To enrich lives through effective and caring service

Los Angeles County
Department of Beaches & Harbors
Caring for Your Coast

Santos H. Kreimann
Acting Director

Kerry Silverstrom
Chief Deputy

December 16, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

APPROVE AND AUTHORIZE EXECUTION OF AMENDMENT TO SECOND AMENDED AND RESTATED LEASE NO. 55624 – PARCEL 125R (MARINA CITY CLUB) – MARINA DEL REY (FOURTH DISTRICT) (4 VOTES)

SUBJECT

Request approval of a lease amendment granting a four-year extension of the outside completion date for the required replacement of the Marina City Club (Parcel 125R) docks to December 31, 2012.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the attached Lease Amendment No. 5 to the Second Amended and Restated Lease No. 55624 with respect to Parcel 125R (Marina City Club) is categorically exempt under the California Environmental Quality Act pursuant to classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines.

2. Authorize the Chairman to execute Lease Amendment No. 5 to the Second Amended and Restated Lease No. 55624 extending by four years the outside completion date to replace the Parcel 125R docks to December 31, 2012.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On January 6, 2004, your Board consented to the assignment of Parcel 125R (Marina City Club) to Essex Marina City Club, L.P. (Essex), a California limited partnership. As part of its acceptance of the assignment of the lease, Essex agreed to replace all of the docks by December 31, 2008. Essex has requested a four-year extension within which to obtain the necessary entitlements and to construct in phases the new docks.

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As compensation for granting Essex's request for a four-year extension to the outside completion date for replacing the docks, Amendment No. 5 (Amendment) to the Second Amended and Restated Lease No. 55624 (Lease) calls for Essex to pay the County an extension fee of $110,000 per year until completion of the docks. The annual payment of $110,000 is intended to compensate the County for the estimated revenue loss due to the delay in the construction of the new docks.

The Amendment also updates the insurance section of the Lease to current County coverage requirements and provides a new definition of Essex's basis in the property with respect to the County's participation in net proceeds from a sale of the property. The Lease as executed in October 1987 set a minimum basis of $103,050,703 for the entire leasehold, including the unsold inventory of condominiums at that time. The new definition reflects the subsequent sale of condominiums and establishes a basis more in conformity with the general basis structure of other recent Marina transactions (i.e., the purchase price paid for the leasehold plus permitted capital improvements and transaction costs).

Implementation of Strategic Plan Goals

The recommended action will allow Essex to proactively redevelop its leasehold improvements, as well as provide the County with anticipated rent it otherwise would have received but for construction delay, which will result in furtherance of approved Strategic Plan Goal Nos. 1 and 4, "Service Excellence" and "Fiscal Responsibility", respectively.

FISCAL IMPACT/FINANCING

The Amendment will provide annual payments of $110,000 to the County during construction of the docks that otherwise could have been expected as increased revenue commencing in 2009 had timely completion of the new docks occurred.

Operating Budget Impact

Upon your Board's approval of the Amendment, the Department of Beaches and Harbors' operating budget will receive a $110,000 Extension Fee payment which will be booked as FY 2008-09 one time over realized revenue. The annual Extension Fee payments received from 2009-10 through 2011-12 will be subsequently budgeted as one time revenue.

Upon completion of the new docks in 2012, the Department's operating budget will include an estimated on going revenue increase of $110,000.

Costs of consultants and primary County staff involved in the negotiation and development of the Amendment are being reimbursed by Essex.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The term of the Lease, executed in October 1987, commenced retroactively on November 7, 1986 and expires on July 29, 2067.

The new docks shall be built in conformance with Marina del Rey dock design standards current as of the date of construction and shall be fully compliant with California Department of Boating and Waterways guidelines. In addition, the new docks shall include: 1) Americans With Disabilities Act (ADA) access on at least one dock with various sized slips; 2) a pump-out station if required by the California Coastal Commission; and 3) a transient/water-taxi dock.

As a condition of the extension, Essex agrees to obtain all necessary regulatory approvals and permits to replace the docks no later than June 30, 2010 and to complete construction of the docks no later than December 31, 2012. If Essex is unable to obtain all necessary regulatory approvals and permits to replace the docks by June 30, 2010, Essex shall pay the County $250,000 as compensation for said failure by July 15, 2010. If Essex is unable to complete construction of the docks by December 31, 2012, it shall pay the County an additional $100 per month for each slip that has not been completed until all of the dock construction is complete. The outside completion date for the docks is June 30, 2013.

