To enrich lives through effective and caring service

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

20 DECEMBER 8, 2009

SACHI A. HAMAI
EXECUTIVE OFFICER

LOS ANGELES COUNTY
Department of Beaches & Harbors
Caring for Your Coast

Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

December 8, 2009

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

Dear Supervisors:

APPROVAL OF OPTION TO AMEND LEASE AGREEMENT TO FACILITATE REDEVELOPMENT – MARINA BAY CLUB APARTMENTS AND MARINA
(Parcel 8T at 14015 Tahiti Way)
MARINA DEL REY
(4th DISTRICT-- 4 VOTES)

SUBJECT

Request for adoption of the Mitigated Negative Declaration and approval of an option agreement to extend the term of the existing Marina Bay Club Apartments and Marina lease (Parcel 8T) for the renovation of the existing 205 apartment units and the complete redevelopment of the marina with 207 slips and 11 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 YOUR BOARD:

1. Consider the Mitigated Negative Declaration for the Marina Bay Club Apartments and Marina 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 and adopt the Mitigation Monitoring Program, finding that the Mitigation Monitoring Program 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; and adopt the Mitigated Negative Declaration.

2. Approve and authorize the Chair of the Board to sign the Option to Amend Lease Agreement granting to the current lessee, NF Marina, LP, a California limited partnership, upon fulfillment of stated conditions, the right to extend the term of its existing ground lease on Parcel 8T by 30 years.

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://marinadelrey.lacounty.gov

3. Approve and authorize the Chair of the Board to sign the Amended and Restated Lease in substantially similar form to Exhibit A attached to the Option, upon confirmation by the Director of the Department of Beaches and Harbors that the NF Marina, LP has fulfilled the Option conditions.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Your Board previously approved assignment of the Bay Club Apartments and Marina to its current lessee, NF Marina, LP, a California limited partnership ("Lessee"), on September 27, 2005. Lessee thereafter changed the name to Marina Bay Club Apartments and Marina and entered into negotiations with the Department of Beaches and Harbors ("Department") to extend the lease term for Parcel 8T. The proposed term sheet that resulted from these negotiations provides for an option in favor of the Lessee to extend the lease term by 30 years from its current June 7, 2021 expiration date to June 7, 2051. Lessee will pay an option fee of $100,000 upon grant of the option and has agreed to spend no less than $20.0 million in renovations and replacement on both the land- and waterside improvements, which will include, among other things, renovation of all existing apartment buildings to include apartment unit interiors, building facades, club house, interior and exterior common areas, landscaping, and hardscape; replacement of the existing marina; and upgrading of the waterfront promenade to current Marina del Rey standards. Lessee will demolish the existing 230-slip and 11-end-tie marina and construct a new 207-slip and 11-end-tie marina; the newly constructed marina will be able to accommodate boats from 22 feet to 60 feet.

In addition, Lessee has agreed to pay the County percentage rent for apartment units at 14.5% for the entire term of the extended lease, subject to certain offsets during the first 20 years of the term. A summary of the proposed terms for the lease extension is set forth in Attachment A. Due to Lessee's agreement to pay the percentage rent for apartment units, there will be no additional extension fee beyond the $100,000 option fee. Because the project is a renovation rather than a redevelopment, the Mello Act and the County's Marina del Rey affordable housing policy do not apply. Upon stabilization of the rent in 2015, County rents are projected to be $1,250,000 per year, an increase of approximately $418,000 per year over Fiscal Year 2008-09 rents received from the parcel.

The Department of Regional Planning has prepared an Initial Study for the proposed project in compliance with the California Environmental Quality Act ("CEQA") and, along with the Department, recommends your Board's adoption of the Mitigated Negative Declaration and Mitigation Monitoring Program (Attachment B). If adopted, Lessee must thereafter obtain all regulatory approvals and exercise the Option to Amend Lease Agreement ("Option") (Attachment C) within 12 months following grant of the Option, subject to discretion of the Department Director to grant up to two six-month extensions if Lessee is delayed in the receipt of approvals despite its diligent efforts.

Due to the current economic environment, the Department has included in the Option an economic *force majeure* provision that allows Lessee to extend the time to exercise the Option on the condition that Lessee is pursuing project financing in good faith, but cannot obtain financing due to the economic downturn. The Department has obtained an appraisal that confirms the returns to the County from the lease extension for Parcel 8T are equivalent to, or greater than, fair market value.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The recommended action will allow Lessee to continue its effort towards the proactive redevelopment of the parcel, which will result in fulfillment of Strategic Plan Goal No. 1, "Operational Effectiveness," Strategy No. 1, "Fiscal Sustainability," and Goal No. 3, "Community and Municipal Services," Strategy No. 1, "Cultural and Recreational Enrichment," respectively.

FISCAL IMPACT/FINANCING

The draft Amended and Restated Lease for the renovation of Parcel 8T reflects the County's current market rate percentage rents for all relevant categories. They will produce the following fiscal benefits to the County: 1) an option fee; and 2) revenue increases due to renovation of the apartment buildings and replacement of the marina. Each component is discussed in detail below.

Option Fee
Lessee shall pay a non-refundable (except in the case of a default by County) fee of $100,000 for the Option, due upon execution of the Option.

Revenue Increase Due to Project Redevelopment
The total revenue derived from Parcel 8T during Fiscal Year 2008-09 was approximately $832,000. After stabilization in 2015, the new project will increase annual County rent by $418,000 to approximately $1,250,000.

OPERATING BUDGET IMPACT

Upon your Board's approval of the Option, the Department's Marina operating budget will receive a one-time $100,000 Option fee as stated above. This revenue will be accounted for as Fiscal Year 2009-10 one-time over-realized revenues.

Costs of consultants and for the Department's Deputy Director and Asset Management Division Chief involved in the negotiation and development of the Option and Amended and Restated Lease are being reimbursed by the Lessee.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The existing 60-year lease for Parcel 8T expires on June 7, 2021. The current improvements on Parcel 8T consist of 205 apartments and 230 existing slips plus 11 end ties. Parcel 8T has frontage on Tahiti Way and is located west of Tahiti Marina (Parcel 7) and east of Parcel 9.

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.

At its meeting of November 18, 2009, the Small Craft Harbor Commission unanimously approved the recommendations to approve the Option and the Amended and Restated Lease for Parcel 8T in the form attached. County Counsel has approved the documents as to form.

ENVIRONMENTAL DOCUMENTATION

In compliance with CEQA, an Initial Study was prepared for the proposed project. The Initial Study identified potentially significant effects of the project on noise, water quality, air quality, biota, and utilities. Prior to the release of the proposed Mitigated Negative Declaration ("MND") and Initial Study for public review, revisions in the project were made or agreed to which would avoid the significant effects or mitigate the effects to a point where clearly no significant effects would occur.

The Initial Study and project revisions showed that there is no substantial evidence, in light of the whole record before the County, that the project as revised may have a significant effect on the environment. Based on the Initial Study and project revisions, an MND was prepared for this project (Attachment B). The proposed Mitigation Monitoring Program, included with the MND, was prepared to ensure compliance with the environmental mitigation measures included as part of the final MND relative to these areas during project implementation. There have been no substantial changes to the proposed project since circulation of the environmental document.

The MND was circulated from August 12, 2009 through September 11, 2009 to the appropriate government agencies. Public Notice was then published in The Argonaut on October 8, 2009, pursuant to Public Resources Code section 21092, and posted, pursuant to section 21092.3. During the second 30-day comment period, a written response was received from the California Department of Fish and Game. In addition,

three written responses were received from the public. All comments received, as well as responses to the comments, are contained in the final MND. Individuals who sent in comments received responses to their particular comments.

The location of the documents and other materials constituting the record of the proceedings upon which your Board's decision will be based in this matter is the County of Los Angeles Department of Regional Planning, 320 West Temple Street, Los Angeles, California 90012. The custodian of such documents and materials is Anthony Curzi, County of Los Angeles Department of Regional Planning.

The project is not exempt from payment of a fee to the California Department of Fish and Game (DFG) pursuant to section 711.4 of the Fish and Game Code to defray the costs of fish and wildlife protection and management incurred by the California Department of Fish and Game. Upon your Board's adoption of the MND, the Department will file a Notice of Determination with the Registrar-Recorder/County Clerk in accordance with section 21152(a) of the California Public Resources Code, along with the Lessee's payment of the DFG required filing and processing fees in the amount of $1,993,.

CONTRACTING PROCESS

Lessee acquired the leasehold interest to Parcel 8T as a result of its assumption of the assigned lease as of September 27, 2005. The Lessee thereafter entered into negotiations with the Department to extend the lease term for Parcel 8T. The Amended and Restated Lease for Parcel 8T will be available to the Lessee upon the proper exercise of the Option. Upon Lessee's demonstration that it has satisfied the conditions for exercise of the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for construction of the development project associated with that Option, we will present to the Executive Officer the final confirmation that the conditions and approvals for exercise contained in the Option have been satisfied and will request at that time execution of the Amended and Restated Lease for Parcel 8T 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 copies of the executed Option and an adopted Board letter to the Department of Beaches and Harbors.

Respectfully submitted,

Kerry Silverstrom
for
Santos H. Kreimann, Director

SK:GJ:PW:ks

Attachments (3)

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

Attachment "A"
Proposed Terms for Lease Extension
Parcel 8T

BOARD POLICY ITEM	***TERMS***
REDEVELOPMENT Development of new improvements	• Renovation of the existing 205-unit apartment building, to include upgrade of all apartment unit interiors, building façades, club house, interior and exterior common areas, landscaping, hardscape, promenade, and provide all required parking on-site and replacement of all 230 existing slips with 11 end ties with 207 new slips and 11 end ties in a configuration and design according to current marina standards. Dock replacement to be in accordance with mutually acceptable phasing program concluding no later than 5 years from the date of exercise of the option. Construction, except for the phased dock replacement, to be completed within 3 years of Lessee's exercise of the Option, exclusive of *Force Majeure* which in no event shall exceed 5 years. • Total development cost of not less than $20.0 million in 2009 dollars. • Starting in the sixth year following Completion of Construction, a Capital Improvement Fund to be funded annually by Lessee in the amount of 2.0% of Lessee's total gross revenues derived from the leasehold will be maintained during the term of the lease. The Capital Improvement Fund must be fully expended for Permitted Capital Expenditures by 10 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. • Starting in the sixth year following Completion of Construction, a Renovation Fund to be funded annually by Lessee in the amount of 1.0% of Lessee's total gross revenues derived from the leasehold, will be maintained during the remaining term of the lease. 20 years form the exercise of the Option, 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 on Parcel 8T by 30 years, from a termination date of 6/07/2021 to 6/07/2051. • Option fee of $100,000, payable immediately prior to Board approval of the Option. The option fee payment is non-refundable.
EXTENSION FEE Fee equal to or commensurate with value of the extension	• Option fee shall be credited against the Extension fee upon exercise of the Option.

BOARD POLICY ITEM	***TERMS***
MARKET RATE RENTS Ensure fair market rents	• Minimum annual rent to be reset upon grant of lease extension and every 3 years after exercise of lease extension option equal to 75% of the previous 3 years' average annual total rent paid to County but in no event shall the minimum rent be reduced below that in effect prior to the date of adjustment. • Percentage rents: Apartments: 14.5% of gross receipts. Boat Slips: 25% of gross receipts. Parking: 20% of gross receipts. Cable/internet/satellite/telecommunications: 5% of gross receipts. Dry Storage: 20% of gross receipts. Office: 12.0% of gross receipts. Laundry/dry cleaning: 5% commissions Telephone/vending: 25% commissions Misc.: 5.0% of gross receipts. • Adjustment of fair market percentage rental on the 20th anniversary date of exercise of lease extension option and each 10th anniversary date thereafter for all percentage rents other than apartment rents, which shall remained fixed at 14.5% for the entire remaining term, subject to rent credits provided below. • Lessee shall be entitled to a rent credit in the form of a reduction in the percentage rent factor for: a) apartment rents from 14.5% to 12.7% during the first 20 years following the Completion of Construction; and b) boat slips by 1.7% from 25% to 23.3% for the first 20 years following Completion of Construction.
PARTICIPATION IN SALE AND REFINANCE Secure County participation in sale and refinance of leasehold	• Sale Participation: Greater of (1) The lesser of (a) the amount by which Gross Proceeds exceeds the applicable investment basis or (b) 5% of the Gross Proceeds or (2) 20% of Net Proceeds upon assignment or other direct or indirect transfer of leasehold. Notwithstanding the above, the first sale during the first 10 years after Completion of Construction shall be equal to the greater of (1) The lesser of (a) that amount by which Gross Proceeds exceeds the applicable investment basis or (b) 2% of the Gross Proceeds of (2) 8% of Net Proceeds. All subsequent sales, including sales other than the first sale that occur during the first 10 years after Completion of Construction, shall not be subject to the above exception. • Refinance Participation: 20% of net loan proceeds not reinvested in leasehold.
COUNTY ADMIN. COSTS Ensure payment for County costs for lease extension	• Lessee agrees to reimburse County for costs associated with lease negotiations and Option and lease preparation, including all appraisal and consultant and legal costs.

BOARD POLICY ITEM	*TERMS*
COUNTY INCOME CONTINUITY Ensure County revenue flow during development	• Current minimum rent (in effect one year prior to the commencement of construction) and percentage rent to remain in place during construction. The adjustment of percentage for the apartment rentals shall occur at the Completion of 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 maintain a full-time dockmaster to manage anchorage.
PROMENADE	• Lessee to construct promenade subject to County's reasonable approval of plans.
APPRAISAL	• The Department has obtained an independent appraisal confirming the return to the County from the lease extension and new lease is equivalent to, or greater than, fair market value.
ENTITLEMENTS: SITE COVERAGE, HEIGHT & LAND USES	• Lessee must obtain all regulatory approvals within 12 months of grant of option by Board of Supervisors. If Lessee is unable to obtain all of the necessary approvals within the 12-month requirement, the Director may grant two 6-month extensions if Lessee can demonstrate it has diligently pursued those approvals. The foregoing 12-month (or up to 24-month) period is subject to a litigation and appeal tolling provisions that shall in no event extend past 3 years after the date of the grant of the option. • 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) Ten years prior to expiration of lease, Lessee to structure funding for removal of improvements (at County's election). b) Maintenance standards for improvements to conform to Marina del Rey standards as set forth in the new lease document. 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; and e) enhanced audit and record-keeping standards. d) 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.

COUNTY OF LOS ANGELES
DEPARTMENT OF REGIONAL PLANNING
320 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

EXHIBIT B

MITIGATED NEGATIVE DECLARATION

PROJECT NUMBER: Parcel 8T/Lease No. 4985/R2008-01776/RENVT200800101

1. DESCRIPTION:

Applicant proposes an Option to Amend Lease Agreement with the County of Los Angeles ("Lease"). The proposed Lease provides for the renovation of 205 existing apartment units, the public waterfront promenade, a club house and an approval in concept for the replacement of the marina. The existing apartment buildings will undergo interior and exterior rehabilitation with new facades, refurbished interiors, and renovated hardscaping and landscaping. The number of dwelling units will not be increased, nor will the square footage of the existing buildings. The public promenade will be improved through the installation of new lighting, fencing, and paving materials. The existing marina will be demolished and replaced with a new 207-slip marina that will meet the requirements of the Americans with Disabilities Act and California Department of Boating and Waterways requirements. This Mitigated Negative Declaration has been prepared by the Department of Regional Planning on behalf of the Department of Beaches and Harbors.

2. LOCATION:

14015 and 14035 West Tahiti Way, Marina Del Rey

3. PROPONENT:

David Nagel
NF Marina, LP
6222 Wilshire Boulevard, Suite 650
Los Angeles, CA 90048

4. FINDINGS OF NO SIGNIFICANT EFFECT:
BASED ON THE ATTACHED INITIAL STUDY, IT HAS BEEN DETERMINED THAT THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT WITH MODIFICATION AS IDENTIFIED ON THE PROJECT CHANGES/CONDITIONS FORM INCLUDED AS PART OF THE INITIAL STUDY.

5. **LOCATION AND CUSTODIAN OF RECORD OF PROCEEDINGS**

THE LOCATION AND CUSTODIAN OF THE RECORD OF PROCEEDINGS ON WHICH ADOPTION OF THIS MITIGATED NEGATIVE DECLARATION IS BASED IS: DEPARTMENT OF REGIONAL PLANNING, 320 WEST TEMPLE STREET, LOS ANGELES, CA 90012

PREPARED BY: *Anthony Curzi* AC

DATE: *October 8, 2009*

STAFF USE ONLY

LEASE PARCEL: 8T/LEASE NO. 4985
PROJECT NUMBER: R2008-01776
CASES: RENVT200800101

*** * * * INITIAL STUDY * * * ***

COUNTY OF LOS ANGELES
DEPARTMENT OF REGIONAL PLANNING

GENERAL INFORMATION

I.A. Map Date: *09/24/2008* Staff Member: *Anthony Curzi*

Thomas Guide: *Page 701/702, Grid J1/A1* USGS Quad: *Venice*

Location: *14015 and 14035 West Tahiti Way, Marina del Rey, County of Los Angeles Marina Del Rey Lease Parcel: 8T Assessors parcels: 4224-002-900, 8940-759-849, 8940-370-029*

Description of Project: *See Project Description Attachment*

Gross Area of Site: *85,640 sf structure footprints, 92,850 sf paving and hardscape, 20,960 sf landscaping and 302,100 sf submerged land.*

Environmental Setting:

a. *The project site is located in a developed area in Marina del Rey in the County of Los Angeles. The approximately 11.5 acre site is currently developed with two linear, 3-story apartment buildings (including at-grade parking) and a two-story clubhouse with attached penthouse and pool located between the two apartment buildings. A total of 205 residential units are located on the site. The site and surrounding area contain landscaping, including ornamental trees. Specifically, vegetation consists of largely ornamental non-native landscaping typically associated with residential and parking uses, including King and Queen Palms, Mexican Fan Palms and an umbrella tree. (The King and Queen Palms would be boxed and replanted as feasible). The land portion of the project site is relatively flat.*

The site also contains 230 boat slips (plus 11 end ties), located directly north of the apartment buildings. The Boat slips are located in Marina del Rey Basin B. The Marina del Rey Channel and Ballona Wetlands are located south of the site.

