with marine commercial uses and does not currently contain existing drilling sites for the recovery of oil and natural gas, nor are any drilling sites located on the project site for the recovery of oil or natural gas proposed in the future. There would be no impacts to oil and natural gas resources with implementation of the proposed project. The proposed project would not result in the loss of availability of a locally important mineral resource recovery site delineated within the County of Los Angeles General Plan or the Marina del Rey Specific Plan.

13. NOISE

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project result in:				
a) Exposure of persons to, or generation of, noise levels in excess of standards established in the County General Plan or noise ordinance (Los Angeles County Code, Title 12, Chapter 12.08), or applicable standards of other agencies?	☐	☐	☒	☐
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	☐	☐	☒	☐
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project, including noise from parking areas?	☐	☐	☒	☐
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project, including noise from amplified sound systems?	☐	☐	☒	☐
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒

EVALUATION OF ENVIRONMENTAL IMPACTS:

The proposed project will conform to Los Angeles County Code Title 12, Chapter 12.08 (Noise Control Ordinance). Section 12.08.390 of the County Code provides a maximum exterior noise level of 45 decibels (dB) between 10:00 p.m. and 7:00 a.m. (nighttime) and 50 dB from 7:00 a.m. to 10:00 p.m. (daytime) in Noise Zone II (residential areas).

Construction of the proposed project would temporarily increase noise levels due to the use of heavy-duty construction equipment during demolition, grading and building construction. Construction activities will be conducted according to best management practices, including maintaining construction vehicles and equipment in good working order by using mufflers where applicable, limiting the hours of construction, and limiting the idle time of diesel engines. Noise from construction equipment will be limited by

compliance with the Noise Control Ordinance and County Code Section 12.12. Therefore, construction impacts would result in a less than significant impact.

In operation, the proposed project would not substantially alter the current noise generated at the project site. The project would renovate an existing restroom building into a marine commercial use and construct a new restroom facility and storage garage. The proposed Project would not change the marine commercial nature of the site. Operation of the project would not result in a substantial change in on-site stationary noise sources or traffic levels. As a result, the project would result in a less than significant noise impact.

The proposed project is not considered a sensitive use, such as a school, hospital, or senior citizen facility. The closest school to the proposed project site is the Westside Global Awareness Magnet School located approximately 2.4 mile west of the project site. The closest hospital is the Marina del Rey Hospital located approximately 0.8 miles to the north of the project site. The closest sensitive residential uses (Breakwater Apartments) are located approximately 0.5 miles to the south of the project site. Burton W. Chace Park is approximately 0.5 miles to the northwest project site (across Basin H). The proposed project does not include a sensitive land use. At these distances, the project would not generate construction noise that would expose sensitive receptors to excessive noise source. However, construction of the proposed project would temporarily increase noise levels due to the use of heavy-duty construction equipment during demolition, grading and building construction.

The project site is not located within the Los Angeles International Airport or Santa Monica Airport land use plan and is not located adjacent or near a private airstrip and would not expose people to excessive noise levels. The project would have no impact with respect to this threshold.

14. POPULATION AND HOUSING

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☒
b) Displace substantial numbers of existing housing, especially affordable housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒
d) Cumulatively exceed official regional or local population projections?	☐	☐	☐	☒

EVALUATION OF ENVIRONMENTAL IMPACTS:

Typical local thresholds of significance for housing and population growth include effects that would induce substantial growth or concentration of a population beyond a city's or county's projections; alter the location, distribution, density, or growth rate of the population beyond that projected in the city or county general plan housing element; result in a substantial increase in demand for additional housing, or create a development that significantly reduces the ability of the county to meet housing objectives set forth in the city or county general plan housing element.

The proposed demolition, renovation and construction of the restrooms, marine commercial building and storage garage would not change the primary use of the marine commercial site. No residential land use component is proposed. Therefore, implementation of the proposed project would not exceed official regional or local population projections and there would be no impacts. The existing land uses on the project site include a boat repair yard and surface parking lots. There are no residential units located on the project site; therefore, implementation of the proposed project would not displace existing housing or affordable housing or a substantial number of people within the community of Marina Del Rey. No impacts would occur.