County Counsel has approved the Amendment as to form. At its meeting of December 10, the Small Craft Harbor Commission will consider the recommendation that your Board approve the attached Second Option Renewal. The Department will provide your Board with the Commission's recommendation prior to your Board's consideration of this item.

ENVIRONMENTAL DOCUMENTATION

Approval of the attached Amendment is categorically exempt under the California Environmental Quality Act pursuant to classes 1(r) and 4(j) of the County's Environmental Document Reporting Procedures and Guidelines. Approval of the Amendment does not authorize construction or reconstruction of any improvements on the parcel.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Please send two copies of the executed Amendment No. 5 to the Department of Beaches and Harbors.

Respectfully submitted,

SANTOS H. KREIMANN
Acting Director

SHK:KS:GB:gb
Attachment (1)

c: Chief Executive Officer
County Counsel

AMENDMENT NO. 5 TO THE SECOND AMENDED AND RESTATED
LEASE (IMPROVED PARCEL) NO. 55624
PARCEL NO. 125R – MARINA DEL REY SMALL CRAFT HARBOR

THIS AMENDMENT NO. 5 TO THE SECOND AMENDED AND RESTATED LEASE (IMPROVED PARCEL) NO. 55624, PARCEL NO. 125R – MARINA DEL REY SMALL CRAFT HARBOR (this "Amendment") is dated as of DEC. 16, 2008,

BY AND BETWEEN COUNTY OF LOS ANGELES, hereinafter referred to as "County,"

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

55624 Supplement No. 5

WITNESSETH:

WHEREAS, County and Marina City Club, L.P., a California limited partnership ("Original Lessee"), entered into that certain Second Amended and Restated Lease (Improved Parcel) dated October 27, 1987 and identified as Lease No. 55624 (the "Original Lease"), as amended by (i) that certain First Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R Marina del Rey dated November 4, 1988, (ii) that certain Second Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R - Marina del Rey dated August 1, 1992, (iii) that certain Amendment No. 3 to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R – Marina del Rey Small Craft Harbor dated December 3, 2002, and (iv) that certain Amendment No. 4 to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R – Marina del Rey Small Craft Harbor dated June 22, 2004 (the Original Lease, as so amended, is hereinafter referred to as the "Lease");

WHEREAS, pursuant to that certain Assignment of Lease dated as of December 11, 2003 and executed by Original Lessee, and that certain Acceptance of Assignment of Lease dated as of December 18, 2003 and executed by Lessee, Lessee acquired all of Original Lessee's right, title and interest in and to, and assumed Original Lessee's obligations under, the Lease effective as of January 21, 2004 (the foregoing Assignment of Lease and Acceptance of Assignment of Lease are collectively referred to herein as the "Assignment");

WHEREAS, pursuant to the Assignment, Lessee agreed to replace the anchorage improvements on the Premises on or before December 31, 2008;

WHEREAS, to date Lessee has failed to initiate the required permit application process for the foregoing boat slip replacement and it will not be possible for Lessee to timely perform and complete the boat slip replacement by the required December 31, 2008 completion date;

WHEREAS, Lessee has requested, and County is willing to grant, an extension to Lessee of the required date for Lessee's completion of the boat slip replacement, subject to and in accordance with the terms and provisions of this Amendment; and

WHEREAS, Lessee and County desire to enter into this Amendment to (a) amend the Assignment and the Lease to document the terms and conditions of the above-referenced extension, (b) confirm certain other agreements of the parties with respect to the boat slip replacement, and (c) otherwise modify the Lease in certain respects, all as more particularly forth herein.

NOW, THEREFORE, with reference to the foregoing recitals, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, County and Lessee hereby agree as follows:

1. Definitions. All initially-capitalized terms used but not defined in this Amendment have the meanings given such terms in the Lease.