Zoning: *SP (Specific Plan)*

General Plan: *N/A*

Community/Area Wide Plan: *R III (Residential III-35 du/ac—Marina Del Rey Community Plan)*

Major projects in area:

Project Number	Description & Status
R2006-03647	*Neptune Marina Parcel 10R in the northwest corner of Basin B. Proposed construction of a 400-unit apartment complex, and 174 boat slips (pending).*
R2006-03652	*Neptune Marina Parcel FF, in the Southwest corner of Basin C. Proposed development of a 126-unit apartment complex (pending).*
R2006-03643 / R2006-03644	*Woodfin Suite Hotel and Timeshare Resort located on parcel 9U North (proposed construction of 288 hotel and timeshare suites) and the development of a public wetland and upland park on the southern portion of Parcel 9U (pending).*
TR 067861	*Nineteen story building with 136 timeshare units and 152 hotel rooms (pending).*
TR 068098	*Four condominium buildings with 216 condominium units (in same development with 262 for-lease units) (pending).*

NOTE: For EIRs, above projects are not sufficient for cumulative analysis.

REVIEWING AGENCIES

Responsible Agencies

- ☐ None
- ☐ Regional Water Quality Control Board
  - ☐ Los Angeles Region
  - ☐ Lahontan Region
- ☒ Coastal Commission
- ☒ Army Corps of Engineers
- ☐ _____

Trustee Agencies

- ☐ None
- ☒ State Fish and Game
- ☐ State Parks
- ☐ _____
- ☐ _____

Special Reviewing Agencies

- ☐ None
- ☐ Santa Monica Mountains Conservancy
- ☐ National Parks
- ☐ National Forest
- ☐ Edwards Air Force Base
- ☐ Resource Conservation District of the Santa Monica Mtns.
- ☒ City of Los Angeles
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____
- ☐ _____

Regional Significance

☒ None

☐ SCAG Criteria

☐ Air Quality

☐ Water Resources

☐ Santa Monica Mtns Area

☐ Walnut Valley Water District

County Reviewing Agencies

☐ Subdivision Committee

☒ Public Works: Traffic & Lighting, Geotechnical & Materials Engineering, Environmental Programs, Waterworks/Sewer Maintenance

☒ Public Health: Environmental Hygiene

☐ Sanitation Districts_____

☒ Sheriff and Fire Department

☒ Beaches and Harbors Department

IMPACT ANALYSIS MATRIX

CATEGORY	FACTOR	Pg	Less than Significant Impact/No Impact	Less than Significant Impact with Project Mitigation	Potentially Significant Impact	Potential Concern
			ANALYSIS SUMMARY (See individual pages for details)			
HAZARDS	1. Geotechnical	6	☒	☐	☐	
	2. Flood	8	☒	☐	☐	
	3. Fire	10	☒	☐	☐	
	4. Noise	12	☐	☒	☐	*Construction within the Marina – standard mitigation*
RESOURCES	1. Water Quality	14	☐	☒	☐	*Construction within the Marina – standard mitigation*
	2. Air Quality	16	☐	☒	☐	*Construction – standard mitigation*
	3. Biota	19	☐	☒	☐	*Construction within the Marina, marine life impacts*
	4. Cultural Resources	22	☒	☐	☐	
	5. Mineral Resources	24	☒	☐	☐	
	6. Agriculture Resources	25	☒	☐	☐	
	7. Visual Qualities	26	☒	☐	☐	
SERVICES	1. Traffic/Access	28	☒	☐	☐	
	2. Sewage Disposal	30	☒	☐	☐	
	3. Education	32	☒	☐	☐	
	4. Fire/Sheriff	33	☒	☐	☐	
	5. Utilities	34	☐	☒	☐	*Recycling – standard mitigation.*
OTHER	1. General	36	☒	☐	☐	
	2. Environmental Safety	37	☒	☐	☐	
	3. Land Use	39	☒	☐	☐	
	4. Pop./Hous./Emp./Rec.	40	☒	☐	☐	
	Mandatory Findings	42	☒	☐	☐	

Environmental Finding:

FINAL DETERMINATION: On the basis of this Initial Study, the Department of Regional Planning finds that this project qualifies for the following environmental document:

☐ NEGATIVE DECLARATION, inasmuch as the proposed project will not have a significant effect on the environment.

An Initial Study was prepared on this project in compliance with the State CEQA Guidelines and the environmental reporting procedures of the County of Los Angeles. It was determined that this project will not exceed the established threshold criteria for any environmental/service factor and, as a result, will not have a significant effect on the physical environment.

☒ MITIGATED NEGATIVE DECLARATION, inasmuch as the changes required for the project will reduce impacts to insignificant levels (see attached discussion and/or conditions).

An Initial Study was prepared on this project in compliance with the State CEQA Guidelines and the environmental reporting procedures of the County of Los Angeles. It was originally determined that the proposed project may exceed established threshold criteria. The applicant has agreed to modification of the project so that it can now be determined that the project will not have a significant effect on the physical environment. The modification to mitigate this impact(s) is identified on the Project Changes/Conditions Form included as part of this Initial Study.

☐ ENVIRONMENTAL IMPACT REPORT*, inasmuch as there is substantial evidence that the project may have a significant impact due to factors listed above as "significant."

☐ At least one factor has been adequately analyzed in an earlier document pursuant to legal standards, and has been addressed by mitigation measures based on the earlier analysis as described on the attached sheets (see attached Form DRP/IA 101). The EIR is required to analyze only the factors not previously addressed.

Reviewed by:_____ Date: _____

Approved by:_____ Date: _____

☐ This proposed project is exempt from Fish and Game CEQA filling fees. There is no substantial evidence that the proposed project will have potential for an adverse effect on wildlife or the habitat upon which the wildlife depends. (Fish & Game Code 753.5).

☐ Determination appealed--see attached sheet.

*NOTE: Findings for Environmental Impact Reports will be prepared as a separate document following the public hearing on the project.

HAZARDS - 1. Geotechnical

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Is the project site located in an active or potentially active fault zone, Seismic Hazards Zone, or Alquist-Priolo Earthquake Fault Zone?

The project site is not located within a currently established Alquist-Priolo Earthquake Fault Zone. No active or potentially active faults are known to pass directly beneath the project site.

b.	☐	☒	☐	Is the project site located in an area containing a major landslide(s)?

The site is located in a developed area in Marina del Rey. The site is surrounded by residential and commercial land uses. The land portion of the site is relatively flat. According to the Los Angeles County Seismic Safety Element, the project site is not within an area identified as having a potential for landslides.

c.	☐	☒	☐	Is the project site located in an area having high slope instability?

The project site is located in a developed portion of Marina del Rey. The site, which is occupied with residential uses and associated parking areas, is relatively flat as is the land surrounding the site. Therefore the site is not located in an area having high slope instability.

d.	☐	☐	☒	Is the project site subject to high subsidence, high groundwater level, liquefaction, or hydrocompaction?

Groundwater: *The site is occupied with apartment buildings, associated parking, and boat slips. Under the proposed project, renovations would be made to the existing residential uses and the public waterfront promenade as well as the boat slips. Only minor earthmoving would occur in connection with landscaping; the landside portion of the project involves renovation, not new construction and there are no below grade structures. Implementation of the proposed project is anticipated to result in less than significant impacts to groundwater.*

Liquefaction: *The project site is located in a developed portion of Marina del Rey. According to the Marina del Rey Land Use Plan of the County of Los Angeles General Plan, Marina del Rey is considered to be highly susceptible to liquefaction. The Los Angeles General Plan Seismic Safety Element includes Marina del Rey in a "Potential Liquefaction Zone." These areas are considered to be subject to liquefaction, acceleration to active landslides, and original movement of rock material.*

As stated above, the site is relatively flat. The site is occupied with residential uses that were constructed in 1971. The channel portion of the site is occupied with boat slips. Under the proposed project renovations would be made to the existing residential uses and the boat slips would be replaced. No substantial ground-breaking activities would occur and no new structures would be introduced onto the landside of the site. Consequently, no significant changes to existing site conditions or uses, or increase in population exposed to potential hazards, would occur with the proposed project. The existing land mass within the marina area has been covered with fill material from channel construction and developed with residential and commercial buildings similar to the residential building that occupies the site.

Subsidence and hydrocompaction: *As stated above, the landside of the site is occupied with residential uses that were constructed in 1971. The channel portion of the site is occupied with boat slips. Under the proposed project, renovations would be made to the existing residential uses and the boat slips would be replaced. No substantial ground-breaking activities would occur and no new structures would be introduced onto the*

landside of the site.

e. ☐ ☐ ☒ Is the proposed project considered a sensitive use (school, hospital, public assembly site) located in close proximity to a significant geotechnical hazard?

The project would include the renovation of a residential use historically located on the project site, which can be considered a sensitive use. The project site is located in an area subject to liquefaction. The project would renovate existing buildings resulting in the same number of units as currently exist; buildings would be brought up to current codes as applicable. Consequently, no significant changes to existing site conditions or uses, or increase in population exposed to potential hazards, would occur with the proposed project.

f. ☐ ☒ ☐ Will the project entail substantial grading and/or alteration of topography including slopes of more than 25%?

Renovation/construction activities proposed under the project would not include substantial grading and excavation at the site (only minor grading in connection with landscaping). The site is relatively flat, is currently paved and is occupied with structures and parking areas. The proposed project would not alter the topography and would not require the import of fill.

g. ☐ ☒ ☐ Would the project 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?

Under the proposed project, no substantial ground-breaking activities would occur. Renovations would occur to the existing residential units and to the existing public waterfront promenade. Existing boat slips would also be replaced. The project would also include an Option to Amend Lease Agreement for the project site. Consequently, no significant changes to existing site conditions or uses or increase in population exposed to potential hazards would occur with the proposed project.

h. ☐ ☒ ☐ Other factors?_____

STANDARD CODE REQUIREMENTS

☐ Building Ordinance No. 2225 C Sections 308B, 309, 310 and 311 and Chapters 29 and 70.

☐ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Lot Size ☐ Project Design ☒ Approval of Geotechnical Report by DPW

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) on, or be impacted by, **geotechnical** factors?

☐Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

HAZARDS - 2. Flood

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Is a major drainage course, as identified on USGS quad sheets by a dashed line, located on the project site?

A portion of the project site is located in Marina del Rey Basin B and is occupied by 230 boat slips (plus 11 end ties). Under the proposed project, the boat slips would be improved and replaced with 207 slips (plus 11 end ties), resulting in an overall reduction of boat slips. The landside portion of the site is developed with urban residential uses.

b.	☐	☐	☒	Is the project site located within or does it contain a floodway, floodplain, or designated flood hazard zone?

The project site is located in a developed area of Marina del Rey. The number of residential units on-site would not increase. The first residential level is located above the ground floor. According to the LA County Flood Zone Map, the project site and the surrounding area are identified as within a flood zone. Additionally, the County of Los Angeles Safety Element identifies the unincorporated area of Marina del Rey at risk for tsunami hazards. The proposed project would comply with any applicable County of Los Angeles regulations related to the renovation of a development located in flood zones. http://planning.lacounty.gov/generalplan/gp/gp2008/gp_web/gp-web-ch08.pdf; accessed November 1, 2008.

c.	☐	☒	☐	Is the project site located in or subject to high mudflow conditions?

The project site is located within an existing developed area and is surrounded by residential and commercial uses, as well as boat slips. Due to the urbanized nature of the site and the surrounding area, as well as the site's topography, which does not include any significant slopes, the proposed project would not be subject to mud flow hazards.

d.	☐	☒	☐	Could the project contribute or be subject to high erosion and debris deposition from run off?

The project site is currently paved and developed with residential and parking uses. No new structures would be introduced onto the landside of the site under the proposed project. Proposed renovations would not include substantial ground-breaking activities, or substantial alteration to the footprint of the existing structures. The footprint of the clubhouse would be reduced in size to accommodate a widened driveway, but alterations would be minimal and are not expected to have a significant impact. The applicant is required to comply with applicable permit requirements through the incorporation of design features and use of best management practices (BMPs) appropriate and applicable to the project. All development shall include measures consistent with the Santa Monica Bay Restoration Plan and the programs of the Department of Public Works to reduce contaminated runoff into bay and Ballona Creek waters, including filtration of low flows, control and filtration of runoff from parking lots and roofs, reduction of impervious surfaces, provision of pump out facilities, and other necessary measures to reduce harmful pollutants from storm drain waters prior to these waters entering the marina. The County of Los Angeles will review the project plans for compliance. Accordingly, less than significant impacts are anticipated.

e.	☐	☒	☐	Would the project substantially alter the existing drainage pattern of the site or area?

The proposed development would not include substantial grading and excavation activities, or substantially alter the footprint of the existing structures. The footprint of the clubhouse would be reduced in size to accommodate a widened driveway, but alterations would be

minimal and are not expected to have a significant impact. Additionally, no new structures would be introduced to the landside of the site, which is currently occupied with residential and parking uses. The proposed project would include renovations to existing uses, and would also include an Option to Amend Lease Agreement for the project site.. Included in these proposed renovations is the replacement of existing boat slips located on the site, which would not substantially alter the existing drainage pattern of the site. The project would not substantially change the percentage of impervious surface area on the project site, and therefore, would not substantially alter the existing drainage pattern on the project site.

f. ☐ ☒ ☐ Other factors (e.g., dam failure)? *The Los Angeles County Seismic Safety Element indicates that the project site is not located within the inundation boundaries of, or up gradient of, dams or reservoirs.*

STANDARD CODE REQUIREMENTS

☐ Building Ordinance No. 2225 C Section 308A ☐ Ordinance No. 12,114 (Floodways)

☐ Approval of Drainage Concept by DPW

☐ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Lot Size ☐ Project Design

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) on, or be impacted by **flood (hydrological)** factors?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

HAZARDS - 3. Fire

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Is the project site located in a Very High Fire Hazard Severity Zone (Fire Zone 4)? *The project site is located within a developed area of Los Angeles County that is not designated a Very High Fire Hazard Severity Zone (Fire Zone 4). No increase in units is proposed on the site. As such. no impact would occur, and no mitigation measures would be required. (Source: LA County Safety Element – Wildland and Urban Fire Hazards Map.)*
b.	☐	☒	☐	Is the project site in a high fire hazard area and served by inadequate access due to lengths, widths, surface materials, turnarounds or grade? *The project site is not located in a high fire hazard area. The project site is developed with adequate access for fire fighting equipment. Project access would not change under project implementation. No new structures would be introduced onto the landside of the site; no additional units are proposed. The proposed project would include renovations to existing residential units and the waterfront promenade. Boat slips would be replaced under the proposed project.*
c.	☐	☒	☐	Does the project site have more than 75 dwelling units on a single access in a high fire hazard area? *The project proposes renovations to existing residential units. No change in the number of units (205 units) would occur under the proposed project. The project site is not served by a single access and the project site is not located within a high fire hazard area.*
d.	☐	☒	☐	Is the project site located in an area having inadequate water and pressure to meet fire flow standards? *The water system serving the project site is maintained by the Los Angeles County Waterworks District # 80. District # 80 serves the Marina del Rey area, which includes the project site. The proposed project would include renovations to existing residential units. No new structures or new residential units would be constructed under the proposed project. The site is not located in an area having inadequate water and pressure to meet fire flow standards. The applicant would comply with all applicable regulations and policies of Waterworks District #80 and the Los Angeles County Fire Department (LACFD).*
e.	☐	☒	☐	Is the project site located in close proximity to potential dangerous fire hazard conditions/uses (such as refineries, flammables, explosives manufacturing)? *The project site is not located in close proximity to potential dangerous fire hazard conditions or uses. The project site is surrounded by various residential uses and boat slip marinas. No industrial uses are located in the immediate vicinity of the project site.*
f.	☐	☒	☐	Does the proposed use constitute a potentially dangerous fire hazard? *The proposed project would include renovations to existing residential uses and to the public waterfront promenade. Additionally, the proposed project would include the replacement of the existing boat slips, and would also include an Option to Amend Lease Agreement for the project site.. No new uses would be introduced to the site. The proposed uses do not constitute a potentially dangerous fire hazard. This would be considered a less than significant impact.*
g.	☐	☐	☐	Other factors?_____

STANDARD CODE REQUIREMENTS

☐ Water Ordinance No. 7834 ☐ Fire Ordinance No. 2947 ☐ Fire Regulation No. 8

☐ Fuel Modification/Landscape Plan

☐ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Project Design ☐ Compatible Use

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) on, or be impacted by **fire hazard** factors?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

HAZARDS - 4. Noise

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Is the project site located near a high noise source (airports, railroads, freeways, industry)?

The project site is not located in close proximity to any high noise sources such as airports, railroads, freeways or industrial uses. The immediate area includes numerous boat slips characteristic of a marina. Residential and commercial uses are located in the area surrounding the site. The site is approximately 4 miles north of Los Angeles International Airport and not within the flight path. The project involves renovations to, and continuation of, existing uses, and would also include an Option to Amend Lease Agreement for the project site..

b.	☒	☐	☐	Is the proposed use considered sensitive (school, hospital, senior citizen facility) or are there other sensitive uses in close proximity?