15. PUBLIC SERVICES

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Would the project create capacity or service level problems, or result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?	☐	☐	☐	☒
Sheriff protection?	☐	☐	☐	☒
Schools?	☐	☐	☐	☒
Parks?	☐	☐	☐	☒
Libraries?	☐	☐	☐	☒
Other public facilities?	☐	☐	☐	☒

EVALUATION OF ENVIRONMENTAL IMPACTS:

Fire suppression services in unincorporated Los Angeles County are provided by the Los Angeles County Fire Department (LACoFD), which has 22 battalions providing services to 58 cities and the whole unincorporated area of Los Angeles County. The LACoFD uses national guidelines of a 5-minute response time for the 1st-arriving unit for fire and EMS responses and 8 minutes for the advanced life support (paramedic) unit in urban areas, and 8-minute response time for the 1st-arriving unit and 12 minutes for advanced life support (paramedic) unit in suburban areas. The project site is located in the urbanized area of Marina del Rey. BMPs would be standard during renovation and construction of the restroom, marine-commercial building and storage garage to ensure that the threat for fire and the threat of crime (pilferage of the construction equipment) is reduced or does not occur on the project site. Since the proposed project would not pose any special fire problems, there would be no impacts. The nearest County Fire Station (#110), located at 4433 Admiralty Way, to the project site is 1.4 miles away.

Law enforcement services within the unincorporated Los Angeles County are provided by the Los Angeles County Sheriff's Department. The Los Angeles County Sheriff's Department strives to maintain a service ratio of approximately one officer for every 1,000 residents within the communities it serves. The renovation and construction of the restroom, marine-commercial building and storage garage could provide opportunity for crime (pilferage of the construction equipment and materials) but not different from other construction locations within the area. The proposed project would not pose any special law enforcement problems, there would be no impacts. The nearest County Sheriff's Station, located at 13851 Fiji Way, to the project site is 0.4 miles away.

In Los Angeles County, parks are operated and maintained by the Department of Parks and Recreation. As of 2010, there were approximately 153 recreational facilities managed by the Department of Parks and Recreation totaling approximately 65,528 acres of recreation and open space. The Los Angeles County General Plan, Regional Recreation Areas Plan, provides the standard for the allocation of parkland in the unincorporated county. This standard is four acres of local parkland per 1,000 residents and six acres of regional parkland per 1,000 residents. For subdivision projects, the Quimby Act permits the County, by ordinance, to require the dedication of parkland or the payment of an in-lieu fee to achieve the parkland-to-population ratio sought in the General Plan. Further, as a condition of a zone change approval, General Plan amendment, or Specific Plan approval, the County may require the applicant pursuing the subdivision to dedicate and/or improve land according to the following General Plan standards. This requirement is justified as long as an appropriate nexus between the proposed project and the dedication can be shown.

In the unincorporated portions of Los Angeles County, as well as in 50 of the 88 cities within the County, library services are provided by the County of Los Angeles Public Library. There are approximately 84 libraries operated by the County with roughly 7.5 million volumes in its book collection. The County of Los Angeles Public Library is a special district and is primarily funded by property taxes, but other funding mechanisms include a Mello-Roos Community Facilities District, developer impact fees, developer agreements, and a voter-approved special tax.

The project is not a residential land use and would not have an impact of schools. The nearest park is Burton Chace Park located approximately 0.8 miles away from the project site, no residential units are proposed, therefore there would be no impact to park resources. The proposed project would have no change to current library services as the proposed project would have the same demand as the current uses. The nearest County library, located at 4533 Admiralty Way, is approximately 0.9 miles away from the project site.

16. RECREATION

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☐	☒
b) Does the project include neighborhood and regional parks or other recreational facilities or require the construction or expansion of such facilities which might have an adverse physical effect on the environment?	☐	☐	☐	☒
c) Would the project interfere with regional open space connectivity?	☐	☐	☐	☒

EVALUATION OF ENVIRONMENTAL IMPACTS:

The Los Angeles County General Plan standard for the provision of parkland is four acres of local parkland per 1,000 residents of the population in the County's unincorporated areas, and six acres of regional parkland per 1,000 residents of the County's total population.