2. Boat Slip Replacement.

2.1 New Anchorage Facilities. The terms and provisions of this Amendment shall supersede and replace the terms and provisions of the Assignment with regard to the replacement of the boat slips located on the Premises. Lessee shall demolish the existing anchorage slips and related anchorage Improvements located on the Premises, and replace the same with new anchorage slips and related anchorage Improvements, including without limitation, new docks, gangways and related components (collectively, the "New Anchorage Facilities"). The New Anchorage Facilities shall be designed and constructed in accordance with such configuration and layout (including size and number of slips) as approved by County and the California Coastal Commission. The New Anchorage Facilities shall comply with the then-current requirements (in effect as of the date of the issuance of the building permit for the New Anchorage Facilities) under all applicable governmental laws, including without limitation all current requirements of the Americans With Disabilities Act, as amended and interpreted by applicable governmental laws and regulations. The New Anchorage Facilities shall be first-class, state of the art, and comply with the following then-current requirements (in effect as of the date of the issuance of the building permit for the New Anchorage Facilities): (i) the most recent edition 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; (ii) the most recent edition of Layout and Design Guidelines for Small Craft Facilities by the California Department of Boating and Waterways (or similar successor publication); and (iii) the then-effective design memoranda as provided by the Harbor Engineer of the Los Angeles County Department of Beaches and Harbors ("Department"). The New Anchorage Facilities shall include a permanent pump-out station if required by the California Coastal Commission. The New Anchorage Facilities shall also be designed and constructed to accommodate a transient/water-taxi dock in a location, size and configuration acceptable to County. Except during any period that County requires the transient/water-taxi dock to be made available by Lessee for transient/water-taxi usage, the transient/water-taxi dock may be leased by Lessee for anchorage slip use. During any period that County requires the transient/water-taxi dock to be made available for transient/water-taxi usage, the use of the transient/water-taxi dock shall be

restricted to such use at no charge. Access to the transient/water-taxi dock shall be subject to such reasonable rules and regulations as Lessee may establish from time to time.

2.2 Design and Construction of New Anchorage Facilities. The New Anchorage Facilities shall constitute Improvements to be constructed by Lessee under Article 4 of the Lease, and Lessee shall comply with all terms and provisions of Article 4 of the Lease in connection with the design and construction of the New Anchorage Facilities. Without limitation of the foregoing, the New Anchorage Facilities shall be designed and constructed in accordance with plans and specifications that are approved by the Department on behalf of County. Lessee shall prepare and submit to the Department all plans and specifications for the New Anchorage Facilities, and submit and process with applicable governmental authorities all applications for required governmental permits and approvals for the New Anchorage Facilities, in accordance with a schedule that is reasonably expected to effectuate the completion of the construction of the New Anchorage Facilities by not later than December 31, 2012. Within thirty (30) days after the date of this Amendment, Lessee shall submit to the Department a proposed schedule for the design and permitting of the New Anchorage Facilities, which schedule shall be subject to the Department's approval, which approval shall not be unreasonably withheld. Upon approval by the Department, Lessee shall comply with such design and permitting schedule. In all events, Lessee shall obtain all necessary governmental permits and approvals for the construction of the New Anchorage Facilities by not later than June 30, 2010 (the "Required Permit Receipt Date"). If Lessee fails to obtain all necessary governmental permits and approvals for the construction of the New Anchorage Facilities by the Required Permit Receipt Date, then in addition to the Extension Payments and any Additional Extension Payments, if applicable (as such terms are defined in Section 3 below), Lessee shall pay to County the sum of Two Hundred Fifty Thousand Dollars ($250,000.00) (the "Permit Delay Fee") within fifteen (15) days after the Required Permit Receipt Date. Notwithstanding any contrary provision of the Lease or this Amendment, the Required Permit Receipt Date shall not be extended for any reason whatsoever, except that if as of the Required Permit Receipt Date a moratorium is in effect against the issuance of all governmental permits for the construction of anchorage facilities in the Marina del Rey Small Craft Harbor, then the Required Permit Receipt Date shall be extended by the period of delay incurred by Lessee in the processing and issuance of the required governmental permits for the New Anchorage Facilities as a result of such moratorium; provided, however, that the Required Permit Receipt Date shall in no event be extended beyond June 30, 2012. For purposes of clarification, the term "moratorium" shall mean an express prohibition against the issuance of permits, and the term "moratorium" shall not be interpreted or construed to mean or include a de facto, constructive or implied moratorium based on processing delays, requirements, conditions or other circumstances.