The project proposes renovations to residential uses, which are generally considered sensitive uses. No changes to this historically established use are proposed. Existing sensitive uses in close proximity to the project site include additional residential uses located adjacent to the site immediately to the north and single- and multi-family residences to the west, south and east.

c.	☐	☒	☐	Could the project substantially increase ambient noise levels including those associated with special equipment (such as amplified sound systems) or parking areas associated with the project?

The use of construction equipment during renovation activities would have the potential to temporarily substantially increase ambient noise levels in the surrounding area (see below). Noise generated by renovation activities would be required to comply with the County of Los Angeles Noise Ordinance and all applicable codes and regulations for noise control.

The site is currently occupied with residential uses and boat slips. Existing noise sources at the site include noise associated with residential uses and noise typically associated with the operation of boats. On-going noise would result from the continued operation of residential uses and boating-related uses with no substantial changes to these sources. The proposed project would reduce the number of boat slips by 23, which would result in a reduction in the noise associated with the operation of boats.

d.	☐	☒	☐	Would the project result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels without the project?

Noise generated by construction/renovation activities would be required to comply with the County of Los Angeles Noise Ordinance and all applicable codes and regulations for noise control. However, the noise generated by pile driving associated with the boat slip renovations would temporarily substantially increase noise levels. Pile driving would occur in three phases, each phase would result in drilling 36 piles; each pile takes about 30 minutes to drill, with up to 5 piles drilled per day. Noise levels could reach as high as 105 dBA as each pile is struck. The project would use noise shrouds that would reduce noise levels about 20 dBA below this level. Noise shrouds together with the short duration of this impact result in this impact being considered less than significant. During project operation, noise associated with the continued operation of residential uses and boats would occur.

e.	☐	☒	☐	Other factors? _____

STANDARD CODE REQUIREMENTS

☒ Noise Ordinance No. 11,778 ☐ Building Ordinance No. 2225--Chapter 35

☒ **MITIGATION MEASURES /** ☐ **OTHER CONSIDERATIONS**

☐ Lot Size ☐ Project Design ☐ Compatible Use

The project applicant shall ensure that noise shrouds are used during pile driving activities.

Any stationary, or semi-stationary piece of equipment that operates under full power for more than sixty minutes per day shall have a temporary ¾ inch plywood screen if there is a direct line of sight from the equipment to any potentially occupied residential bedroom window.

Noisy construction activity should be restricted to between the hours of 8:00 a.m. to 5:00 p.m. in order to minimize disturbance on surrounding residences and commercial land; pile driving shall be limited to the hours between 8:00 a.m. and 4:30 p.m.

The contractor shall ensure that all construction equipment, fixed and mobile, is regularly maintained and in proper operating condition and fitted with standard silencing devices. Proper engineering noise controls shall be implemented when necessary on fixed equipment.

Engine idling shall be minimized to reduce noise (as well as emissions of particulate matter and greenhouse gases).

Noise levels of mobile sources will be monitored periodically as part of the Mitigation Monitoring and Reporting Program.

The applicant will notify residents in the surrounding area (within 1,000 feet of construction activity) of the anticipated duration of construction and anticipated activities prior to the start of construction. The notice will provide a phone number where neighbors can register questions and complaints. A log of questions and complaints will be maintained and reasonable efforts shall be made to respond to questions and address complaints.

The applicant shall post a notice at the construction site indicating the type of project, duration of construction activities and the phone number where questions and complaints can be registered.

Staging and delivery areas shall be located as far as feasible away from existing residences. Deliveries and hauling activities shall be scheduled between 9:00 a.m. and 4:00 pm. to the extent feasible to minimize disturbance of residents in the area.

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) on, or be adversely impacted by **noise**?

☐ Potentially significant ☒ Less than significant with project mitigation ☐ Less than significant/No impact

RESOURCES - 1. Water Quality

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Is the project site located in an area having known water quality problems and proposing the use of individual water wells? *No water wells are located on the site. The water system serving the project site is maintained by the Los Angeles County Waterworks District #80. District #80 serves the Marina del Rey area, which includes the project site. The proposed project would include renovations to existing residential uses and to the adjacent waterfront promenade in addition to the replacement of boat slips, and would also include an Option to Amend Lease Agreement for the project site.. No new uses would be included under the proposed project. Therefore, the project is not proposing the use of local groundwater sources or individual water wells. As such, a less than significant impact would occur and no mitigation measures would be required. The Marina has water quality issues; Best Management Practices and compliance with NPDES would be required and implemented during construction.*
b.	☐	☒	☐	Will the proposed project require the use of a private sewage disposal system? *The County of Los Angeles Department of Public Works currently provides sanitary sewer service to the project site and would continue to serve the project. The project would discharge to the existing sewage system and the number of residential units and anticipated sewage generation would not change; no private sewage disposal system is required. (Boat wastewater – which is minor -- would go into the sanitary sewer, which does not occur under existing conditions.) Impacts are anticipated to be less than significant and no mitigation would be necessary.*
	☐	☒	☐	If the answer is yes, is the project site located in an area having known septic tank limitations due to high groundwater or other geotechnical limitations *or* is the project proposing on-site systems located in close proximity to a drainage course? *Not applicable (see above).*
c.	☐	☒	☐	Could the project's associated construction activities significantly impact the quality of groundwater and/or storm water runoff to the storm water conveyance system and/or receiving water bodies? *Implementation of the proposed project would include renovations to existing residential units, the existing public waterfront promenade and replacement of the existing boat slips. The proposed project would comply with applicable regional policies, permits and regulations. The County of Los Angeles will review the project plans for compliance with NPDES requirements as part of the project review and approval process. (See also Hazards – Flood 2. d. above.)*
d.	☐	☒	☐	Could the project's post-development activities potentially degrade the quality of storm water runoff and/or could post-development non-storm water discharges contribute potential pollutants to the storm water conveyance system and/or receiving bodies? *The developed site is occupied with residential uses and associated uses. No new structures would be introduced onto the landside of the site under the proposed project. The proposed development would not substantially change the percentage of impervious surface area on the project site, introduce new uses or expand the existing building footprint. Additionally, the proposed project would not substantially increase storm water runoff from the site. The project shall comply with the California Regional Water Quality Control Board and the County National Pollutant Discharge Elimination System (NPDES)*

permit discharge requirements.

e. ☐ ☒ ☐ Other factors? _____

STANDARD CODE REQUIREMENTS

☐ Industrial Waste Permit ☐ Health Code Ordinance No. 7583, Chapter 5

☐ Plumbing Code Ordinance No. 2269 ☒ NPDES Permit Compliance (DPW)

☒ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Lot Size ☐ Project Design

To reduce impacts to water quality during construction, the following actions included in the project and BMPs would be implemented:

- *Silt curtains shall be deployed when practicable to contain the spread of turbid waters beyond the project area.*
- *Spill kits and cleanup materials will be available at all locations of pile driving. Equipment used shall be leak-free.*
- *Hammers and other hydraulic attachments will be protected from run-on and run-off by placing them on plywood and covering them with plastic or a comparable material prior to the onset of rain.*
- *Sandbag barriers will be placed around the staging areas to control sediment and prevent run-off.*
- *Employees and subcontractors will implement the appropriate measures for storage and use of materials and equipment.*
- *All debris and trash shall be disposed in appropriate trash containers on land or on construction barges by the end of each construction day.*
- *Discharge of hazardous materials into the study area shall be prohibited.*
- *Any dredge material will be tested and disposed of in accordance with applicable regulations -- at sea if clean or at an appropriate landfill if found to be contaminated.*

CONCLUSION

Considering the above information, could the Project have a significant impact (individually or cumulatively) on, or be impacted by, **water quality** problems?

☐ Potentially significant ☒ Less than significant with project mitigation ☐ Less than significant/No impact

RESOURCES - 2. Air Quality

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Will the proposed Project exceed the State's criteria for regional significance (generally (a) 500 dwelling units for residential uses or (b) 40 gross acres, 650,000 square feet of floor area or 1,000 employees for nonresidential uses)?

The proposed project would include renovations to existing apartment units and the public waterfront promenade, and would also include an Option to Amend Lease Agreement for the project site. The project would not increase units or change the existing density on the site; boat slips would also be replaced and the total number of slips would be reduced.

b.	☐	☒	☐	Is the proposal considered a sensitive use (schools, hospitals, parks) and located near a freeway or heavy industrial use?

The proposed project would include the renovation of existing apartment units as well as the replacement of boat slips in Basin B in Marina del Rey, and would also include an Option to Amend Lease Agreement the project site. The site is currently occupied with apartment buildings that were constructed in 1971. The site is surrounded by residential and commercial uses. No freeway or heavy industrial use is located in the immediate area.

c.	☐	☒	☐	Will the project increase local emissions to a significant extent due to increased traffic congestion or use of a parking structure, or exceed AQMD thresholds of potential significance per Screening Tables of the CEQA Air Quality Handbook?

The site is currently occupied with multi-family residential uses and associated parking. Implementation of the proposed project would not increase the number of residential units or introduce new structures onto the landside of the site. Existing boat slips would also be replaced under the proposed project. Specifically, boat slips would be reduced from 230 slips (plus 11 end ties) to 207 slips (plus 11 end ties) and associated trip generation would be similarly reduced. Despite the reduction in the number of boat slips, in order to comply with new County Code parking ratio requirements, the project would use compact spaces to add 3 additional parking spaces to the existing parking area of the site (increasing the number of parking stalls from 484 to 487). While the number of spaces would be increased, the number of boat slips would be reduced. Therefore, implementation of the proposed project is not anticipated to increase local emissions due to vehicle or boat traffic.

d.	☐	☒	☐	Will the project generate or is the site in close proximity to sources, which create obnoxious odors, dust, and/or hazardous emissions?

The project site is not located in close proximity to sources of obnoxious odors, dust, and/or hazardous emissions; surrounding land uses are residential and commercial in nature. During renovation/construction, the project could periodically generate minor odors, dust and/or hazardous emissions (for example paint fumes). No obnoxious odors, dust and/or hazardous emissions would be generated during project operation. This would be considered a less than significant impact with mitigation.

e.	☐	☒	☐	Would the project conflict with or obstruct implementation of the applicable air quality plan?

The project involves renovation of residential uses and replacement of boat slips in three phases; demolition debris from the boat docks and apartments would require 1 to 4 trucks removing debris (4 to 8 one way truck trips) each day (with a peak of about 9 loads per day or 18 one-way truck trips) during the demolition period of each phase (about four to

five weeks). Material delivery would result in about 2 to 4 deliveries per day during boat slip assembly and apartment renovation (approximately five to six months per phase). Project implementation would include the continued operation of residential uses that occupy the site, however as apartments and boat slips are renovated in three phases, approximately one third of the apartments (68 units) and boat slips (76 boat slips) would be unoccupied (with associated trips and air emissions not occurring on the site) as the renovations occur. On completion, no change in use or density would occur under the proposed project. Therefore, project implementation is expected to be compliant with the AQMP.

f. ☐ ☒ ☐ Would the project violate any air quality standard or contribute substantially to an existing or projected air quality violation?

See response to e. above; the landside of the project would involve renovation activities only. The marina side would include boat slip replacement. Activities would be split into three phases, with net daily activity below levels that could exceed SCAQMD thresholds.

g. ☐ ☒ ☐ Would the project 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)?

The project site is located within the South Coast Air Basin, which is currently in non-attainment for ozone (which is not directly emitted into the air but instead forms through NO_x and VOCs), PM_{10} and $PM_{2.5}$. See above discussion of construction activity; the net increase in emissions would be below levels that SCAQMD would consider to be cumulatively considerable.

h. ☐ ☒ ☐ Other factors: _____

STANDARD CODE REQUIREMENTS

☐ Health and Safety Code Section 40506

☒ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Project Design ☐ Air Quality Report

To reduce emissions during construction, the following actions included in the project and BMPs would be implemented:

- *Construction parking shall be configured to minimize traffic interference.*
- *Construction activities that affect traffic flow on the arterial system shall be scheduled at off-peak hours as permitted.*
- *Truck deliveries will be consolidated when possible.*
- *Maintain equipment and vehicle engines in good condition and in proper tune according to manufacturers' specifications and per SCAQMD rules, to minimize exhaust emissions.*
- *Suspend use of construction equipment during second stage smog alerts.*
- *Use electricity from power poles rather than temporary diesel- or gasoline powered generators.*
- *Use methanol- or natural gas-powered mobile equipment and pile drivers instead of diesel if readily available at competitive prices.*
- *Use propane- or butane-powered on-site mobile equipment instead of gasoline if readily available at*

competitive prices.

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) on, or be impacted by, **air quality**?

☐ Potentially significant ☒ Less than significant with Project mitigation ☐ Less than significant/No impact

RESOURCES - 3. Biota

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Is the project site located within a Significant Ecological Area (SEA), SEA Buffer, or coastal Sensitive Environmental Resource (ESHA, etc.), or is the site relatively undisturbed and natural?

The project site is not located within a SEA, SEA Buffer, or coastal Sensitive Environmental Resource area. SEA #29 (Ballona Creek) is located approximately one mile to the southeast. The project site, which is located within a developed area of Marina del Rey, has been developed with residential uses since 1971 and contains no areas that could be considered undisturbed. A survey of the submerged land where the boat slips are located was undertake, and neither eel grass nor Caulerpa were detected. The survey is available for review at Regional Planning, Environmental Review Section.

b.	☐	☒	☐	Will grading, fire clearance, or flood related improvements remove substantial natural habitat areas?

No natural habitat areas occur on the project site. The project site is occupied with apartment buildings, associated parking and boat slips. A survey of the submerged land where the boat slips are located was undertake, and neither eel grass nor Caulerpa were detected. The proposed project would not introduce any new structures onto the landside of the site, significantly alter the footprint of the structures or include substantial grading activities. The footprint of the clubhouse would be reduced in size to accommodate a widened driveway, but alterations would be minimal and are not expected to have a significant impact. The project site is presently developed and surrounded by residential and commercial uses; implementation of the proposed project would not remove substantial natural habitat areas.

c.	☐	☒	☐	Is a major drainage course, as identified on USGS quad sheets by a blue, dashed line, located on the project site?

The boat slips are located in Marina del Rey Basin B, immediately north of the apartment buildings located on the site. As such, a less than significant impact would occur and no mitigation measures would be required

d.	☐	☒	☐	Does the project site contain a major riparian or other sensitive habitat (e.g., coastal sage scrub, oak woodland, sycamore riparian woodland, wetland, etc.)?

The project site, which is presently fully developed, does not contain a major riparian or other sensitive habitat. No coastal sage scrub, oak woodland, sycamore riparian woodland or wetland habitats are present on-site. Additionally, no sensitive habitats are present in the immediate area. A survey of the submerged land where the boat slips are located was undertaken and neither eel grass nor Caulerpa were detected.

e.	☐	☒	☐	Does the project site contain oak or other unique native trees (specify kinds of trees)?

The project site contains no live oak trees. Vegetation consists of largely ornamental non-native landscaping typically associated with residential and parking uses, including King and Queen Palms (proposed to be boxed and replanted as feasible), Mexican Fan Palms and an umbrella tree. Under the proposed project, appropriate drought tolerant landscaping would be provided.

f. ☐ ☒ ☐ Is the project site habitat for any known sensitive species (federal or state listed endangered, etc.)?

The project site, which is located within a developed area in Marina del Rey, does not contain habitat for any known sensitive species. The project site is currently developed with residential uses, associated parking, and boat slips. The apartment buildings have occupied the site since 1971. A survey of the submerged land where the boat slips are located was undertaken and neither eel grass nor Caulerpa were detected; in addition a reconnaissance to identify potential sensitive birds was undertaken and none were observed.

g. ☐ ☒ ☐ Other factors (e.g., wildlife corridor, adjacent open space linkage)?

☒ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Lot Size ☐ Project Design ☐ Oak Tree Permit ☐ ERB/SEATAC Review

To ensure that the project will not adversely affect eelgrass beds or result in the dissemination of invasive algae, the applicant will conduct pre-construction surveys for eelgrass no more than 60 days prior to construction and for Caulerpa no less than 30 days and no more than 90 days prior to construction during the period of active growth (i.e., March 1 to October 31). It is anticipated that neither species will be detected in the study area. In the unlikely event that eelgrass is detected, focused dive surveys will be performed to map the location and area of eelgrass beds and determine turion densities within patches. Locations of beds will be mapped using a GPS unit, and areal coverage will be determined by measuring the dimensions of the beds with transect tapes. If eelgrass is detected, the following Best Management Practices (BMPs) would be implemented to minimize adverse effects to eelgrass:

• The locations of eelgrass beds will be marked with buoys by the project marine biologists prior to conducting renovations;

• The project marine biologist will meet with construction crews to show areas where eelgrass occurs and discuss BMPs;

• Vessel operation in the vicinity of eelgrass will be limited to tides higher than +2 to +4 feet mean lower low water (MLLW); and

• Vessels shall avoid anchoring over eelgrass beds.

Upon completion of dock renovations, a post-project eelgrass survey will be conducted within 30 days to evaluate impacts to eelgrass. The survey will be repeated annually for two years to quantify the extent of eelgrass loss due to shading effects as required by the Southern California Eelgrass Mitigation Policy (NMFS 1991).

If losses of eelgrass is observed at the end of the two-year monitoring period, then the applicant will be required to mitigate for losses at a ration of 1.2 to1 either on site or at another site within Marina del Rey.

In the unlikely event that Caulerpa are identified within the study area during preconstruction surveys, NMFS or CDFG contacts will be notified within 24 hours of the discovery. Within 96 hours of notification, the extent of the infestation will be documented. Caulerpa eradication will be performed using the best available technologies under the guidance of NMFS and CDFG contacts. Following eradication, surveys will be conducted to determine the effectiveness of treatments prior to approval of the project.