The existing marine commercial structures do not include recreational features for visitors. No impacts would occur. The proposed project would not generate a permanent population within the community of Marina del Rey, there would not be a need to develop or expand additional recreational facilities around or near the project site. There would be no impact from the proposed project. The proposed project would be consistent with the Department of Parks and Recreation Strategic Asset Management Plan 2020. There is no regional open space in the project area and the proposed project would not interfere with connectivity.

17. TRANSPORTATION/TRAFFIC

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Conflict with an applicable plan, ordinance, or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	☐	☐	☒	☐
b) Conflict with an applicable congestion management program (CMP), including, but not limited to, level of service standards and travel demand measures, or other standards established by the CMP for designated roads or highways?	☐	☐	☐	☒
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☒
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	☐	☐	☐	☒
e) Result in inadequate emergency access?	☐	☐	☐	☒
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?	☐	☐	☐	☒

EVALUATION OF ENVIRONMENTAL IMPACTS:

Traffic conditions are determined by using a system that measures the volume of traffic going through an intersection at a specific point in time relative to the intersection's maximum possible automobile throughput. This volume-to-capacity ratio is referred to as Level of Service (LOS) and ranges from the best-case scenario LOS A (free-flowing conditions) to the worst-case scenario LOS F (gridlock).

The project includes the renovation of restroom facility to marine-commercial and construction of a new restroom facility and new storage garage. The site is already developed as a boat repair yard and the proposed project would not increase traffic trip to the site.

The project would not change air traffic patterns or change roadway design. Any haul trucks will follow the regular main arterial routes in exporting grading materials. The project does not include a change to any of the existing emergency access routes. The proposed project will not interfere with existing Bikeway Plan, Pedestrian Plan, Transit Oriented District development standards in the County General Plan Mobility Element. The proposed renovation of existing commercial-retail buildings will not decrease the performance or safety of an alternative transportation facility. There would be no impact from the proposed project.

18. UTILITIES AND SERVICE SYSTEMS

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
Would the project:				
a) Exceed wastewater treatment requirements of either the Los Angeles or Lahontan Regional Water Quality Control Boards?	☐	☐	☐	☒
b) Create water or wastewater system capacity problems, or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☐	☒
c) Create drainage system capacity problems, or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☒	☐
d) Have sufficient reliable water supplies available to serve the project demands from existing entitlements and resources, considering existing and projected water demands from other land uses?	☐	☐	☒	☐
e) Create energy utility (electricity, natural gas, propane) system capacity problems, or result in the construction of new energy facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☒	☐
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☐	☒
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☐	☒

EVALUATION OF ENVIRONMENTAL IMPACTS:

All public wastewater disposal (sewer) systems are required to obtain and operate under the terms of an NPDES (National Pollution Discharge Elimination System) permit, which is issued by the local Regional Water Quality Control Board (RWQCB). The NPDES is a permitting program that established a framework for regulating municipal, industrial, and construction stormwater discharges into surface water bodies and stormwater channels.

The Los Angeles and Lahontan Regional Water Quality Control Boards are responsible for implementing the federally-mandated NPDES program in the County through the adoption of an Order, which is effectively the NPDES Permit for that region. The Los Angeles Regional Board's Permit designates 84 cities within the Board's region as permittees, and the County as the principal permittee of the NPDES Permit. The NPDES Permit defines the responsibilities of each permittee to control pollutants, including the adoption and enforcement of local ordinances and monitoring programs. The principal permittee is responsible for coordinating activities to comply with the requirements set forth in the NPDES Permit, but is not responsible for ensuring the compliance of any other permittee. The County's Stormwater Ordinance requires that the discharge, deposit, or disposal of any stormwater and/or runoff to storm drains must be covered by a NPDES permit.

For the unincorporated areas, in accordance with the NPDES Permit, the County implements a Standard Urban Stormwater Mitigation Plan (SUSMP) at the project site level to address pollutants generated by specific activities and types of development. The main purpose of this planning program is to identify new construction and redevelopment projects that could contribute to stormwater pollution, and to mitigate runoff from those projects by requiring that certain Best Management Practices be implemented during and after construction. Moreover, the SUSMP prevents erosion by controlling runoff rates, protecting natural slopes and channels, and conserving natural areas.