2.3 Completion of New Anchorage Facilities. Lessee shall perform the New Anchorage Facilities construction on a phased basis in accordance with a phasing schedule approved by the Department, which approval shall not be unreasonably withheld. Such phasing schedule shall not result in more than thirty percent (30%) of the boat slips on the Premises being out of service at any one time. Lessee shall substantially complete the construction of the New Anchorage Facilities by not later than December 31, 2012. If Lessee has worked diligently to complete the design, permitting and construction of the New Anchorage Facilities by December 31, 2012, but despite such diligent efforts Lessee is unable to substantially complete the construction of the New Anchorage Facilities by December 31, 2012, then Lessee shall not be in

default of the Lease for its failure to substantially complete the construction of the New Anchorage Facilities by December 31, 2012 as long as Lessee substantially completes the construction of the New Anchorage Facilities by June 30, 2013 (the "Outside Anchorage Completion Date"). Notwithstanding the foregoing, if Lessee is delayed in the substantial completion of the construction of the New Anchorage Facilities by June 30, 2013 due to an Anchorage Force Majeure Event (as defined below), then the Outside Anchorage Completion Date shall be extended by the duration of the delay caused by such Anchorage Force Majeure Event, but in no event shall the Outside Anchorage Completion Date be extended beyond December 31, 2013. If Lessee fails to substantially complete the construction of the New Anchorage Facilities by the Outside Anchorage Completion Date (as such date may be extended pursuant to the immediately preceding sentence), then upon written notice by County to Lessee, such failure shall constitute an Event of Default by Lessee under Article 8 of the Lease, without any requirement for a cure or grace period, and County shall have the right to exercise all of its rights and remedies available under the Lease, at law or in equity as a result of such Event of Default. Notwithstanding any contrary provision of the Lease, the dates for Lessee's performance under this Section 2 and Section 3 below shall not be subject to extension for any reason, including without limitation, any force majeure delay or other excuse, except for (i) any extension of the Required Permit Receipt Date pursuant to the next to last sentence of Section 2 above, (ii) any extension of the Outside Anchorage Completion Date for an Anchorage Force Majeure Event in accordance with this Section 2.3, or (ii) any extension of the December 31, 2012 date set forth in Section 3 below for an Anchorage Force Majeure Event. For purposes of this Amendment, the "substantial completion" of the New Anchorage Facilities shall mean the completion of the New Anchorage Facilities, subject only to minor punch-list items that do not materially interfere with the use and occupancy of the New Anchorage Facilities by boaters, including without limitation, receipt by Lessee of a certificate of occupancy (whether temporary or permanent) or other governmental approval for all of the New Anchorage Facilities that permits the lawful use or occupancy thereof. Lessee shall diligently complete any remaining punch-list items as soon as reasonably possible (but in any event within thirty (30) days, except to the extent that a period longer than thirty (30) days is required due to the unavailability of parts or materials or other causes beyond the reasonable control of Lessee).

For purposes hereof, an Anchorage Force Majeure Event shall mean a delay in the completion of the New Anchorage Facilities due to fire, earthquake, flood, tornado, tsunami, civil disturbance, war, organized labor dispute, moratorium or other similar unforeseeable event beyond the control of Lessee that occurs after the date of this Amendment. In no event shall an Anchorage Force Majeure Event include any delay attributable to financial infeasibility or other financially related condition. Notwithstanding any contrary provision hereof, no delay attributable to an Anchorage Force Majeure Event shall be considered to have commenced until Lessee has provided County with written notice of the occurrence, condition or circumstance that constitutes such Anchorage Force Majeure Event; provided, however, that if Lessee provides written notice to County of the Anchorage Force Majeure Event within five (5) business days after the date that Lessee first becomes aware that the occurrence, condition or circumstance that constitutes the Anchorage Force Majeure Event has occurred or arisen, then the delay attributable to the Anchorage Force Majeure Event shall be considered to have commenced retroactive to the date that the Anchorage Force Majeure Event causing the delay first occurred or arose.