As required by the Migratory Bird Treaty Act and California Fish and Game Code Section 3500 (et seq.) it is recommended that pre-construction nesting bird surveys be conducted no more than 72 hours prior to the

commencement of construction activities. The applicant will be required to include the following measures to ensure that there is no substantial adverse effect on any nesting habitats or wildlife foraging areas within the study area for residential and migratory species.

• A qualified biologist will conduct a nesting bird and raptor survey prior to any vegetation clearing activities. For these purposes, a qualified biologist would be any individual with sufficient education and field experience in local California ecology and biology to adequately identify plant and wildlife species. Surveys will be performed no earlier than 72 hours prior to the initiation of construction activities to document that no occupied passerines and/or raptor nests would be impacted.

• Vegetation clearing activities, if applicable, will be completed prior to the onset of the avian breeding season beginning in March, to the maximum extent practicable, in order to greatly reduced or avoid adverse impacts to avian species. The clearing of vegetation prior to commencement of the development activities would deter the majority of individuals from selecting nesting or breeding sites within the development areas.

• Upon detection of an active nest within the study area or on immediately adjacent lands, a buffer zone from occupied nests will be maintained during construction activities. Once it is determined that nesting ceased, the buffer may be removed.

In the event that noise-sensitive biota, specifically special status avian and marine mammalian species, are observed in the project area during preconstruction surveys and construction monitoring, the use of acoustic shrouds can be employed around the pile driving rig to reduce noise levels.

CONCLUSION

Considering the above information, could the project leave a significant impact (individually or cumulatively) on **biota**?

☐ Potentially significant ☒ Less than significant with project mitigation ☐ Less than significant/No impact

RESOURCES - 4. Archaeological / Historical / Paleontological

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Is the project site in or near an area containing known archaeological resources or containing features (drainage course, spring, knoll, rock outcroppings, or oak trees) which indicate potential archaeological sensitivity?

The project site is located in a developed area in Marina del Rey. The site is surrounded by residential uses and the public waterfront promenade. The site is occupied by apartment buildings that were constructed in 1971 and with 230 boat slips (plus 11 end ties). The project site is not known to contain archaeological resources or contain features such as springs, rock outcroppings or oak trees, which indicate potential archaeological sensitivity.

The proposed project would include improvements to existing residential units and the replacement of 230 boat slips (plus 11 end ties) with 207 slips (plus 11 end ties) , and would also include an Option to Amend Lease Agreement for the project site. In addition to the proposed renovations of the residential units and the boat slip replacements, the proposed project would replace the promenade landscaping and fixtures. No new substantial ground disturbance would occur under the proposed project and existing subsurface conditions would be unchanged. Therefore proposed renovations and improvements included under the proposed project are not anticipated to encounter significant archeological resources.

b.	☐	☒	☐	Does the project site contain rock formations indicating potential paleontological resources?

The project site is located in a developed area of Marina del Rey and is occupied by two apartment buildings, a clubhouse and boat slips. The project site does not contain any rock formations that indicate potential paleontological resources. As described above, no substantial ground disturbance is proposed under the proposed project. As no surface grading and shallow excavations are proposed for the site, it is unlikely to encounter significant vertebrate fossils as existing subsurface conditions would be unchanged.

c.	☐	☒	☐	Does the project site contain known historic structures or sites?

The existing structures on the project site, which were constructed between 1970 and 1972, are not considered historic resources. No known historically significant events have occurred on the project site. The project site does not contain known historic structures or sites.

d.	☐	☒	☐	Would the project cause a substantial adverse change in the significance of a historical or archaeological resource as defined in 15064.5?

The site is not known to contain historical or archaeological resources. The existing land mass located within the marina area has been covered with fill material from channel construction and developed with commercial and residential uses. No substantial ground-breaking activities would occur under the proposed project. Existing residential units would be renovated and existing boat slips would be replaced. The exterior of the apartment buildings would receive a cosmetic upgrade. Additionally the existing public waterfront promenade would be renovated. No impact to historical or archaeological resources is expected to occur.

e.	☐	☒	☐	Would the project directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

No paleontological resources or unique geologic features are known to exist on the

project site. As previously stated no substantial ground-breaking activities would occur under the proposed project. Existing residential units would be renovated and existing boat slips would be replaced. Additionally the existing public waterfront promenade would be renovated. The proposed project would not directly or indirectly destroy a unique paleontological resource or unique geologic feature.

f. ☐ ☒ ☐ Other factors? _____

☐ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Lot Size ☐ Project Design ☐ Phase I Archaeology Report

CONCLUSION

Considering the above information, could the project leave a significant impact (individually or cumulatively) on **archaeological, historical**, or **paleontological** resources?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

RESOURCES - 5. Mineral Resources

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Would the project 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?

The project site, which is currently developed with apartment buildings, a clubhouse and boat slips, is not located within a locally important mineral resource discovery site and project implementation would not result in the loss of availability of a known mineral resource. (Source: United States Geological Survey, "Mineral Resources On-Line Spatial Data," http://mrdata.usgs.gov/website/MRData-US/viewer.htm. 2008.)

b.	☐	☒	☐	Would the project result in the loss of availability of a locally important mineral resource discovery site delineated on a local general plan, specific plan or other land use plan?

According to the Draft Los Angeles County General Plan, the project site, which is currently developed with residential and boat slip uses, is not located within a locally important mineral resource area. Mineral resource areas include existing surface mining activities, areas identified or to be identified as containing significant mineral resources by the State Mining and Geology Board, and areas suitable for the production of energy resources, including crude oil and natural gas.

(Source: http://planning.co.la.ca.us/generalplan/gp/gp2008/gp_web/gp-web-ch06.pdf. October 28, 2008.)

c.	☐	☒	☐	Other factors? _____

☐ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Lot Size ☐ Project Design

CONCLUSION

Considering the above information, could the project leave a significant impact (individually or cumulatively) on **mineral** resources?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

RESOURCES - 6. Agriculture Resources

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Would the project 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? *The project would not convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. The project site is located in a developed area in Marina del Rey. Two apartment buildings, a clubhouse, boat slips and associated parking currently occupy the project site.*
b.	☐	☒	☐	Would the project conflict with existing zoning for agricultural use, or a Williamson Act contract? *The project site is zoned SP (Specific Plan) and is designated R-III by the Marina del Rey Community Plan. The project site is historically developed with non-agricultural uses including residential uses, boat slips, and associated parking. Under the proposed project the existing apartments would be renovated and the existing waterfront promenade would be improved, and the project would also include an Option to Amend Lease Agreement for the project site. No Williamson Act contract applies to the Project Site. Therefore, the project would not conflict with existing zoning for agricultural uses.*
c.	☐	☒	☐	Would the project involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? *The project site is bordered by residential and commercial uses. The site also contains 230 boat slips (plus 11 end ties) located directly north of the apartment buildings. No agricultural uses are present on the project site or in the project area and the project would not result in the conversion of farmland to non-agricultural use.*
d.	☐	☒	☐	Other factors? _____

☐ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Lot Size ☐ Project Design

CONCLUSION

Considering the above information, could the project leave a significant impact (individually or cumulatively) on **agriculture** resources?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

RESOURCES - 7. Visual Qualities

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Is the project site substantially visible from or will it obstruct views along a scenic highway (as shown on the Scenic Highway Element), or is it located within a scenic corridor or will it otherwise impact the viewshed?

The project site is located in a developed area in Marina del Rey. According to the Conservation and Open Space Element of the Draft County of Los Angeles General Plan, the project site is not located along a scenic highway as shown on the LA Adopted and Eligible Scenic Highways Map. The site is not located within a scenic corridor. Renovations included under the proposed project would not be substantially visible from a scenic highway: http://planning.lacounty.gov/generalplan/gp/gp2008/ accessed November 1, 2008.

b.	☐	☒	☐	Is the project substantially visible from or will it obstruct views from a regional riding or hiking trail?

The project site is located in a developed area in Marina del Rey. The site is currently occupied by two apartment buildings, a clubhouse, boat slips, and associated parking areas. The proposed project would include renovations of the apartment units, the clubhouse and the adjacent public waterfront promenade and the replacement of the boat slips, and would also include an Option to Amend Lease Agreement for the project site. Proposed improvements would not diminish or obstruct existing views. No visual impacts related to the obstruction of views from a regional riding of hiking trail would occur.

c.	☐	☒	☐	Is the project site located in an undeveloped or undisturbed area, which contains unique aesthetic features?

The project site, which is presently developed with two apartment buildings including at-grade parking, a clubhouse and boat slips. The landside portion of the site is completely paved and is not located within, nor does it contain, an undeveloped or undisturbed area. The project vicinity is already developed with a mix of residential and commercial uses. The project would not affect any undeveloped or undisturbed areas or any unique aesthetic features.

d.	☐	☒	☐	Is the proposed use out-of-character in comparison to adjacent uses because of height, bulk, or other features?

The project would not introduce any new structures or uses onto the landside of the site. The existing residential structures would be renovated and the exterior dimensions of the structures would not be expanded. Similarly, the existing boat slips would be replaced. Improvements proposed for the waterfront promenade include new landscaping and replacement of the pavement, fencing and light fixtures (which could be considered an improvement in aesthetic conditions). These proposed renovations would not be out-of-character in comparison to adjacent residential and commercial uses.

e.	☐	☒	☐	Is the project likely to create substantial sun shadow, light or glare problems?

The site is currently occupied by two 3-story apartment buildings with attached club house, at grade parking and boat slips. Implementation of the proposed project would include renovations to residential units, replacement of boat slips and improvements to the existing public waterfront promenade. The project would also include an Option to Amend Lease Agreement for the project site. No modifications to building height or footprint which could increase existing shadows would occur with the project. Improvements proposed for the promenade would include the replacement of existing light fixtures. No new structures would be introduced onto the landside of the site and existing

heights of the apartment buildings or clubhouse would not be altered. Renovated lighting fixtures will be comprised of focused lighting designed to reduce excess glare. A further description of the materials used to renovate the exterior of the project structures, and the materials used to rebuild the boat slips is included in the attached project description. It is not anticipated that these new materials will cause any light or glare problems. Therefore, the proposed project would not create substantial sun shadow, light, or glare problems.

f. ☐ ☒ ☐ Other factors (e.g., grading or land form alteration):

☐ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Lot Size ☐ Project Design ☐ Visual Report ☐ Compatible Use

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) on **scenic** qualities?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

SERVICES - 1. Traffic/Access

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Does the project contain 25 dwelling units, or more and is it located in an area with known congestion problems (roadway or intersections)?

The project site contains 205 existing multi-family residential units that would be renovated under the proposed project. The project would also include an Option to Amend Lease Agreement for the project site. No additional residential units would be constructed under the proposed project. Additionally, no new uses would be developed on the site. The site is located in a developed area of Marina del Rey. Site access would not be altered under the proposed project. Additionally, the number of boat slips would be reduced from 230 slips (plus 11 end ties) to 207 slips (plus 11 end ties), which is anticipated to reduce overall trips. Due to the fact that no additional residential units would be proposed and the number of boat slips would be reduced, implementation of the proposed project is not anticipated to result in traffic congestion problems.

b.	☐	☒	☐	Will the project result in any hazardous traffic conditions?

The design of the proposed project would not alter existing access to the site. Existing residential and associated parking uses would continue to operate under implementation of the proposed project. No new structures would be introduced onto the landside of the site. Renovations would occur to existing apartment buildings and to the public waterfront promenade. Accordingly, the project design would not result in hazardous conditions for vehicles entering and/or exiting the project site.

c.	☐	☒	☐	Will the project result in parking problems with a subsequent impact on traffic conditions?

The project would include an Option to Amend Lease Agreement for the project site. The proposed project would also include landside renovations to existing residential uses. Under the proposed project renovations would be made to existing apartment units, the clubhouse and to the existing public waterfront promenade. No new residential units would be introduced onto the site.

The marina component of the proposed project would include the replacement of boat slips. Overall parking areas would remain in their existing condition however, to comply with current boat slip parking ratio requirements, the applicant proposes to use compact spaces to increase the total number of parking spaces located on the site by 3 stalls. Parking requirements for slips have increased from 0.67 parking stalls per slip to 0.75 parking stalls per slip. Although the parking requirement for each slip has increased, the number of slips would be reduced (by 23 slips) under the proposed project. Therefore, in order to comply with current requirements, the project would only need to create 3 additional parking stalls through the use of compact parking spaces. These proposed components of the project would not result in parking problems with a subsequent impact on traffic conditions.

During dock assembly the project would temporarily use one public boat ramp as well as adjacent parking to assemble the docks; docks would then be floated into place.

d.	☐	☒	☐	Will inadequate access during an emergency (other than fire hazards) result in problems for emergency vehicles or residents/employees in the area?

No modifications to existing project site access and on-site circulation are proposed that would result in problems for emergency vehicles or residents/employees in the area. Building and site plans will be provided to the Los Angeles County Fire Department. No

new structures would be introduced onto the landside of the site under the proposed project. The project does propose to increase the width of the existing driveway leading from Tahiti Way to the promenade by 8 feet, which would enhance access to the promenade and the waterside of the residential structures. Project access would continue to be adequate in the event of an emergency.

e. ☐ ☒ ☐ Will the congestion management program (CMP) Transportation Impact Analysis thresholds of 50 peak hour vehicles added by project traffic to a CMP highway system intersection or 150 peak hour trips added by project traffic to a mainline freeway link be exceeded?

The project would not result in an increase in trips and, due to the reduction in the number of boat slips, trips would actually be slightly reduced.

f. ☐ ☒ ☐ Would the project conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?

The proposed project would include the continued operation of residential uses along with the continued operation of boating uses. Renovations of the existing public waterfront promenade, which promotes walking and biking in the surrounding area, would also occur under the project. These proposed improvements would not conflict with adopted policies, plans or programs supporting alternative transportation.

g. ☐ ☒ ☐ Other factors?_____

☐ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Project Design ☐ Traffic Report ☐ Consultation with Traffic & Lighting Division

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) on the physical environment due to **traffic/access** factors?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

SERVICES - 2. Sewage Disposal

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	If served by a community sewage system, could the project create capacity problems at the treatment plant?

The project site is currently served by a sanitary sewer system, and effluent generated by the project would be treated at facilities operated by the Hyperion Treatment Plant. The Marina Maintenance Sewer District has a 0.97 mgd purchased capacity right at Hyperion Treatment Plant. (http://planning.lacounty.gov/doc/plan/drp_pd_marinadelrey.pdf. Accessed November 1, 2008.)

The project would include an Option to Amend Lease Agreement for the project site. The proposed project would include the continued operation of residential uses along with boat-related activities. Under the proposed project, no additional residential units would be constructed. The number of boat slips would be reduced under the proposed project and existing sewage generation would be commensurately reduced. Project implementation is not anticipated to create capacity problems at the treatment plant. Currently wastewater from boats is not disposed into the sanitary sewer. Boat owners typically pump out sewage from boats using a third party service. The new marina would have mobile hose reels on each gangway that boat owners would use to hook up to their boats and pump their wastewater into the sanitary sewer. A Sewer Capacity Report was prepared by Fuscoe Engineering in June 2009 (the report is on file and available for review at Regional Planning, Impact Analysis). The report includes a current flow study and estimate of changes in peak flows as a result of the project (assuming two pumps to service the boats); the study indicates no potential for the project changes to significantly impact local sewers.

b.	☐	☒	☐	Could the project create capacity problems in the sewer lines serving the project site?

See above. The project's proposed renovations would not result in additional residential units or new structures on the landside of the site. Currently, sewer lines are in place to serve existing uses on the project site. Project implementation is not anticipated to result in a substantial increase in the quantity of wastewater generated on the project site; the reduction in the number of boat slips would result in a commensurate reduction in overall sewage generation. No capacity problems in the sewer lines serving the project site are anticipated to result.

c.	☐	☒	☐	Other factors? _____

STANDARD CODE REQUIREMENTS

☐ Sanitary Sewers and Industrial Waste Ordinance No. 6130

☒ Plumbing Code Ordinance No. 2269

☐ **MITIGATION MEASURES** / ☐ **OTHER CONSIDERATIONS**

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) on the physical environment due to **sewage disposal** facilities?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

SERVICES - 3. Education

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Could the project create capacity problems at the district level?

The project site is served by the Los Angeles Unified School District (LAUSD). Nearby schools include Coeur d'Alene Elementary School, Marina del Rey Middle School, and Venice High School. The proposed project would include improvements to existing residential units, the replacement of boat slips and improvements to the existing public waterfront promenade, and would also include an Option to Amend Lease Agreement for the project site. No new residential units would be constructed and existing student enrollment from the site would not change.

b.	☐	☒	☐	Could the project create capacity problems at individual schools which will serve the project site?

As stated above nearby schools include Coeur d'Alene Elementary School, Marina del Rey Middle School, and Venice High School. The proposed project would include improvements to existing residential units, the replacement of boat slips and improvements to the existing public waterfront promenade. Existing student enrollment from the site would not change as no new residential units would be constructed.

c.	☐	☒	☐	Could the project create student transportation problems?

Proposed improvements to existing residential units and the public waterfront promenade and the replacement of the boat slips are not anticipated to create student transportation problems.

d.	☐	☒	☐	Could the project create substantial library impacts due to increased population and demand?

The proposed project would be served by the Los Angeles County Public Library system. Proposed improvements would include renovations to existing residential units and the public waterfront promenade and the replacement of boat slips, and would also include an Option to Amend Lease Agreement for the project site. Site population would not substantially change. The proposed improvements are not anticipated to create substantial library impacts due to increased population and demand since no additional residential units are proposed.

e.	☐	☒	☐	Other factors? _____

☐ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Site Dedication ☐ Government Code Section 65995 ☐ Library Facilities Mitigation Fee

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) relative to **educational** facilities/services?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

SERVICES - 4. Fire/Sheriff Services

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Could the project create staffing or response time problems at the fire station or sheriff's substation serving the project site?