The Los Angeles County Integrated Waste Management Plan (IWMP), which is compiled by the interagency Integrated Waste Management Task Force and updated annually, has identified landfills with sufficient disposal capacity for the next 15 years, assuming current growth and development patterns remain the same. In addition to the projections of the IWMP (see above), all projects must comply with other documents required by the California Integrated Waste Management Act of 1989 (AB 939).

The project includes the renovation of restroom facility to marine-commercial and construction of a new restroom facility and new storage garage and would not generate an increase in wastewater. The restroom renovations include a total decrease in restroom facilities from 12 toilets , 6 urinals , and 4 showers in two restroom facilities to 7 toilets, 2 urinals and 4 showers contained in one restroom facility and one toilet in the renovated marine commercial building. No substantial increase in commercial square footage would occur; therefore, the proposed project would not substantially increase the amount of waste water that is generated compared to existing conditions. The proposed project would not increase capacity problems at the Hyperion wastewater treatment plant that currently serves the project site.

The proposed project would require the same or less drainage from the project site as the existing land uses as the project will need to comply with the Low Impact Development standards that improves groundwater infiltration. Review of the drainage concept/LID plan will be required as part of the Department of Public Works' Land Development Division's Site Plan Review, preceding the issuance of any project grading or building permits. Therefore, the project should have no impact on the existing drainage system. The project site is located in a developed area of Marina del Rey that is currently served by an existing water conveyance system. Fire flows to the project site are adequate for the uses that currently exist on the project site (Parcel

53). Furthermore, the proposed project site contains fire hydrants located around the project site to provide hook-ups for the fire department in case of a fire on the project site. The proposed project would not include the addition of floors to the existing commercial structures, therefore, an increase in fire flow is not anticipated to be required to adequately serve the proposed project upon its completion.

The project site currently receives electricity from the Southern California Edison Company and natural gas from the Southern California Gas Company. Infrastructure currently exists on the project site, which conveys an adequate supply of electricity and natural gas to the existing uses on the project site. Project development will result in a small increase of building square footage (storage garage) but would not result in an appreciable intensification of use on the project site; therefore, the proposed project would demand the same amount of electricity and natural gas that is currently being demanded under existing conditions. No impacts would occur.

The proposed project would not result in an appreciable increase the intensity of the existing land uses, and therefore, would generate the same amount of solid waste that is being generated under existing conditions. During project demolition, construction and renovation activities, an increase in the amount of construction debris would occur; however, this increase is normal and would be temporary in nature and would be able to be accommodated by the local solid waste disposal service provided in the community of Marina del Rey. Furthermore, any debris that would be generated by the proposed project would be subject to the diversion rate. Since the proposed project would not generate more solid waste upon its completion than is being generated under existing conditions and since renovation of the proposed project site would produce a minimal amount of renovation debris that can be adequately disposed of at landfill facilities serving the project site, no impacts would occur. The proposed project would comply with all federal, state, and local statutes regulating solid waste. As there is no proposed change in land use there would be a less than significant impact from the proposed project on solid waste statutory compliance.

19. MANDATORY FINDINGS OF SIGNIFICANCE

	<i>Potentially Significant Impact</i>	<i>Less Than Significant Impact with Mitigation Incorporated</i>	<i>Less Than Significant Impact</i>	<i>No Impact</i>
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	☐	☐	☒	☐

Based on the findings of this initial study, the proposed project would neither degrade the quality of the environment nor is it expected to eliminate important examples of the major periods of California prehistory. The proposed project would not substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, nor threaten a plant or animal community. There are no nesting trees or active birds nest on-site, further compliance with LCP polices 23 and 34 would require surveys for the presence of these birds and other species prior to development and renovation activities. Therefore, impacts would be less than significant and further analysis on this topic is not required.

b) Does the project have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals?	☐	☐	☐	☒
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The proposed project would not disadvantage any long-term environmental goals of Los Angeles County or those identified in the Marina del Rey 2010 Conservation and Management Plan in an effort to achieve short-term environmental goals, as both goals are consistent with each other.

c) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	☐	☐	☒	☐
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As described in this Initial Study, the proposed project would not increase the current land use intensity on the project site. Related projects as specified above would be involved in individual environmental review to determine the level of significance for impacts pertaining to each of their individual development. Therefore, cumulative impacts would be less than significant and the project's contribution to cumulative impacts would not be cumulatively considerable.

d) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

☐☐☒☐

As described throughout this Initial Study, the proposed project includes demolition of one 770 square foot restroom facility located at the north eastern portion of the site to be replaced with a new 921 square foot restroom facility just east of the fire lane closest to the water. The second existing 770 square foot restroom located on the west side of the fire lane would be converted marine commercial space. The project also includes construction of a new storage garage totaling 4,383 to accommodate sixteen cars (3,916 square feet) and six boater storage units (467 square feet) along the western parcel edge. The proposed project would not include construction or operational activities that would cause a substantial adverse effect on human beings. No significant impacts would occur and further analysis on this topic is not required.

Recording Requested by:

COUNTY OF LOS ANGELES

When Recorded Return to:

COUNTY OF LOS ANGELES

Office of County Counsel

648 Kenneth Hahn Hall of Administration

500 West Temple Street

Los Angeles, CA 90012

Attn: Amy Caves, Esq.

FREE RECORDING

GOVERNMENT CODE SECTION 6103

SPACE ABOVE THIS LINE FOR RECORDING USE

**MEMORANDUM OF AMENDED AND RESTATED LEASE AGREEMENT
PARCEL 53 — MARINA DEL REY**

This Memorandum of Amended and Restated Lease Agreement Parcel 53 — Marina Del Rey (**"Memorandum of Restated Lease"**), is made and entered into as of April 29, 2016 (**"Effective Date"**) by and between the COUNTY OF LOS ANGELES (**"County"**), as lessor, and HARBOR REAL ESTATE LIMITED PARTNERSHIP, a Delaware limited partnership (together with its permitted successors and assigns, **"Lessee"**), as lessee.

WITNESSETH

WHEREAS, County, as lessor, and Playa Del Rey Marine Supply Company, Inc. (**"Original Lessee"**), entered into Lease No. 5691, dated June 19, 1962 (as amended prior hereto, the **"Existing Lease"**), concerning the lease of certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 53, and more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the **"Premises"**); and

WHEREAS, the term of the Existing Lease commenced effective as of March 1, 1962 and was originally scheduled to expire on February 28, 2022; and

WHEREAS, Lessee is the current successor-in-interest to the Original Lessee's right, title and interest as lessee under the Existing Lease; and

WHEREAS, County and Lessee have entered into an Amended and Restated Lease Agreement dated of even date herewith (the **"Restated Lease"**), pursuant to which the parties have fully amended and restated the Existing Lease; and

WHEREAS, County and Lessee desire to enter into and record this Memorandum of Restated Lease to provide notice of the Restated Lease.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree that the Existing Lease is amended and restated in accordance with the Restated Lease, as follows:

1. **Lease.** For and in consideration of the payment of rentals and the performance of all the covenants and conditions of the Restated Lease, County hereby leases to Lessee, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as lessee, the Premises for the Term (as hereinafter defined), upon and subject to the terms, conditions and reservations set forth in the Restated Lease.

2. **Term.** Unless terminated sooner in accordance with the provisions of the Restated Lease, the term of the Restated Lease shall be for the period commencing on March 1, 1962 and expiring at 11:59 p.m. on February 28, 2061 ("**Term**").

3. **Reservations.** Lessee expressly agrees that the Restated Lease and all rights thereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way (a) existing as of the Effective Date, or (b) otherwise referenced in the Restated Lease, in, to, over or affecting the Premises for any purpose whatsoever, or (c) consented to by Lessee.

Without limiting the foregoing, Lessee expressly agrees that the Restated Lease and all rights thereunder shall be subject to (i) all prior matters of record, and (ii) the right of County or any other governmental authority existing as of the Effective Date or otherwise disclosed or known to Lessee, as their interests may appear, to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of County or such other governmental authority to convey such easements and transfer such rights to others; provided, however, that no new facilities (excluding replacement facilities for facilities existing as of the Effective Date) shall be constructed on the Premises by County after the Effective Date pursuant to this clause (ii) that unreasonably interfere with Lessee's business operations on the Premises.