2.4 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 or permits that may be required in connection with the construction of the New Anchorage Facilities. Such cooperative efforts may include the Department's joinder in any application for such approval, consent or permit, where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Cost (as defined below) incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Lessee and County acknowledge that (a) the approvals given by County (including the Department) under this Amendment are approvals pursuant to its authority under Section 25536 or 25907 of the California Government Code; (b) that approvals given under this Amendment 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 New Anchorage Facilities and the operation and use thereof; and (c) that the Department's duty to cooperate and any approvals by County (including the Department) under this Amendment 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. For purposes of this Amendment, "Actual Costs" means (i) the reasonable out-of-pocket costs and expenses incurred by County with respect to a particular activity or procedure, including without limitation, expenditures for third party legal counsel, financial consultants and other 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.

3. Extension Payments. In consideration of the extension granted by County to Lessee under this Amendment with respect to the completion of the New Anchorage Facilities, Lessee shall pay to County an annual amount equal to One Hundred Ten Thousand Dollars ($110,000.00) (each, an "Extension Payment") commencing on the date of this Amendment until the date of the substantial completion of the New Anchorage Facilities. The first annual Extension Payment shall be paid by Lessee to County concurrent with the parties' execution and delivery of this Amendment. Lessee shall continue to pay annual Extension Payments to County on each and every successive anniversary of the date of this Amendment unless and until as of the due date for a particular Extension Payment the construction of the New Anchorage Facilities has been substantially completed. In addition to the Extension Payments, if the construction of the New Anchorage Facilities has not been substantially completed by December 31, 2012 (as such date may be extended by an Anchorage Force Majeure Event, but not beyond December 31, 2013), then Lessee shall thereafter pay to County an additional monthly sum (each, an "Additional Extension Payment") equal to One Hundred Dollars ($100.00) per month for each boat slip of the New Anchorage Facilities that has not been substantially completed as of the first day of each calendar month thereafter (i.e., commencing with January, 2013 if the foregoing December 31, 2012 date is not extended by an Anchorage Force Majeure Event) until all of the New Anchorage Facilities have been substantially completed. If applicable, the first Additional Extension Payment shall be paid by Lessee to County on or before January 1, 2013 (or in the case of an Anchorage Force Majeure Event, the first day of the calendar month following the date to which the December 31, 2012 date set forth in this Section 3 is extended) and subsequent

Additional Extension Payments shall continue to be paid by Lessee to County on or before the first day of each calendar month thereafter until the New Anchorage Facilities have been substantially completed. The Extension Payments and Additional Extension Payments described in this Section 3 and the Permit Delay Fee described in Section 2 above, if and to the extent payable hereunder, shall constitute additional rent payable by Lessee under the Lease. The Additional Extension Payments and Permit Delay Fee (if applicable) are not intended as a forfeiture or penalty within the meaning of Sections 3275 or 3369 of the California Civil Code, but are intended to constitute liquidated damages for Lessee's failure to substantially complete the New Anchorage Facilities by the date required in this Amendment, the parties acknowledging and agreeing that it is extremely impracticable and difficult to estimate the actual damage and harm (including rental losses) that County will suffer from further delays by Lessee in performing the New Anchorage Facilities work. The parties further expressly acknowledge, stipulate and agree that the Additional Extension Payments and Permit Delay Fee are reasonable taking into consideration all circumstances, including without limitation, Lessee's existing failure to perform the boat slip replacement work as previously agreed by Lessee under the Assignment and in consideration of the further extension being granted by County under this Amendment.

4. Insurance. The terms and provisions of Article 11 of the Lease are hereby deleted and replaced with the following, except that Sections 11.01.B., 11.01.C, 11.02, 11.06 and 11.07 of the Lease shall not be modified and shall remain in full force and effect as set forth in the Lease, unmodified by this Amendment:

"11.1 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.

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

General Aggregate:	$30,000,000
Products/Completed Operations Aggregate:	$30,000,000
Personal and Advertising Injury:	$10,000,000
Each Occurrence:	$15,000,000

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 11.1.1.

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

11.1.3 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

11.1.4 Commercial Property insurance covering damage to the Premises, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake, and including Ordinance or Law Coverage, written for the full replacement value of the Improvements, with a deductible no greater than $250,000 or 5% of the property value, which ever is less, and also including business interruption, including loss of rent equal to two (2) years 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.