The nearest fire station is County of Los Angeles Fire Station 110, located at 4433 Admiralty Way, approximately 1.43 miles from the project site. The proposed project would include renovation of existing residential units, replacement of boat slips and landscaping and light fixture improvements to the public waterfront promenade, and would also include an Option to Amend Lease Agreement for the project site. No new residential units would be constructed and no change in access to the site would occur. These proposed improvements would not create staffing or response time problems at Fire Station 110. Additionally, the proposed project would comply with all applicable County of Los Angeles Fire Department polices and regulations.

b.	☐	☒	☐	Are there any special fire or law enforcement problems associated with the project or the general area?

The proposed project would include renovation of existing residential units, replacement of boat slips and landscaping and light fixture improvements to the public waterfront promenade. No changes to existing established uses would occur. Existing residential units would be renovated and no change in access to the site would occur.

c.	☐	☒	☐	Other factors?_____

☐ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Fire Mitigation Fees

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) relative to **fire/sheriff** services?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

SERVICES - 5. Utilities/Other Services

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Is the project site in an area known to have an inadequate public water supply to meet domestic needs or to have an inadequate ground water supply and proposes water wells?

The LA County Waterworks District #80 provides domestic water service to the project site. In its existing condition the site is occupied by multi-family residential uses that were constructed in the 1970's. The proposed renovations of existing multi-family residential units and the proposed renovation of the public waterfront promenade are not anticipated to substantially increase water demand. Proposed improvements would include energy efficient building materials such as high-performance glass and new energy efficient appliances and equipment including washers and dryers in residential units, low-flush toilets, and new low precipitation sprinkler heads for landscape irrigation. No new residential units would be constructed under the proposed project. Therefore, implementation of the proposed project would not result in an inadequate groundwater supply or impact to the public water supply.

b.	☐	☒	☐	Is the project site in an area known to have an inadequate water supply and/or pressure to meet fire fighting needs?

The project applicant would consult and comply with all applicable Los Angeles County Fire Department fire flow requirements for the project. Fire flow requirements are not expected to change under the proposed project as compared to existing conditions. The proposed project would include the continued operation of existing residential uses and the boat-slip marina, and would also include an Option to Amend Lease Agreement for the project site. As previously mentioned, no new residential units would be constructed under the proposed project.

c.	☐	☒	☐	Could the project create problems with providing utility services, such as electricity, gas, or propane?

Utilities such as electricity and natural gas currently serve the project site and surrounding area. The proposed project, which would consist of the continued operation of the existing residential uses and an Option to Amend Lease Agreement for the project site, would not be expected to create problems for providers or increase the demand on these existing utility services. Additionally, the proposed project would comply with any applicable ordinances which may be adopted by the County including those imposing applicable green building techniques, low impact development principles and drought tolerant landscaping. Specific energy-conserving features of the project have not been finalized at this time. The project would not result in an inefficient use of energy resources. Nonetheless, due to the renovations proposed for each unit and the proposed new dock slips, the project would require that the power company upsize the supply transformers to accommodate the updated project; such an increase in demand for power would be within the capability of the power provider and less than significant compared to surrounding capacity.

d.	☐	☒	☐	Are there any other known service problem areas (e.g., solid waste)?

The project site is occupied by residential structures, a clubhouse, boat slips and associated parking. The apartment buildings and clubhouse were constructed in the 1970's. Under the proposed project, the apartment buildings and clubhouse would undergo renovation, but no additional residential units are proposed. The site is not

known to have any service problems. Services would continue under the proposed project and are not anticipated to undergo any problems or, with the exception of power, change in existing service demand. The project would require that the power company upsize the supply transformers to accommodate the project; such an increase in demand for power would be within the capability of the power provider and less than significant compared to surrounding capacity.

e. ☐ ☒ ☐ Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services or facilities (e.g., fire protection, police protection, schools, parks, roads)?

The project would not increase the demand for fire and police protection, school facilities, recreational facilities, or other public services. The proposed renovations would not result in any new residential units.

f. ☐ ☒ ☐ Other factors? _____

STANDARD CODE REQUIREMENTS

☒ Plumbing Code Ordinance No. 2269 ☒ Water Code Ordinance No. 7834

☒ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Lot Size ☐ Project Design

During construction, materials requiring disposal will be recycled to the extent feasible (untreated wood, concrete, asphalt, metals, glass, drywall, paper and rubble are potentially recyclable); other materials will be disposed of at local landfills as appropriate.

During operation, a permanent full-service recycling program shall be implemented for residents and marina lessees that will include contracting for periodic onsite collection and physical improvements such as centralized receptacles to recycle paper, plastic, glass and metal waste products. The recycling program shall be fully maintained at all times by building management.

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) relative to **utilities/services**?

☐ Potentially significant ☒ Less than significant with project mitigation ☐ Less than significant/No impact

OTHER FACTORS - 1. General

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Will the project result in an inefficient use of energy resources?

The proposed project would include the renovation of existing residential units and clubhouse, the replacement of boat slips and the renovation of the public waterfront promenade, and would also include an Option to Amend Lease Agreement for the project site. The proposed project would comply with any applicable ordinance, which may be adopted by the County. Specific energy-conserving features of the project have not been finalized at this time. The project is expected to use energy-efficient building materials such as high-performance glass and energy efficient equipment and appliances such as washers and dryers, low-flow toilets, low precipitation sprinkler system heads for landscape irrigation, and drought-tolerant plants. The project would be required to comply with Title 24 energy requirements and applicable Los Angeles County Building Code requirements. The project would not result in an inefficient use of energy resources.

b.	☐	☒	☐	Will the project result in a major change in the patterns, scale, or character of the general area or community?

The proposed project would not introduce any new structures onto the landside of the site. The site is occupied with existing apartment buildings, a clubhouse, boat slips and associated parking. The project would include an Option to Amend Lease Agreement for the project site. The proposed project would also include renovations to the residential units and clubhouse, replacement of boat slips, and renovation of the public waterfront promenade, and would retain existing established uses on the site with no increase in density or change in character.

c.	☐	☒	☐	Will the project result in a significant reduction in the amount of agricultural land?

The project site, which is currently developed with residential uses, a clubhouse, boat slips and associated parking is located in a developed area of Marina del Rey. Therefore, the proposed project would not result in a reduction in agricultural land.

d.	☐	☒	☐	Other factors? _____

STANDARD CODE REQUIREMENTS

☒State Administrative Code, Title 24, Part 5, T-20 (Energy Conservation)

☐ **MITIGATION MEASURES** / ☐ **OTHER CONSIDERATIONS**

☐ Lot size ☐ Project Design ☐ Compatible Use

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) on the physical environment due to any of the above factors?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

OTHER FACTORS - 2. Environmental Safety

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Are any hazardous materials used, transported, produced, handled, or stored on-site?

The site is occupied by apartment buildings and a clubhouse that were constructed in 1971. Hazardous materials handled or stored on the site include cleaning agents, paints, lubricants and other similar materials. typically associated with residential uses. The marina portion of the site includes boat slips. Hazardous materials stored on this portion of the site include materials typically associated with boats (including house-boats, such as gasoline, cleaners, etc.). Demolition activities will disturb materials that could contain asbestos and lead based paints. The applicant will identify any such materials and remove and/or abate them in accordance with applicable regulations.

No other hazardous materials that would create a significant hazard to the public are used transported, produced, handled or stored on-site. Continued operation of residential uses and of the boat slips would not introduce new hazardous materials onto the site, nor would the proposed Option to Amend Lease Agreement for the project site .

b.	☐	☒	☐	Are any pressurized tanks to be used or any hazardous wastes stored on-site?

Renovation and operation of the proposed residential uses do not require the extensive or ongoing use of materials or pressurized tanks that would create a significant hazard to the public. The occasional use and disposal of hazardous materials associated with residential uses include unused paint, aerosol cans, cleaning agents and automotive fluids. These materials are generally disposed of at non-hazardous Class II and III landfills (along with traditional solid waste). The marina component of the project site includes the boat slip area. The use of boat fuels would continue under the proposed project. Therefore, the impact of the project on the environment through the routine transport, use, or disposal of hazardous materials is less than significant, given that appropriate procedures and guidelines are followed during project construction and throughout project operation.

c.	☐	☒	☐	Are any residential units, schools, or hospitals located within 500 feet and potentially adversely affected?

Residences are located within 500 feet of the project site. However, these uses would not be adversely affected by the project, which would utilize the same substances commonly used in households and for boat slips.

d.	☐	☒	☐	Have there been previous uses that indicate residual soil toxicity of the site or is the site located within two miles downstream of a known groundwater contamination source within the same watershed?

The land portion of the project site is completely paved. Renovations to existing apartment buildings would occur with no substantial change in the footprint of the structures or associated soil disturbance. The footprint of the clubhouse would be reduced in size to accommodate a widened driveway, but alterations would be minimal and are not expected to have a significant impact. Given the existing use, which would continue under the proposed project, there is no indication that residual soil toxicity of the site exists.

e.	☐	☒	☐	Would the project create a significant hazard to the public or the environment involving the accidental release of hazardous materials into the environment?

As stated above, the proposed project would include the continued operation of residential uses that have occupied the site since 1971. Construction activities shall comply with SCAQMD Rule 1403 – Asbestos Emissions from Demolition/Renovation Activities. This rule

is intended to limit asbestos emissions from the demolition or renovation of structures and the associated disturbance of asbestos-containing materials (ACMs) generated or handled during these activities. The rule requires that SCAQMD be notified before demolition or renovation activity occurs. This notification includes a description of structures and methods utilized to determine the presence or absence of asbestos. All ACMs found on the project site shall be removed prior to demolition or renovation in accordance with the requirements of Rule 1403. Therefore, the project would not create a significant hazard to the public involving the accidental release of hazardous materials into the environment.

f. ☐ ☒ ☐ Would the project emit hazardous emissions or handle hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

The project site is not located within one-quarter mile of any existing or proposed school.

g. ☐ ☒ ☐ Would the project be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would create a significant hazard to the public or environment?

The project site has been in residential use since 1971; the project site is not on a list of hazardous materials sites.

h. ☐ ☒ ☐ Would the project result in a safety hazard for people in a project area located within an airport land use plan, within two miles of a public or public use airport, or within the vicinity of a private airstrip?

The project site is not located within an airport land use plan, within two miles of a public or public use airport, or within the vicinity of a private airstrip. Los Angeles International Airport is located approximately 4 miles south of the site but the project is not in the airport's flight path.

I. ☐ ☒ ☐ Would the project impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

The project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.

j. ☐ ☒ ☐ Other factors? _____

☐ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

☐ Toxic Clean up Plan

CONCLUSION

Considering the above information, could the project have a significant impact relative to **public safety**?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

OTHER FACTORS - 3. Land Use

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Can the project be found to be inconsistent with the plan designation(s) of the subject property?
				According to the Marina del Rey Community Plan, the current land use designation for the Project Site is R-III, which allows apartments, single family and two-family residences. Specifically, the R-III designation includes medium density multiple family residential development. The project proposes improvements to existing residential units, the clubhouse and to the public waterfront promenade in addition to the replacement of existing boat slips, and would also include an Option to Amend Lease Agreement for the project site. No changes to these existing land uses are proposed. These improvements would be consistent with the plan designation.
b.	☐	☒	☐	Can the project be found to be inconsistent with the zoning designation of the subject property?
				The current zoning designation for the project site is SP (Specific Plan). The project proposes improvements to existing residential units, the clubhouse and to the public waterfront promenade in addition to the replacement of existing boat slips, and would also include an Option to Amend Lease Agreement for the project site. No changes to these existing land uses are proposed. These improvements would be consistent with the zoning designation for the project site
c.				Can the project be found to be inconsistent with the following land use criteria:
	☐	☒	☐	Hillside Management Criteria?
				The project site is not located within a Hillside Management Area. As such, no further analysis is required.
	☐	☒	☐	SEA Conformance Criteria?
				The project site is not located within a designated Significant Ecological Area.
	☐	☒	☐	Other? _____
d.	☐	☒	☐	Would the project physically divide an established community?
				The project would include a series of improvements to existing uses (residential units. clubhouse and the public waterfront promenade) and the replacement of existing boat slips, and would also include an Option to Amend Lease Agreement for the project site. This would not divide an established community.
e.	☐	☒	☐	Other factors? _____

☐ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) on the physical environment due to **land use** factors?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

OTHER FACTORS - 4. Population/Housing/Employment/Recreation

SETTING/IMPACTS

	Yes	No	Maybe	
a.	☐	☒	☐	Could the project cumulatively exceed official regional or local population projections?

Continued growth in population is predicted to occur throughout unincorporated portions of Los Angeles County. Further, the population in unincorporated areas of Los Angeles County is expected to increase by 16% between 2005 and 2014, or from 1,086,077 to 1,263,045. The proposed project would include renovations to the existing 205 apartment units; there would be no change in the number of units on the site. Currently, the site contains 230 boat slips (plus 11 end ties). Under the proposed project, there would be a reduction of 23 boat slips to 207 slips (plus 11 end ties). Implementation of the proposed project would not change regional or local population projections. The project would also include an Option to Amend Lease Agreement for the project site.

b.	☐	☒	☐	Could the project induce substantial direct or indirect growth in an area (e.g., through projects in an undeveloped area or extension of major infrastructure)?

The project site is located in a developed area in Marina del Rey. The area surrounding the site is occupied by residential and commercial uses. The proposed project would include improvements to the existing apartment buildings and clubhouse located on the site in addition to the renovation of the public waterfront promenade and replacement of the boat slips. No new structures would be introduced onto the landside of the site. This is not anticipated to induce population growth in the surrounding area. No change in density or established uses would occur.

c.	☐	☒	☐	Could the project displace existing housing, especially affordable housing?

The project site is currently developed with two apartment buildings, a clubhouse, and boat slips. The proposed project would include a series of improvements to the apartment buildings and clubhouse in addition to the renovation of the public waterfront promenade and replacement of the boat slips. This would not displace existing housing and would retain 205 existing units in the County's housing stock.

d.	☐	☒	☐	Could the project result in a substantial job/housing imbalance or substantial increase in Vehicle Miles Traveled (VMT)?

The project site is located in a developed area in Marina del Rey. Surrounding uses include residential and commercial uses in addition to the Marina. The project would not introduce any new structures onto the landside of the site. The proposed project would include renovations to the existing apartment buildings and clubhouse located on the site and to the public waterfront promenade in addition to the replacement of boat slips, and would also include an Option to Amend Lease Agreement for the project site. Currently, the site contains 230 boat slips (plus 11 end ties). Under the proposed project, there would be a reduction of 23 boat slips to 207 slips (plus 11 end ties). The proposed project would not change the existing job/housing balance and could actually decrease total VMT as a result of the reduction in boat slips.

e.	☐	☒	☐	Could the project require new or expanded recreational facilities for future residents?

The project site currently contains a two-story clubhouse with attached penthouse and pool. The clubhouse and pool would undergo renovations as part of the proposed project and the existing waterfront promenade would be improved. No new structures would be

introduced onto the landside of the site under the proposed project. Implementation of the proposed project would not require new or expanded recreational facilities for future residents.

f. ☐ ☒ ☐ Would the project displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

The project is not expected to permanently displace existing housing or residents. As such, the project would not result in the displacement of residents such that new replacement housing would need to be constructed. Apartments and boat slips would be renovated in three phases, as each phase is implemented the applicant would to the extent possible offer replacement units/boat slips to current residents/occupants.

g. ☐ ☒ ☐ Other factors? _____

☐ **MITIGATION MEASURES / ☐ OTHER CONSIDERATIONS**

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) on the physical environment due to **population, housing, employment**, or **recreational** factors?

☐ Potentially significant ☐ Less than significant with project mitigation ☒ Less than significant/No impact

MANDATORY FINDINGS OF SIGNIFICANCE

Based on this Initial Study, the following findings are made:

	Yes	No	Maybe	
a.	☐	☒	☐	Does the project have the potential to substantially 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, 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?

The project site, which is located within an urbanized area, does not contain habitat for any known sensitive species. While the project does involve renovation activities in the waters of the marina, which would temporarily increase turbidity during construction, a biotic survey indicates that, with mitigation, there is no potential for impacts to sensitive species. Two apartment buildings, a clubhouse, boat slips, a public waterfront promenade and associated parking currently occupy the site. The project involves the renovation or replacement of these uses, and would also include an Option to Amend Lease Agreement for the project site. Therefore, the project would not have the potential to substantially 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, or reduce the number or restrict the range of a rare or endangered plant or animal. Additionally, no important examples of the major periods of California history or prehistory would be eliminated. A biota study was prepared for the project and is on file at Regional Planning, Environmental Review Section.

b.	☐	☒	☐	Does the project have possible environmental effects which are individually limited but cumulatively considerable? "Cumulatively considerable" means that the incremental effects of an individual 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.

The project would result in construction noise impacts that would be short-lived and mitigated; cumulative construction noise impacts are not anticipated. Operational impacts would be the same or less than today.

c.	☐	☒	☐	Will the environmental effects of the project cause substantial adverse effects on human beings, either directly or indirectly?

The proposed project would include the renovation of existing residential units, the clubhouse and of the public waterfront promenade, and would also include an Option to Amend Lease Agreement for the project site. Existing boat slips would be replaced. No new structures would be introduced onto the landside of the site. No substantial ground-breaking activities would occur on the site. Construction noise from pile driving would be mitigated (by 20 bBA) and of very short duration. Implementation of the proposed project is not anticipated to cause substantial adverse effects on human beings, either directly or indirectly.