4. **Promenade.** County hereby reserves a public easement for access over and use of the Promenade (as defined in the Restated Lease) for the pedestrian and park related uses for which they are designed and such other related uses as may be established by the County from time to time, all in accordance with such rules and regulations as are promulgated from time to time by the County regulating such public use. Lessee shall be responsible for the maintenance and repair of the Promenade in accordance with commercially reasonable maintenance and repair standards established by the County from time to time for other comparable public facilities in Marina del Rey. At the request of either party the exact legal description of the Premises encumbered by the public easement reserved herein shall be established based upon the final as-built drawings for the Promenade to be delivered by Lessee upon the completion thereof in accordance with the terms and provisions of Article 5 of the Restated Lease and at the request of either party such legal description shall be recorded in the Official Records of the County as a supplement to this Lease.

5. **Successors.** Subject to the provisions in the Restated Lease governing assignment, the rights and obligations created in the Restated Lease shall bind and inure to the benefit of the respective heirs, personal representatives, successors, grantees, and assigns of County and Lessee.

6. **Incorporation and Conflicts.** The purpose of this Memorandum of Restated Lease is to provide notice of the Restated Lease. All of the terms and conditions of the Restated Lease are incorporated herein by reference as though set forth fully herein. In the event of any conflict between the terms hereof and of the Restated Lease, the terms of the Restated Lease shall prevail. This Memorandum is prepared for the purpose of recordation only and it in no way modifies the provisions of the Restated Lease. A true copy of the Restated Lease is on file in the offices of the County at Department of Beaches & Harbors, 13837 Fiji Way, Marina del Rey, California 90292. This Memorandum of Restated Lease may be executed in counterparts, each of which shall be an original and all of which together shall constitute one fully-executed document.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, County has caused this Memorandum of Restated Lease to be subscribed by the Chair of the Board of Supervisors and attested by the Clerk thereof, and Lessee has executed the same.



THE COUNTY OF LOS ANGELES

By:

Hilda F. Solis
Chair, Board of Supervisors

ATTEST:

LORI GLASGOW,
Executive Officer – Clerk of the
Board of Supervisors

By:

[Signature]
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

23

MAR 15 2016

Lori Glasgow
LORI GLASGOW
EXECUTIVE OFFICER

APPROVED AS TO FORM:

MARY C. WICKHAM,
County Counsel

By:

[Signature]
Deputy

APPROVED AS TO FORM:

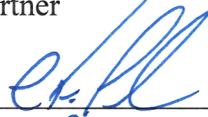
MUNGER, TOLLES & OLSON LLP

By:

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

HARBOR REAL ESTATE LIMITED
PARTNERSHIP, a Delaware limited partnership

By: Vaparetto Corp., a California corporation, its
general partner

By: 
Name: GREGORY F. SCHEM
Title: PRESIDENT



4/20/14



ESTELA CASTILLO
Commission # 2116373
Notary Public - California
Los Angeles County
My Comm. Expires Jun 20, 2019

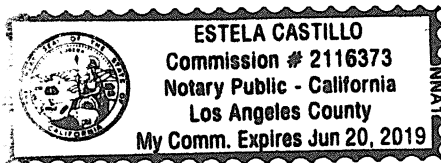
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Los Angeles)
 On April 20th, 2016 before me, Estela Castillo, Notary Public,
 Date Here Insert Name and Title of the Officer
 personally appeared Gregory Chen
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
 Signature of Notary Public

Place Notary Seal Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

DEAN C. LOGAN, Registrar-Recorder/
County Clerk of the County of Los Angeles

By Wm. K. Shivers
Deputy County Clerk



(Seal)

THIS ACKNOWLEDGEMENT IS ATTACHED
TO THE FOLLOWING DOCUMENT:

Title of document: Memorandum of Amended and Restated Lease Agreement (The Boat Yard - Parcel 53)

Number of pages – Five (5)

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Parcels 832 to 845 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, recorded in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Recorder of said county.

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

Also, subject to the public easement reserved by the County in Section 15.20 of the Restated Lease.