11.1.5 For construction projects, including any alterations or restoration of the Improvements 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.):

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

11.1.5.2 General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as reasonably required by the County for the particular Improvements or alterations work. The products/completed operations coverage shall continue to be maintained for three (3) years after the date of the completion and acceptance of the work by Lessee. The amount of this coverage for the New Anchorage Facilities work shall be Two Million Dollars ($2,000,000) per occurrence, Four Million Dollars ($4,000,000) aggregate.

11.1.5.3 Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability of not less than Two Million Dollars ($2,000,000) per accident. Such insurance shall include coverage for all "owned," "hired" and "non-owned" automobiles, or coverage for "any auto."

11.1.5.4 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 11.1.5.4 shall be (a) Two Million Dollars ($2,000,000) per claim, Four Million Dollars ($4,000,000) aggregate with respect to the prime architect for the New Anchorage Facilities work (or such lesser amount for other Improvements or alterations as approved by Director), 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 Improvements or 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.

11.1.5.5 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants, and if such insurance is available. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos in compliance with governmental mandate or order. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's of subcontractor's Automobile Liability Insurance. The amount of such insurance shall be as reasonably required by Director for the particular work, except that the amount of such insurance for the New Anchorage Facilities work shall be Two Million Dollars ($2,000,000).

11.1.6 If the use of the Premises or Improvements involves any manufacture, distribution or service of alcoholic beverages, Liquor Liability

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

11.1.7 If use of the Premises or Improvements 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.

11.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Sections 11.1.4 and 11.1.5.1 shall name the County as an additional insured and any Approved Encumbrance Holder as loss payee. The proceeds from such insurance shall be administered in accordance with the terms and provisions of Sections 11.01.B and 11.01.C of the Lease, as those Sections exist under the Lease prior to this Amendment (and are not being modified by this Amendment).

11.3 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 11, in such form as shall be reasonably acceptable to County, shall be delivered to Director, provided that the evidence of the insurance coverage required under Section 11.1.5 shall not be required to be delivered by Lessee until prior to the commencement of any alterations or Improvements work. 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 11. 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 11 as if the insurance had been procured on an individual property basis.

11.4 Additional Required Provisions. Lessee's insurance policies required by this Article 11 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 Approved 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 Approved 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.

11.5 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 Adjustment Rate (as defined in Section 5.10.G of the Lease), to County within five (5) business days after Lessee's receipt of written demand therefor. This Section 11.5 does not affect the terms and provision of Section 11.07 of the Lease, which Section 11.07 is not being modified by this Amendment.

11.6 Adjustment to Amount of Liability Coverage. The amounts of liability insurance required under Sections 11.1.1, 11.1.2 and 11.1.3 above shall be subject to renegotiation as of each fifth (5th) anniversary of this Amendment (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 Section 16.6 of the Lease. 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.

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

5. Defined Net Transfer Proceeds. Section 5.15 of the Lease is hereby deleted and replaced with the following:

"5.15 Defined Net Transfer Proceeds. Upon those transfers described in subsection 5.15.C, Lessee shall pay County a sum equal to the excess of twenty percent (20%) of the Defined Net Transfer Proceeds from such transfer over the amount of any Administrative Transfer Fee paid in connection with the transfer.

5.15.A. [Deleted.]

5.15.B. Transfers by Lessee and its Successors. "Defined Net Transfer Proceeds" shall mean the total cash and other consideration received by the transferor Lessee (including any successor Lessee to the Lessee executing this Amendment) minus such transferor's Eligible Costs. "Eligible Costs" shall mean the sum of the following:

(1) The higher of the purchase price paid by the transferor for the interest being conveyed or Twenty Eight Million Dollars ($28,000,000.00), provided that the Lessee executing this Amendment hereby agrees that the purchase price paid by the Lessee executing this Amendment for its interest was Twenty Eight Million Dollars ($28,000,000.00).

(2) Any Improvement Costs paid or incurred by the transferor (as opposed to any predecessor Lessee, or any Sublessee or any other person or entity) after the date of this Amendment or, in the case of a transfer by a transferor other than the Lessee executing this Amendment, incurred after the date of this Amendment and after the date such transferor acquired its interest.