CONCLUSION

Considering the above information, could the project have a significant impact (individually or cumulatively) on the environment?

☐ Potentially significant ☒ Less than significant with project mitigation ☐ Less than significant/No impact

BAY CLUB MARINA
Bay Club Landside Renovation Project
Marina Reconstruction
Option to Amend Lease Agreement

Project Description

Introduction

NF Marina, LP ("Marina LP") proposes the renovation of 205 existing apartment units (no change in number of units), replacement of boat slips and improvements to the adjacent public waterfront promenade. The project site currently contains two linear, three-story (including at-grade open air parking) apartment buildings, a two-story clubhouse with attached penthouse and pool located between the two apartment buildings and 230 boat slips (plus 11 end ties).

The project site is owned by the County of Los Angeles. Marina LP leases the property from the County, and the landside and waterside improvements are owned and operated by Marina LP. As part of the project, Marina LP seeks an Option to Amend Lease Agreement with the County for the project site.

The landside component of the project includes renovation of the existing apartment buildings without increasing the number of dwelling units. Each apartment unit will be updated and improved. The living space of each unit will be expanded by recapturing inefficiencies, including areas such as laundry rooms, under-utilized storage rooms and dog washing facilities. Additional living area will also be added by enclosing a portion of the existing balconies. All kitchens and bathrooms will be fully modernized, and each unit will receive washer and dryer units. In addition, all exterior doors and windows will be replaced. The exterior of the buildings will also receive a complete cosmetic upgrade. All doors and windows will be replaced, as will the stained wood balcony rails.

The two-story clubhouse with attached penthouse and the pool will also be renovated. The small western wing of the clubhouse will be rebuilt on a narrower footprint to enable the driveway from Tahiti Way to the leasing office/guest parking to be widened from one-way to two-way. The second floor will include a large common area multi-purpose room with a terrace facing the Marina. The pool and pool deck will be redesigned and receive new landscaping. The second floor penthouse will be renovated and will also be evaluated to determine if it can be modified from a two to a three-bedroom unit (the only unit gaining an additional bedroom).

The marina-side component of the project includes replacing the existing boat slips with brand new slips. The dock improvements will result in a reduction in the total number of slips from 230 slips (plus 11 end ties) to 207 slips (plus 11 end ties) due to changes in applicable design standards and Americans with Disabilities Act ("ADA") requirements. In addition, Marina LP intends to renovate the existing public waterfront promenade.

Project Location and Surrounding Uses

Parcel 8T (the "Site") is located on the western side of Marina del Rey and contains approximately 11.5 acres, with 199,450 square feet of land area and 302,100 square feet of water area. The Site is

located east of Via Marina and west of Admiralty Way, and is bordered on the north by Marina del Rey's Basin B and on the south by Tahiti Way. To the west is parcel 9U, the site of a proposed new park and adjacent hotel (proposed by Woodfin). Across Basin B on parcel FF is the proposed Legacy project. We understand the County is currently working to process the proposed Woodfin and Legacy approvals, which, together with the Site's renovation will result in the improvement of almost all of Basin B.

Existing Improvements

The Site is currently improved with two linear, three-story apartment buildings constructed over an open-air at-grade parking garage, and a 230 boat slip (plus 11 end ties) marina [See Exhibit A: A1-A3]. The total size of the Site is approximately 501,550 square feet; 199,450 square feet of land and 302,100 square feet of water. The three existing structures cover 85,640 square feet, or about 43% of the land area and 17.1% of the entire Site. Paving (primarily consisting of the promenade) covers an additional 71,350 square feet, hardscape (the parking asphalt) covers 21,500 square feet and landscaping covers 20,960 square feet. Constructed in 1971, the apartment buildings currently contain 205 residential units (102 in each of the two apartment buildings, and one penthouse apartment above the clubhouse), totaling approximately 165,000 square feet of rentable space (156 one-bedroom units, 48 two-bedroom units and one two-bedroom penthouse unit). A central two-story clubhouse building is located between the two residential structures. The lower level of the clubhouse contains the management and leasing offices and a separate office for the dockmaster. Also on the ground floor is the residents' fitness center and lounge room. Restrooms with lockers, shower facilities and men's and women's saunas are located near the outdoor pool and spa on the marina side of the clubhouse building. A 2,000 square-foot penthouse unit is located on the second floor of this structure. The current buildings are constructed of a heavily textured plaster, with stained wood picket balcony rails and clay tile mansard. The existing landscape of the building perimeter is a mix of water-loving plants that were popular at the time: split leaf philodendron (*Philodendron selloum*), ivy, shrubs and turf.

The marina promenade also dates from the 1970's. From curb face to seawall the promenade is 13'-5" wide, with perpendicular parking stalls running along the basin's length. The promenade currently consists of a standard grey concrete walking surface and chain link fencing at the seawall; all original installations from the early 1970's.

The existing boat docks were built in 1969 and contain 230 existing slips and 11 end ties. The current docks are primarily comprised of fiberglass/wood composite system. The floats supporting the docks are hollow fiberglass with ports built into the deck that allows for pumping water that infiltrates into the pontoons. Due to deterioration of this fiberglass dock system and the historical repairs and maintenance required, approximately 30% of the original fiberglass dock system has been replaced with wood dock systems, comprised of a wood frame with a plywood deck and plastic foam-filled floats. The existing docks do not meet current ADA or California Department of Boating & Waterways ("DBAW") standards.

The Project

Marina LP proposes to renovate all three existing buildings, including the apartment unit interiors, building facades, the clubhouse, interior and exterior common areas, landscaping, and hardscape. Marina LP also proposes to resurface the existing promenade, providing a more contemporary and aesthetically pleasing marina walkway. In addition, Marina LP intends to replace all of the existing boat docks with new, state-of-the-art concrete docks to be built to MDR Design Criteria and

specifications, and in conformance with modern marina standards. The total estimated cost for the project is approximately $20 million.

To minimize the impact of the renovations on the existing residents, boat owners and surrounding marina, the project's building exterior, apartment interiors and marina will be renovated simultaneously in three phases. The building exterior phasing will match the interior phasing. During each phase, the apartment units and boat slips not under construction will be operating and available for occupancy. It is anticipated that it will take approximately 21 months to renovate all of the apartment units, common areas, building exterior and to replace the existing boat slips.

The key elements of the improvements are as follows.

Building and Landside Architectural Improvements

Apartment Building Interiors

Without increasing the number of dwelling units, each apartment unit will be dramatically improved and updated [See Exhibit A: A4-A5(d)]. The one-bedroom units, currently either 728 square feet or 755 square feet, will be enlarged to 792 square feet and up to 1,005 square feet respectively by reconfiguring the existing balcony space and underutilized common areas. The two-bedroom units, currently 1,006 square feet, will be enlarged to either 1,156 square feet or 1,260 square feet, also by reconfiguring balcony space and common areas. As a result, the rentable square footage of each apartment building will increase to 92,978 square feet per building from 82,286. Marina LP will completely redesign the kitchens, adding islands, new counter tops, cabinets, fixtures, appliances and floor covering. Stacked washers and dryers will also be added to all units. Marina LP will install all new plumbing fixtures, counter tops, medicine cabinets and mirrors in the bathrooms. In addition, the common areas will all undergo extensive refurbishment and reorganization.

Marina LP plans to enlarge the units by transforming areas such as laundry rooms, under-utilized storage rooms and dog washing facilities into livable space. Marina LP will also add living space by enclosing a portion of the existing balconies, taking better advantage of the existing building footprint. In the current configuration, balconies extend across the entire width of each unit. To take advantage of this often under-utilized outdoor space, a portion of the exterior balcony will be enclosed to create additional internal living area for existing units, while retaining enough external balcony space to enable each resident to take full advantage of the marina views. The enclosure of a portion of the balcony will result in each one-bedroom unit gaining an alcove off of the bedroom and each two-bedroom unit gaining an alcove off of both the bedroom and the living room. Due to the enclosures, the average one-bedroom unit balcony will be reduced from 5'6" x 20' (110 square feet) to 5'6" x 11' (60.5 square feet), and the average two-bedroom unit balcony will be reduced from 5'6" x 26'6" (145.75 square feet) to 5'6" x 7' (38.5 square feet). The units on the marina-side lower level have balconies that are deeper than the other units (14'6" vs. 5'6"), with balcony sizes ranging from 282.75 square feet to 529.25 square feet. The enclosures for these units will create L-shaped balconies with sizes ranging from 215 square feet to 387.75 square feet [See Exhibit A: A5(c)]. [See "Apartment Building Exteriors" below for additional balcony description]. In addition, space will also be captured in the units flanking the elevator lobbies by allocating the common area laundry rooms and the under-utilized storage space on each floor into the adjacent units.

As part of the interior renovation of each unit, all sliding doors and windows will be replaced with double paned low E, vinyl covered windows and doors. (Window Manufacturer to be Milgard or equal) and all windows and sliding glass doors will receive new window coverings in the form of

mini blinds (window) or vertical blinds (sliding glass doors).

Apartment Building Exteriors

The exterior of the buildings will be completely revitalized and refreshed [See Exhibit A: A6-A10]. The project's exterior image will be changed from the 1970's wood, stucco and red tile to a contemporary building exterior that will provide a more exciting look.

Both buildings will be entirely re-roofed, with the existing red clay tile mansard roof material being removed and a parapet being added to complement the new building exterior. The parapet will be the same color as the frame of the new building. The existing mansard height is 37'6" from the Tahiti Way-side (41'4" from the marina-side) and the existing high point of the buildings (located above each building entryway) is 43'10" from the Tahiti Way-side (47'8" from the marina-side).1 The new parapet will remain at 37'6" from the Tahiti Way-side (41'4" from the marina-side). At the four first floor lobbies off Tahiti Way, the two flanking vertical projections will be re-designed in keeping with the new contemporary exterior to provide a more open and inviting entry to the buildings. To add visual interest, at each lobby entrance, one of the two vertical projections will be eliminated, leaving only one vertical projection which will remain at the current height of 43'10" from the Tahiti Way-side (47'8" from the marina-side). All the existing heavily textured plaster material will be sandblasted and a new smooth sand finished stucco, manufactured by Merlex, will be applied. The new surface will consist of colors mixed into and integral to the stucco compound, as well as portions of painted stucco; colors to be provided by Dunn Edwards. The frame of each building will be sea grass (DEC775) and bungalow taupe (DE6172) with the balconies and alcoves projecting out of this frame in contrasting colors of oak harbor (DE6179), courtyard green (DEC776) and burnt almond (DE5258). Each lobby entrance off Tahiti Way will be further differentiated with the use of bolder primary colors. Aluminum reglets (horizontal recessed joints fixed to the exterior wall within the stucco surface and used to provide moisture protection) will extend horizontally at the first, second and third floor lines. The color of the reglets will be the same color as the surrounding stucco.

The long continuous wood balcony rails will be removed and a portion of each existing balcony will be enclosed and utilized as additional living space within the apartment units. A new wall with inset windows will be erected at the exterior edge of the existing balconies to create a new alcove within the bedroom and/or living areas. [See Exhibit A: A6]. The existing sliding glass doors and windows at the balconies will be replaced with new windows and sliders using dual glaze Low E (high thermal performance) glass. The window frames will be aluminum and will be a light champagne color. On the portion of the remaining balcony, all wood balcony rails and wood trim will be removed, and the existing balcony material will be removed. A new balcony rail system comprised of aluminum railings with an appropriate baked on finish and white glass inserts will be installed. The wood fascia board will be replaced with a fiber cement fascia in a granite color. The side walls of the balconies will be further framed by simulated wood cementitious siding ("Hardiplank" with "Superdeck" semitransparent coating). The existing balcony surface will be replaced with a new two-part epoxy non-skid waterproof surfacing material (Dex-O-Tex/Merkote (or equal)).

Clubhouse

The two-story clubhouse with attached penthouse and the pool will also be completely renovated to benefit both the apartment residents, as well as the boat slip lessees [See Exhibit A: A7-A8].

1 The dimensions listed in this letter are based on the as-built drawings, as opposed to field measurements.

To improve the view corridor from Tahiti Way to the marina, as well as access to the building's parking, a portion of the existing west wing of the clubhouse will be partially demolished to enable the narrow 12' wide existing driveway from Tahiti Way to the promenade to be widened to a 20' wide two-way driveway with landscaping on both sides. As a result, the width of the existing view corridor will also be increased from 20' to 32'. To enable the view corridor and driveway to be widened, the width of the clubhouse will be reduced from 46' to 40', and the overall footprint of the clubhouse will be reduced from 4,980 square feet to 3,930 square feet.

The existing one-story wing will be renovated to include an entry lobby, leasing office, Apartment Manager and Dock Master office (all of which will be located on the ground floor). The existing clubhouse wing which will remain, will house an enlarged fitness center facing the pool and marina, men's and women's bathrooms, and unisex sauna. The second floor of the existing clubhouse wing will be accessed by an elevator and will contain a resident's lounge and multi-purpose room, together with a roof terrace with a fire pit overlooking the marina. The second floor recreation deck (roof terrace) will receive glass handrails and will include a new traffic bearing surface comprised of tile (or equal). The existing 2nd story penthouse will be evaluated to determine if it can feasibly be converted from a large two-bedroom unit to a three-bedroom unit. The unit will be upgraded to the specifications of the balance of the Bay Club Apartments.

To correspond with the exterior improvements to the apartment buildings, the exterior elements of the clubhouse will also be dramatically improved. The existing tile mansard roof will be replaced with a new parapet installed to complement the frame of the new clubhouse. The height of the two-story element of the clubhouse will not be changed and will remain at 27'3" from the Tahiti Way-side (31'1" from the marina-side). The height of the one-story element with roof terrace that extends to the marina-side of the project will also remain unchanged at 14' from the Tahiti Way-side (17'10" from the marina-side). Glass windows and aluminum and tinted green glass balcony rails will be incorporated into the clubhouse building design, providing a more contemporary and exciting exterior elevation more fitting for the current marina. The basic frame exterior of the clubhouse will consist of stucco with integral color of burnt almond (DE5258). Stone tile (Daltile – City View CY05) will be applied to the main entrance off Tahiti Way to add additional visual appeal [See Exhibit A: A10].

Promenade

The promenade improvement plan is presented as a conceptual plan only. The conceptual plans for the waterfront pedestrian promenade will meet all necessary fire department access requirements and will also be a pedestrian-friendly space with paving treatments, landscape pockets and seating areas for enhanced marina views [See Exhibit A: L2]. The promenade walkway will be resurfaced with colored interlocking paving bands. The fencing at the sea wall will be replaced with decorative metal fencing designed to provide an exciting, creative outdoor space for residents and the public. New security gate enclosures will also be provided for the dock gangway entrances. The promenade surface will also receive new pedestrian light bollards providing downward focused lighting, as well as new metal benches and trash receptacles.

Thematic lighting along the promenade will personalize the area and tie it to the overall design concept of the project [See Exhibit A: L2 and Exhibit B]. Pedestrian scaled lighting fixtures with integral cut-off shields will reduce glare. The existing pedestrian light standards will be replaced with new down-lighting standards.

Hardscape and Parking

To add to the revitalized image of the project, all hardscape will be upgraded. The existing surface material of the widened driveway from Tahiti Way to the promenade will be replaced with a new stamped concrete surface and a smooth concrete edge band will be installed. In addition, all existing asphalt will have a new slurry coating and the parking lot will be re-striped to provide the required on-site parking for the apartments and slips. Due to the reduction in the number of slips, by converting a number of the existing full size boat slip parking spaces to compact spaces, Marina LP will be able to increase the ratio of parking spaces to boat slips from 0.67 to 0.75 to comply with current Los Angeles County Code and Marina del Rey Land Use Plan requirements without increasing the number of available parking spaces. The number and size of parking spaces for the apartments will not change since no increase in the number of units is proposed.

PARKING RATIOS

Current

	Number of Units	Parking Spaces	Ratio
Apt.	205	315	1.5
Boat Slips[1]	252	169	0.67
Total		**484**	

Proposed

	Number of Units	Parking Spaces	Ratio
Apt.	205	315	1.5
Boat Slips[2, 3]	229	172	0.75
Total		**487**	

[1] 230 slips (plus 11 end ties allowing for 2 boats each)
[2] 207 slips (plus 11 end ties allowing for 2 boats each)
[3] Additional compact spaces will be created to increase boat slip parking, resulting in 68 compact spaces and 104 full size spaces (thus 39% of the 172 boats slip parking spaces will be compact spaces)

Circulation

The Site is accessed by two driveways off of Tahiti Way. The main access is located between the two residential buildings at the approximate mid-point of the Site. Another access is located just east of the adjacent parcel 9U. The main access driveway is proposed to be widened from a one to two lanes.

Marina Boat Slip Improvements

Marina LP intends to completely replace the existing slips with a brand new state-of-the-art modern concrete dock, that meets modern marina standards and that is compliant with ADA and DBAW standards [See Exhibit C]. To address recent public and Coastal Commission concerns regarding marina small boat slip availability, Marina LP has developed a boat slip configuration that consists of 207 slips and 11 end ties, minimizing, to the extent possible, the loss of boat slips for the marina. This configuration allows Marina LP to retain as many small slips as possible while still complying with modern ADA and DBAW standards. The new configuration is designed to retain the approximate existing boat slip size mix design ratios, and will actually increase the number of slips <25' in length and decrease the number of slips > 40' in length.

EXISTING VS. PROPOSED SLIP CONFIGURATION

Slip Length	Existing Total	Proposed Total
22	0	1
24	0	4
25	0	8
28	14	4
29	0	4
30	64	40
32	0	1
33	16	16
34	0	1
35	81	66
36	0	1
38	6	19
40	33	18
42	7	13
44	2	2
45	0	1
46	7	7
60	0	1
Total2	**230**	**207**
Average Length	*34.47*	*34.73*

2 Totals exclude 11 end tie slips.

Planned Change in Slip Numbers

Slip Size (Linear Ft)	≤ 25'	≤ 30'	32' – 38'	40+'
Current Layout	0	78	103	49
Proposed Layout	13	61	104	42
Change	*13*	*(17)*	*1*	*(7)*

Planned Change in Slip Ratios

Slip Size (Linear Ft)	≤ 25'	≤ 30'	32' – 38'	40+'
Current Layout	0.0%	33.9%	44.8%	21.3%
Proposed Layout	6.3%	29.5%	50.2%	20.3%

The new marina anchorage will be redeveloped with commercially available, pre-manufactured concrete dock systems. This new construction will provide for a clean, modern appearance that requires minimal maintenance. The walkways will be constructed of concrete with a light broom non-skid finish. The stringers framing the walkways will be made of 3" by 8" rough sawn wood or glu-laminated beams, depending on structural calculations, on either side of the concrete docks. The ramps will be designed utilizing aluminum trusses. Newly installed guide piles will be pre-stressed concrete. The dock will not be painted and will retain the natural color of its various building materials. All timber used for the marina will utilize pressure-treated preservatives to extend timber useful life and will meet all State and Federal requirements.

The new dock system will utilize a combination of traditional dock boxes with power centers (30 amp & 50 amp) mounted in the front dock box recess area for all standard boat slips, and the use of pedestal-style power centers along end ties of the marina, where higher levels of power are required due to the variety of boats that may berth to these end ties; i.e., 100 amp power. Lighting is provided in both styles of dock box. Low level florescent lamps (7 to 9 watts) are normally used for localized safety lighting for the main dock walkways.

Based on County requirements, the fire and domestic water piping systems will be separated. Fire water pressure shall be provided meeting Fire Department requirements.

The new marina will also incorporate in its design a sewage pump-out system/stations at each dock which will connect directly into the sanitary sewer. The sewage pump-out system is composed of a pump (peristaltic or vacuum system), hydrants located at or near each slip (i.e. one hydrant per two to four boats) allowing for in-slip pump-out convenience, internal piping system located in the docks connecting the hydrants to the sewage pumps, and portable hose reels on carts that can move around the marina as needed for the direct connection between the hydrant and the sewage pump-out valve located each boat. It is envisioned that two portable pump-out carts will be strategically located within the marina for use by all boaters. These pump-out carts are normally stored at the base of

gangways, for the boaters' convenience, but could be stored in landside storage areas. Locating these carts on the docks promotes their use, which is the State's primary desire. Based on a marina of this size, no more than 3 pumps are required to serve the dock system, but based on marina geometry, more pumps may be installed to limit landside space constraints and inter-connecting piping systems. In addition, several sewage manholes will be installed in the access road. Trenching in the roadway will be required to run piping from the top of gangway locations to the new manholes, and then to the County sewage pipeline underground. Sewage is pumped under pressure to the new manholes in the roadway, with sewage then flowing via gravity into the existing sewage system header managed by County Public Works.

A consolidated panel or cabinet will be provided where all utilities, with the possible exception of the sewage piping system, can be housed. This panel would be located within the guard railing system, alongside the gangway entrances. The panel will also be used to mount the various required signs. It is intended that the panels or cabinet would be pre-finished steel, aluminum or stainless steel sheet metal, with color to match to-be-designed railings. It is believed that this panel system is an aesthetic enhancement to the marina, since the County does not allow developers to core holes thru the seawall to service the related dock systems, and up to six utility lines must be routed to each gangway, which can be unsightly if required to run up and over the tops of the seawall, at each gangway. Due potential Los Angeles County Code requirements, the sewage piping system may need to be separated from the water system and therefore may not be allowed to run within this same cabinet. Examples of this installation can be viewed at Marina Harbor.

Landscaping

The landscape design concept is intended to transform the existing plant palette to a new contemporary and more sustainable water-conserving design [See Exhibit A: L1-L3]. An emphasis will be placed on native and Mediterranean, drought-tolerant plantings that will both serve the practical purpose of providing cover and shade to building residents and promenade pedestrians, as well as adding to the revitalized architectural design of the overall project. To ensure that the new plantings are properly maintained without the waste of valuable water resources, an unobtrusive, automatic-low-precipitation irrigation system will be installed.

On the promenade, shade trees, such as native Catalina Ironwood (*Lyonothamnus floribundus*) and Brisbane Box Tree (*Tristania conferta*) in tree wells, will be located adjacent to the renovated promenade to provide shade for pedestrians and benches. The existing King Palms (*Archontophoenix c.*) and Queen Palms (*Syagrus romanzoffiana*) will be relocated into the new promenade.

Most of the existing landscaping is concentrated along the Tahiti Way front setback. Since the under-story planting is a sparse and dated mix of water-loving plants, this landscape will be replaced with a new water-efficient landscape. This plant pallet will consist mainly of low-water/drought tolerant Mediterranean plants. New layered screen planting and low groundcover will replace the existing grass and ivy, providing for additional visual coverage for the at-grade parking. The existing Mexican Fan Palms (*Washingtonia robusta*) and the umbrella tree (*Schefflera actinophylla*) will be saved, as they are a prominent part of the streetscape.

Signage

Marina LP will install all new custom property identification signage utilizing focused accent lighting. Additionally, a new finder graphics package is to be installed throughout the property for better identification and access for residents, emergency crews and on-site guests.

Lighting

Landscape and area lighting on the property will be replaced to better enhance the new building exteriors and create better-lit paths for ingress and egress [See Exhibit A: L2 and Exhibit B]. Care has been taken to select lighting that is either directed downward or highly-focused accent up-lighting in order to reduce excess glare and up-lit surfaces.

The primary illumination along the promenade will be provided by light standards spaced out 27 feet on center. The light source will be shielded to illuminate the promenade and to keep excess light from the boat slips, apartments and waterway. Secondary light fixture bollards that project light downwards will be located at the gangway gates. These bollards will be approximately 4 feet tall and will provide pathway illumination.

Foot-level lighting will be installed along each gangway to provide for enhanced walking path safety. LED lighting bulbs will be used in the lighting pedestals installed on the docks, providing for more environmentally friendly, low-energy light fixtures that give off a more pure light. Each dock-box with power center will be fitted with 7 watt fluorescent lamps. As previously mentioned, this lighting will be directed downward to the path itself to reduce or eliminate glare or lighting of the Marina waterway.

List of Required Actions

- Conceptual Design Review – Marina del Rey Design Control Board
- Environmental Clearance – Board of Supervisors/ Department of Regional Planning
- Option to Amend Lease Agreement – Board of Supervisors
- Site Plan Review, Marina Approval in Concept – Department of Regional Planning
- Marina Coastal Development Permit – California Coastal Commission

To enrich lives through effective and caring service

Los Angeles County
Department of Beaches & Harbors

Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

Responses to Comments and Corrections

Mitigated Negative Declaration
Bay Club Marina
14105 and 14035 West Tahiti Way, Marina del Rey
Lease Parcel 8T/Lease No. 4985
Project No. R2008-01776
Environmental Review No. RENV T200800101

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://marinadelrey.lacounty.gov

Responses to Comments

Introduction

This Responses to Comments document has been prepared to respond to written public comments received during the public comment period on the Mitigated Negative Declaration ("MND") for the proposed Bay Club Marina project, which includes an Option to Amend Lease Agreement with the County of Los Angeles, site plan review for landside renovation, and approval in concept for the marina reconstruction (the "Project").

The MND was subject to a 30 day public review period in accordance with the California Environmental Quality Act ("CEQA") Guidelines Section 15073. The MND was circulated twice. The first circulation was from August 12, 2009 to September 11, 2009 to the following government agencies:

- California Coastal Commission
- California Department of Fish and Game
- County of Los Angeles Fire Department
- City of Los Angeles Planning Department
- County of Los Angeles Department of Public Works
- County of Los Angeles Sheriff Department
- State Clearinghouse
- Army Corps of Engineers
- County of Los Angeles Department of Beaches and Harbors
- Los Angles County Department of Public Health

The second review period ran from October 8, 2009 to November 9, 2009. Distribution of the MND and the Notice of Intent to Adopt a Mitigated Negative Declaration ("Notice") was again distributed to the government agencies listed above as well as to the Los Angeles County Board of Supervisors. Distribution of the Notice was made to the Los Angeles County Registrar-Recorder/County Clerk for posting on October 8, 2009. Distribution of the Notice was made via U.S. Mail and email to interested parties. The Notice was posted on site on October 8, 2009. The Notice was posted off site at the Department of Beaches and Harbors Administration Building, 13837 Fiji Way, Marina del Rey, 90292; Burton Chase Park, 13650 Mindanao Way, Marina del Rey; Lloyd-Taber Marina del Rey Library, 4533 Admiralty Way, Marina del Rey, 90292; and MdR Visitors and Information Center, 4701 Admiralty Way, Marina del Rey, on October 8, 2009. The Notice was published in the Argonaut, a newspaper of general circulation, on October 8, 2009. Copies of the MND, Initial Study, Mitigation Monitoring Program, and Mitigation Measures Contract were also made available for public review at the Department of Beaches and Harbors Administration Building, 13837 Fiji Way, Marina del Rey, 90292; the Department of Regional Planning, Hall of Records, Room 1348, 320 West Temple Street, Los Angeles, 90012; Department of Beaches and Harbors Administration Building, 13837 Fiji Way, Marina del Rey, 90292; and the Lloyd-Taber Marina del Rey Library, 4533 Admiralty Way, Marina del Rey 90292.

CEQA Guidelines Section 15204(b) provides that in reviewing negative declarations, persons and public agencies should focus on the proposed findings that the project will not have a significant effect on the environment. If persons and public agencies believe that the project may have a significant effect, they should (1) identify the specific effect; (2) explain why they believe the effect would occur; and (3) explain why they believe the effect would be significant.

CEQA Guidelines Section 15204(c) further advises: "Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments." Pursuant to CEQA Guidelines Section 15064, an effect shall not be considered significant in the absence of substantial evidence. Section 15204(d) also states, "Each responsible agency and trustee agency shall focus its comments on environmental information germane to that agency's statutory responsibility."

Section 15024(e) states: "This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or the lead agency to reject comments not focused as recommended by this section."

The County of Los Angeles Department of Regional Planning received four comment letters on the MND. CEQA Section 21091(d)(1) requires the County, as Lead Agency, to consider any comments on the MND that are received within the public comment period. Therefore, the comment letters received during the public review period are included in their entirety in this document. Each letter is followed by responses corresponding to comments submitted in the letter. Responses are provided for all comments submitted. No new significant environmental impacts are raised by the submitted comment letters.

Comment Letters and Responses

This section provides copies of all comment letters received during the public review period for the MND. Each letter is included in its entirety for the subject MND, followed by responses that correspond to the comments submitted in the letter.

Comment Letter	Commentor	Letter Date
1	Loni Adams, Department of Fish and Game	October 19, 2009
2	Daniel Gottlieb	October 12, 2009
3	Nancy Vernon Marino, We ARE Marina del Rey	October 8, 2009
4	David Barish, We ARE Marina del Rey	November 9, 2009

Letter 1

-----Original Message-----
From: Loni Adams [mailto:LAdams@dfg.ca.gov]
Sent: Monday, October 19, 2009 2:58 PM
To: Curzi, Anthony
Subject: MND for Bay Club Marine Parcel 8T (Marina Boat SlipImprovements)

Dear Mr. Curzi:

Concerning the subject proposed project to completely replace the existing slips with a new concrete dock that meets all local, state and federal requirements. According to the Mitigated Negative Declaration (MND) that I received, the marina portion of the project would use the existing boat slip size mix design ratios. The MND also indicates that the number of boat slips would decrease, but the size of slips would increase. The MND does not indicate the total square footage of increase or decrease of over water coverage and no indication of shading impacts to biological resources in the proposed project foot print.

The Department of Fish and Game (Department) marine region staff has reviewed your MND and is requesting that you estimate and send to us the total area of additional (increased) over water bay marina coverage, if any, or the area of decrease in square feet. In the case that there is additional area of over water bay coverage (shading impacts) proposed, then I request that you further analyze all potential impacts to biological resources that may be affected along with best available minimization, mitigation and conservation measures for this type of impact. Consultation with the natural resources agencies may be needed. 1-1

The Department requests that you send additional impact analysis, if necessary, and all future biological surveys or monitoring reports conducted before, during and after construction of your proposed project.

If you have any questions, feel free to call me to discuss.

Sincerely,

Loni Adams
Environmental Scientist
Department of Fish and Game
Marine Region
4949 Viewridge Ave.
San Diego, CA 92123

Office: 858-627-3985
Cell: 858-750-8803
Fax: 858-467-4299

Response to Comment Letter 1: California Department of Fish and Game

1-1 Thank you for your comment. The MND was circulated twice to the California Department of Fish and Game; the first circulation was from August 12, 2009 to September 11, 2009, and the second circulation was from October 8, 2009 to November 9, 2009. No comments were received from the Department of Fish and Game during the first review period.

The reconstruction and reconfiguration of the existing marina would increase the dock surface area by 2,010 square feet from 53,202 square feet currently to 55,212 square feet at buildout. The additional shaded area is solely due to compliance with the Americans with Disabilities Act. Attachment 1 to this Responses to Comments is an overlay of the existing marina and proposed marina on an aerial photo to demonstrate the additional shading effects likely to occur. Areas immediately below the expanded dock are anticipated to experience reduced light penetration due to shading.

Refer to Initial Study Resources Section 3, Biota, for discussion regarding the biological resources at the project site. A Biological Resource Survey of the submerged land where the marina is located, including the 2,010 square feet of new dock surface area, was undertaken during the environmental review process to assess, among other issues, the presence of eelgrass and other species of special status. Refer to the Biological Resource Survey prepared by Weston Solutions, Inc. and dated August 2008, which is available for review at the County. As stated in the Biological Resource Survey, the benthos is dominated by soft-bottom habitat with little to no algal cover. If eelgrass or other species of special status were present on the site, increased shading could have an impact; however, as documented in the Biological Resource Survey and Initial Study, no eelgrass or other species of special status were detected during the dive surveys. Accordingly, the increase in area subjected to reduced light penetration is unlikely to have a significant adverse biological effect.

In addition, the MND included the following mitigation measure, also included as Mitigation Monitoring Program Mitigation No. 19, to ensure no adverse impact to biological resources:

> To ensure that the project will not adversely affect eelgrass beds or result in the dissemination of invasive algae, the applicant will conduct pre-construction surveys for eelgrass no more than 60 days prior to construction and for Caulerpa no less than 30 days and no more than 90 days prior to construction during the period of active growth (i.e., March 1 to October 31). It is anticipated that neither species will be detected in the study area. In the unlikely event that eelgrass is detected, focused dive surveys will be performed to map

the location and area of eelgrass beds and determine turion densities within patches. Locations of beds will be mapped using a GPS unit, and areal coverage will be determined by measuring the dimensions of the beds with transect tapes. If eelgrass is detected, the following Best Management Practices (BMPs) would be implemented to minimize adverse effects to eelgrass;

- The locations of eelgrass beds will be marked with buoys by the project marine biologists prior to conducting renovations;
- The project marine biologist will meet with construction crews to show areas where eelgrass occurs and discuss BMPs;
- Vessel operation in the vicinity of eelgrass will be limited to tides higher than +2 to +4 feet mean lower low water (MLLW); and
- Vessels shall avoid anchoring over eelgrass beds.

Upon completion of dock renovations, a post-project eelgrass survey will be conducted within 30 days to evaluate impacts to eelgrass. The survey will be repeated annually for two years to quantify the extent of eelgrass loss due to shading effects as required by the Southern California Eelgrass Mitigation Policy (NMFS 1991).

If loss of eelgrass is observed at the end of the two-year monitoring period, then the applicant will be required to mitigate for losses at a ratio of 1.2 to 1 either on site or at another site within Marina del Rey.

In the unlikely event that Caulerpa are identified within the study area during preconstruction surveys, NMFS or CDFG contacts will be notified within 24 hours of the discovery. Within 96 hours of notification, the extent of the infestation will be documented. Caulerpa eradication will be performed using the best available technologies under the guidance of NMFS and CDFG contacts. Following eradication, surveys will be conducted to determine the effectiveness of treatments prior to approval of the project.

No further impact analysis is necessary.

Letter 2

From: Daniel Gottlieb [mailto:daniel.gottlieb@gmail.com] **On Behalf Of** Daniel Gottlieb **Sent:** Monday, October 12, 2009 9:25 AM **To:** Curzi, Anthony **Cc:** Santos Kreimann; zev@bos.lacounty.gov **Subject:** Notice of Intent to Adopt a Mitigated Negative Declaration for parcel 8T

Mr. Anthony Curzi
County of Los Angeles Department of Regional Planning
Impact Analysis Section
320 West Temple St.
Los Angeles CA 90012-3225

Dear Mr. Curzi,

I write this in order to demonstrate the culture of misinformation identified in Marina del Rey by Santos Kreimann.

1. The given addresses 14015 and 14035 West Tahiti Way, do not correspond to existing buildings according to the Beaches and Harbors map on their website. It looks like the project is half of a long building. 2-1

2. There is no street in Marina del Rey called **West** Tahiti Way. 2-2

3. There is no Parcel 8T shown on the website map. 2-3

4. The commonly used name, Bay Club, is not used in the Notice of Intent to Adopt a Mitigated Negative Declaration. This violates Section 15071(a) of the **Public Resources Code**. See below, (my emphasis). 2-4

5. The Assessor Parcel maps are frequently inaccurate in the Marina. They haven't been updated in 10 years. 2-5
I won't bother to check if Assessor Parcel Number 4224-002-is correct.