(3) Eligible Documented Transaction Costs incurred by the transferor in connection with the original purchase by such transferor of the interest being transferred, provided that this clause (3) shall not be applicable in connection with a transfer by the Lessee executing this Amendment (or a transfer by a beneficial interest holder of the Lessee executing this Amendment).

(4) Eligible Documented Transaction Costs incurred by the transferor in connection with any refinancings of its interest in the Lease after the transferor's acquisition of such interest and prior to the transfer by the transferor of such interest.

5.15.C. Transfers to Which Section 5.15 Applies. The provisions of this Section 5.15 shall apply to each of the following transfers, unless such transfers are otherwise exempted from an Administrative Transfer Fee pursuant to subsection 5.11.B and shall not apply to a mere change in form or method and/or status of ownership;

(1) Any transfer for which an Administrative Transfer Fee is due pursuant to Section 5.11.

(2) Any transfer by Lessee of all or any portion of Lessee's beneficial interest in this Lease.

(3) Any transfer of any beneficial interest in a "Single-Asset" entity which holds all or any portion of the Lessee's interest under this Lease. As used in this subsection 5.15.C, a "Single-Asset" entity means an entity in which the interest in this Lease constitutes seventy-five percent (75%) or more, by gross value, of the assets of such entity.

(4) Any transfer of an interest in an entity which is not a Single-Asset entity, and is not a publicly-traded entity of the type described in subsection 5.11.B.(4), but the amounts provided for in this Section 5.15 shall be collected only when sufficient interests in such entity have been transferred so as to constitute a Change in Ownership.

(5) Any transfer of an interest in an entity which County can demonstrate was formed primarily for the purpose of avoiding the fees provided for in this Section 5.15.

5.15.D. Effect of Transfer of Less Than Entire Interest. If less than the entire beneficial interest of Lessee in this Lease is transferred, then the amount deducted for Eligible Costs shall bear the same proportion to the total Eligible Costs that would be applicable on a transfer of the entire beneficial interest of Lessee in this Lease as the interest being transferred bears to the entire beneficial interest of Lessee in this Lease. In addition:

(1) For purposes of subsection 5.15.B.(1), the transferee of a portion of the entire beneficial interest in this Lease shall receive an Eligible Costs basis under such subsection 5.15.B.(1) equal to the higher of its acquisition cost or its transferor's Eligible Costs basis (calculated on a pro rata basis as provided above) in such beneficial interest if the transaction is one in which either an Administrative Transfer Fee or Defined Net Transfer Proceeds were paid, and an Eligible Costs basis equal to its transferor's Eligible Costs basis (calculated on a pro rata basis as provided above) in such beneficial interest if no such payment was made. Such transferee's Eligible Costs basis shall also include the amounts described in subsections 5.15.B.(2) through (4) which are paid or incurred by such transferee after its acquisition of such interest (or a pro rata portion of such costs, in the case of costs incurred directly by Lessee).

(2) Every transfer of a beneficial interest in this Lease shall be reported to County in writing within five (5) days following the effective date of the transfer in order to enable County to monitor ownership of the beneficial interest in this Lease.

5.15.E. Valuation of Notes. Should the transferor of an interest accept a note for all or a part of the consideration for the transfer, then such note shall be valued at its face amount unless it is a Contingent Payment Note or unless it is sold within 30 days of receipt to a nonrelated third party, in which latter case the note shall be valued at the amount obtained. A "Contingent Payment Note" is a note which, by its terms, is either not due and payable until the occurrence of an event other than the passage of time or within the control of the transferor, or one which is both secured solely by the interest transferred and nonrecourse, in which case such note shall be valued at the amount paid, when paid. A transferee shall not be entitled to include the payment(s) made under any Contingent Payment Note in its Eligible Costs until such payment(s) has been made and the County has received any Administrative Transfer Fee or Defined Net Transfer Proceeds due with respect to such payment(s).

5.15.F. Payment. Defined Net Transfer Proceeds shall be due and payable concurrently with the transfer giving rise to the obligation to pay Defined Net Transfer Proceeds and shall be the joint and several obligation of the transferee and the transferor; provided, however, that any payment with respect to

a Contingent Payment Note shall be due and payable within five (5) days following the date the payment under the Contingent Payment Note is made.

5.15.G. Improvement Costs. Notwithstanding any contrary provision of the Lease, the definition of "Improvement Costs" under the Lease is hereby amended to mean the actual costs and expenses paid to third parties in connection with the design, permitting or construction of new Improvements or alterations to or capital renovations of existing Improvements, including the New Anchorage Facilities work. Improvement Costs shall not include any costs or expenses for repairs, maintenance or replacements required for the Improvements to continue in a good, operating condition. As a condition to inclusion of costs and expenses as Improvement Costs, Lessee must notify Director in writing within ninety (90) days after the completion of any Improvements, alteration or renovation work of the Improvement Costs incurred in connection with such work, with such notice to include a statement in detail reasonably acceptable to Director setting forth such Improvement Costs. Director shall have the right to verify the amount of the costs and expenses properly included as Improvement Costs. The amount of any costs or expenses for the New Anchorage Facilities work that are to be included in Improvement Costs must be approved in advance by Director, which approval shall not be unreasonably withheld. Exhibit G to the Lease is hereby deleted.

6. Refinancing. Sections 5.19 and 5.20 are deleted from the Lease.

7. Representations and Warranties. To induce County to enter into this Amendment, Lessee hereby represents and warrants to County as follows:

7.1 Lessee has not assigned its interest as lessee under the Lease and is the current holder of all rights, title and interest of the lessee under the Lease; and

7.2 Lessee's interest in the Lease and the Premises is not encumbered by any deed of trust, mortgage or other security instrument.

8. Miscellaneous.

8.1 Lease. The Lease has not been modified, amended or supplemented except as set forth in this Amendment and, as amended by this Amendment, the Lease is and remains in full force and effect.

8.2 Counterparts. This Amendment may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

8.3 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California without giving effect to the conflict of law principles of said state.

8.4 Controlling Provisions. In the event of any inconsistencies between the provisions of this Amendment and the provisions of the Lease, the provisions of this Amendment shall govern and prevail.

8.5 Integration and Merger. This Amendment contain the entire agreement of County and Lessee regarding the modification of the Lease and supersede all prior agreements, term sheets and understandings between County and Lessee, whether written or oral, with respect to the subject matter hereof.

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

8.7 Successors and Assigns. The rights and obligations of the parties under this Agreement shall be binding upon the parties' respective permitted successors and assigns.

8.8 Joint Preparation. Preparation of this Amendment has been a joint effort of both parties, and this Amendment shall not be construed or interpreted in favor of one of the parties based upon any party being more responsible for the preparation of this Amendment.

8.9 Memorandum. Concurrent herewith, the parties shall execute and cause to be recorded in the Official Records of Los Angeles County, California, a memorandum of this Amendment in form reasonably acceptable to County and Lessee.

8.10 County Costs. Within thirty (30) days after written request by County, Lessee shall reimburse County for all Actual Costs incurred by County in connection with the review, preparation, negotiation, documentation and administration of this Amendment, including without limitation, all Actual Costs incurred by County in connection with the review, evaluation and administration of Lessee's obligations under the Assignment with respect to the boat slip replacement work.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

COUNTY:

COUNTY OF LOS ANGELES

By: _____
Chairman, Board of Supervisors

ATTEST:

SACHI HAMAI,
Executive Officer of the
Board of Supervisors

By: _____
Deputy

I hereby certify that pursuant to
Section 25103 of the Government Code,
delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By _____
Deputy

55624

Supplement No. 51

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.,
COUNTY COUNSEL

By: _____
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

23 DEC 16 2008

SACHI A. HAMAI
EXECUTIVE OFFICER

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

[SIGNATURES CONTINUED ON NEXT PAGE]

LESSEE:

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

By: Essex MCC, LLC,
a Delaware limited liability company,
its general partner

By: Essex Portfolio, L.P.,
a California limited partnership,
its sole member

By: Essex Property Trust, Inc.,
a Maryland corporation,
its general partner

By: _____
Gerald E. Kelly,
FIRST Vice President

ATTEST: SACHI A. HAMAI
EXECUTIVE OFFICER
CLERK OF THE BOARD OF SUPERVISORS

By _____, Deputy

COUNTY OF LOS ANGELES
CALIFORNIA

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

23 DEC 16 2008

SACHI A. HAMAI
EXECUTIVE OFFICER

55624 Supplement No. 5

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