6. The addresses in the Marina are frequently wrong. The incorrect address given for the Parking lot on Parcel A in a 1990's survey of parking lots by Crain and Associates probably led to its omission in the recent right sizing parking lot study. Parcel A does not appear on most Beaches and Harbors maps. It is however used very frequently by visitors, who come for walks along Baollona Lagoon or along the jetty, or simply to enjoy the views of the scullers and sail boats and wild life (including a whale) set in a magnificent location with view of the snow covered San Gabriel Mountains on favorable days. 2-6

I note that these errors are packed within the first 12 lines of the Notice. The amount of misinformation in MdR, always considerable, has exploded since the approval of the Shores Project and the jailing of MSCII's lawyer, Richard I Fine, in March of this year. 2-7

Sincerely

Prof. Daniel Henry Gottlieb
Math. Dept.
UCLA
Los Angeles, CA 90095-1555
gottlieb@math.ucla.edu

Exhibt: Public Resources Code, Section--

15071. Contents

A Negative Declaration circulated for public review shall include:

(a) A brief description of the project, including a commonly used name for the project, if any;

(b) The location of the project, preferably shown on a map, and the name of the project proponent;

(c) A proposed finding that the project will not have a significant effect on the environment;

(d) An attached copy of the Initial Study documenting reasons to support the finding; and

(e) Mitigation measures, if any, included in the project to avoid potentially significant effects.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21080(c), Public Resources Code.

Discussion: The purpose of this section is to prescribe the contents of a Negative Declaration. The statute itself does not say what a Negative Declaration must contain. The contents described in this section appear to be the minimum required to meet the public participation and disclosure policies of CEQA.
.....

Subsection (b) reflects the concept of the "Mitigated Negative Declaration" as defined in Public Resources Code section 21064.5. A Mitigated Negative Declaration is not intended to be a new kind of document. **It is merely a Negative Declaration** prepared in a slightly different situation. The Guidelines would continue to give Lead Agencies the option of allowing applicants to modify their projects so that the Lead Agency could make a finding that the project would not have a significant effect on the environment.

Dan Gottlieb
3516 Via Dolce
Marina del Rey
CA 90292
gottlieb@math.purdue.edu
(310) 301 4980

Response to Comment Letter 2: Daniel Gottlieb

2-1 14015 and 14035 West Tahiti Way are the commonly-referenced mailing addresses associated with the Bay Club Marina apartments and marina. In order to ensure that the Project site is easily and appropriately identified, the Notice, MND, Initial Study, and other circulated public documents also reference several other identifying designations for the property including Assessor Parcel Number 4224-002-900, Lease Parcel 8T, Lease Number 4985, and County Project Numbers R2008-01776 and RENVT200800101. The property has also been identified as 13800 Tahiti Way on County maps and surveys.

As discussed in the Notice and the Project Description made available to the public on October 8, 2009, the Project includes the renovation of 205 apartment units in two linear, three-story buildings; the renovation of an existing two-story clubhouse with attached penthouse and pool; and the replacement of 230 boat slips (plus 11 end ties) with 207 new boat slips (plus 11 end ties). The proposed reductions in slip counts are due only to changes in applicable Americans with Disabilities Act and California Department of Boating and Waterways guidelines. See Project Description.

2-2 While the County's official maps show the street name as Tahiti Way, 14015 and 14035 West Tahiti Way are the commonly-referenced mailing addresses associated with the Bay Club Marina apartments and marina.

See Response to Comment 2-1.

2-3 Parcel 8T is identified on maps incorporated into the Marina del Rey Land Use Plan, which is publicly available on the Department of Regional Planning's website, http://planning.lacounty.gov/assets/upl/data/pd_marina-del-rey.pdf. A complete legal description and lease history for Parcel 8T are also available on the Department of Beaches and Harbors website at: http://beaches.co.la.ca.us/bandh/PublicOnlineDatabase/Leases.htm.

2-4 The commenter alleges that the Notice circulated on October 8, 2009, is in violation of Section 15071(a) of the Public Resources Code ("PRC"). As of the date of this response, there is no such section of the PRC.

To the extent the commenter intended to allege a violation of California Code of Regulations ("CCR") Section 15071(a), CCR Section 15071(a) states that the contents of a Negative Declaration circulated for public review shall include "A brief description of the project, including a commonly used name for the project, if any."

The Project Description attached to the MND, which was circulated to all commenting Agencies and made publicly available on October 8, 2009, references the commonly used project name, "Bay Club Marina." See Page 1 of

Project Description. In addition, the Notice, which was circulated to all commenting Agencies and interested parties, and posted at various on and off site locations, referenced the commonly used name "Bay Club Marina" in the upper right-hand corner. See Notice.

2-5 Assessor Parcel Number 4224-002-900 references all of Development Zone 2, identified in the Marina del Rey Land Use Plan. Development Zone 2 contains Parcel 8T, as depicted in the Marina del Rey Land Use Plan maps. 4224-002-900 is the Assessor Parcel Number associated with the Project site.

See also Responses to Comments 2-1 and 2-3.

2-6 This comment is noted for the record.

See also Response to Comment 2-1.

2-7 The Notice was prepared in accordance with regulations published in PRC Section 21092 and CCR Sections 15071 and 15072 and is in compliance with those laws.

See also Responses to Comments 2-1 through 2-6.

Letter 3

From: Nancy Marino [mailto:nancy@wearemdr.com] **Sent:** Thursday, October 08, 2009 5:41 PM **To:** Curzi, Anthony **Cc:** Nancy Marino **Subject:** Re: Notice of Intent to Adopt MND in Marina del Rey

Dear Mr. Curzi,

Regarding the proposed Bay Club redevelopment:

1) What does the "T" in the parcel designation "Parcel 8T" signify? On all county Marina maps that I have seen, the Bay Club parcel is designated only as Parcel 8. Does this project entail only a portion of Parcel 8, or has the county changed its parcel classifications? 3-1

2) The notice does not indicate how many existing slips will be demolished in the redevelopment proposal. This is critical information, and the notice should be re-issued to include it. It should also be included in all other project overviews in the permitting and/or entitlements process. 3-2

3) The notice does not include a link to supporting materials. I despair of ever finding anything on the DRP website, so please send me the materials or a direct link to same (the redesign of the Regional Planning website has made it much harder to search supporting materials for projects) 3-3

Thank you for your assistance

Together,
We ARE Marina del Rey
Nancy Vernon Marino
Co-Director

310.490.1983
nancy@wearemdr.com

P.O. Box 9096
Marina del Rey, CA 90295

www.wearemdr.com

We ARE Marina del Rey is a project of the International Humanities Center, a nonprofit public charity exempt from federal income tax under Section 501[c](3) of the Internal Revenue Code

Response to Comment Letter 3: Nancy Marino, We ARE Marina del Rey

3-1 The Bay Club Marina property has historically been identified as Lease Parcel 8T, as noted in the legal description approved for the Lease Parcel on August 13, 1971. This legal description is publicly available on the Department of Beaches and Harbors Website at: http://beaches.co.la.ca.us/bandh/PublicOnlineDatabase/Leases.htm.

See also Response to Comment 2-3.

3-2 The Notice was prepared in accordance with PRC Section 21092 and CCR Sections 15071 and 15072 and complies with those requirements.

In addition, the Initial Study and Project Description made available for public review with the Notice contain multiple references to proposed slip replacement counts and ratios. See Initial Study Sections Resources 4.a.; Resources 6.b.; Other Factors 4.a.; Other Factors 4.d.; Project Description Page 1; Project Description Page 6; and Project Description Page 8.

3-3 As stated in the Notice, Project materials, including the Notice, MND, Initial Study, Project Description, Mitigation Monitoring Program, Mitigation Monitoring Contract, and Land Use and Vicinity Maps were made available to the public at multiple locations throughout Marina del Rey and Los Angeles County, as well as online at the Department of Beaches and Harbors website (http://beaches.co.la.ca.us/BandH/Main.htm) as of October 8, 2009.

This comment is noted for the record.

Letter 4

From: David B - We ARE Marina del Rey [mailto:davidb@wearemdr.com] **Sent:** Monday, November 09, 2009 6:34 PM **To:** Curzi, Anthony **Cc:** David Barish - We ARE MdR; nancy@wearemdr.com **Subject:** Re: Notice of Intent to Adopt MND in Marina del Rey

Dear Mr. Curzi,

please accept the following comments for the record regarding the Notice of Intent to Adopt MND for Project #R2008-01776, Bay Club Apartments on Parcel 8 in Marina del Rey.

While We ARE Marina del Rey is not opposed to renovation of apartments versus complete tear down and rebuilds, we do have concerns about short-term construction impacts including short-term noise and air quality impacts from this project, given the number of projects in the immediate area that are scheduled to commence construction concurrently and/or overlap.

The following projects were not included with the four listed major projects in area in the Initial Study:

- Bar Harbor Apartments (Parcel 15 along Via Marina and Panay Way) which has been approved for construction 4-1
- The Shores Apartments (Parcels 100&101 on Via Marina between Panay Way and Marquesas)which has been approved for construction

- Tahiti Marina Apartments (Parcel 7) renovation of apartments which has commenced the regulatory phase

- The Venice Dual Force Main project by the City of Los Angeles along Via Marina from Marquesas to the breakwater

I do not believe the Initial study provide adequate review of the cumulative short-term construction impacts and believe only an Environmental Impact Study could properly assess such impacts on the community and of this project.

Sincerely,

David Barish Director We ARE Marina del Rey PO Box 9096 Marina del Rey, CA 90295 (310) 909-6697 www.wearemdr.com davidb@wearemdr.com

We ARE Marina del Rey is in affiliation with International Humanities Center, a nonprofit public charity exempt from federal income tax under Section 501[c](3) of the Internal Revenue Code.

Response to Comment Letter 4: David Barish, We ARE Marina del Rey

4-1 This comment states that We ARE Marina del Rey is not opposed to the renovation of apartments versus complete tear down and rebuilds, but has concerns about short-term construction impacts given the possible projects in the area that could commence construction concurrently and/or overlap with the Project.

Construction timeframes are subject to frequent changes, both in terms of the overall timeframe as well as use of equipment day to day; accordingly, it is not possible to precisely quantify the potential for overlapping construction impacts. Nevertheless, the Initial Study identified and considered the potential for cumulative impacts with the following major projects in the area (page 2):

- R2006-03647. Neptune Marina Parcel 10R in the northwest corner of Basin B. Proposed construction of a 400-unit apartment complex, and 174 boat slips (pending).

- R2006-03652. Neptune Marina Parcel FF, in the Southwest corner of Basin C. Proposed development of a 126-unit apartment complex (pending).

- R2006-03643 / R2006-03644. Woodfin Suite Hotel and Timeshare Resort located on parcel 9U North (proposed construction of 288 hotel and timeshare suites) and the development of a public wetland and upland park on the southern portion of Parcel 9U (pending).

- TR 067861. Nineteen story building with 136 timeshare units and 152 hotel rooms (pending) at Parcel 9U.

- TR 068098. Four condominium buildings with 216 condominium units (in same development with 262 for-lease units) (pending).

The MND concluded that with mitigation, the Project would not have the potential to have a significant effect on the environment. In addition, refer to Initial Study, Mandatory Findings of Significance, which determined that the Project would not have possible environmental effects which are cumulatively considerable, which means that the incremental effects of the Project are not considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The commenter identifies the following four projects that were not included in the Initial Study, but which he states may commence construction concurrently and/or overlap with construction of the Project:

- Bar Harbor Apartments; Via Marina and Panay Way

- Shores Apartment, Via Marina between Panay Way and Marquesas
- Tahiti Marina Apartments
- Venice Dual Force Main, Via Marina from Marquesa to the breakwater

The Bar Harbor Apartments, located on Parcel 15 in Marina del Rey, is an apartment and marina reconstruction project. According to information provided to the County, the project is currently on hold. Construction timeframes are subject to frequent changes, both in terms of the overall timeframe as well as use of equipment day to day. It would be speculative to quantify the potential for overlapping construction impacts.

The Shores Apartments project, located on Parcels 100 and 101 in Marina del Rey, involves construction of new apartments only. According to information provided to the County, the project has been delayed due to litigation hold. Construction timeframes are subject to frequent changes, both in terms of the overall timeframe as well as use of equipment day to day. It would be speculative to quantify the potential for overlapping construction impacts.

Environmental review has commenced for apartment and other landside renovations at the Tahiti Marina Apartments located on Parcel 7 in Marina del Rey, but no applications have been submitted. Construction timeframes are subject to frequent changes, both in terms of the overall timeframe as well as use of equipment day to day. It would be speculative to quantify the potential for overlapping construction impacts.

The Venice Pumping Plan Project Dual Force Main project is a City of Los Angeles project proposing construction of a new 54-inch diameter force main sewer from the existing Venice Pumping Plant to the Coastal Interceptor Sewer in Playa del Rey. The EIR considered three primary alternative pipeline route alignments, including a route on Via Marina in Marina del Rey. The EIR also considered three construction methods: (1) cut-and-cover, (2) small-diameter micro-tunneling; and (3) large-diameter tunneling. EIR certification is pending, and the Los Angeles City Council has yet to select a route alignment or construction method(s). The expected construction duration is from December 8, 2010 to September 4, 2013; however, the project requires additional approvals and entitlements from the County, California Coastal Commission, and other agencies, and it is unclear which route alignment will ultimately be chosen. Construction timeframes are subject to frequent changes, both in terms of the overall timeframe as well as use of equipment day to day. It would be speculative to quantify the potential for overlapping construction impacts.

The Applicant anticipates that construction of the Project will commence no sooner than 2011 and be completed no sooner than 2013; however, the precise

timing of Project construction is not known and is subject to a number of factors including market conditions and obtaining the site plan approval from the County for the landside renovation portion of the Project and a Coastal Development Permit from the California Coastal Commission for the marina reconstruction portion of the Project.

Potential Cumulative Temporary Construction Impacts: Noise

Refer to Initial Study Hazards Section 3, Noise (pages 12 – 13), for discussion regarding noise impacts, which were determined to be less than significant with Project mitigation. As indicated in the MND, the Project would be required to comply with the County of Los Angeles Noise Ordinance that regulates noise in order to protect the public from construction and operational noise impacts. The landside portion of the Project requires only ministerial approvals and consists of renovation to the existing improvements. The renovation of the apartments, marina reconstruction, and associated utility work would result in noise levels typical of renovation activities and minor construction: hammering, sawing, worker activity, and minor use of jackhammers to break up small areas of concrete for utility work; however, the Project would not include heavy equipment use associated with new construction such as bulldozers and scrapers. The MND recognizes pile driving as the only activity that would temporarily substantially increase noise levels in the area, and concludes that the use of noise shrouds and the relatively short duration of that activity would result in a less than significant impact. Also refer to Initial Study, Mandatory Findings of Significance, for discussion of the Project's cumulatively considerable impacts, which were determined to be less than significant with Project mitigation.

The Project, which would be completed in three phases, would require an average of 2 to 8 truck trips per day, with up to 18 truck trips per day during the approximately five weeks of demolition for each phase. The noise associated with truck activity, in general less than one truck per hour between 8:00 a.m. and 5:00 p.m., would not add significant noise impacts or cumulatively considerable impacts, including to existing traffic noise on Via Marina and surrounding streets.

As noted above and set forth in the Initial Study, the only potential substantial cumulative temporary construction impact is from noise resulting from pile driving activities associated with the marina reconstruction portion of the Project. The Initial Study states:

> [T]he noise generated by pile driving associated with the boat slip renovations would temporarily substantially increase noise levels. Pile driving would occur in three phases, each phase would result in drilling 36 piles; each pile takes about 30 minutes to drill, with up to 5 piles drilled per day. Noise levels could reach as high as 105 dBA as each pile is struck. The project would use noise shrouds that would reduce noise levels about 20 dBA below this

level. Noise shrouds together with the short duration of this impact result in this impact being considered less than significant.

The marina reconstruction is anticipated to be constructed in three phases, with each phase taking three and one-half months up to six months. As described in the Initial Study, each phase would result in driving 36 piles, with each pile taking approximately 30 minutes to drive, and with up to approximately 5 piles drilled each day. Accordingly, during each construction phase, driving would occur for approximately seven to eight days for two and one-half hours per day.

As set forth in the Initial Study, the noise level could reach as high as 105 dBA at 50 feet from the pile as each pile is struck. The closest sensitive uses are residential uses on-site and located east of the marina, each approximately 100 feet from pile driving activity. Residences immediate south of Tahiti Way are approximately 200 feet from pile driving activity; however, these residences are shielded by the existing on-site apartment buildings, which act as a noise buffer. The MND included the following mitigation measure, also included as Mitigation Monitoring Program Mitigation No. 1, to ensure no adverse impact from noise:

> The Project applicant shall ensure that noise shrouds are used during pile driving activities.

Exterior noise levels at the residences 100 feet from pile driving activity (including possibly live-aboard boats) with the use of shrouds would be 79 dBA, which is less than the noise level associated with typical new construction activity which at 50 feet ranges from 83 dBA to 90 dBA (and at 100 feet ranges from 77 dBA to 84 dBA). Interior noise levels would be reduced about 24 dBA compared to outdoor noise levels (10 to 15 dBA for live-aboard boats);[1] thus, noise levels in the closest residences could reach 55 dBA (69 dBA in the live-aboard boats) for short periods when pile driving is 100 feet away. A noise level of 55 dBA is approximately the noise level associated with a residential air conditioner at 50 feet (a noise level of 69 dBA is about the level of a human voice at 3 feet). Since construction activity would not be concentrated in one location, but would move around the site, no individual residence is anticipated to be exposed to this level of noise for more than 2.5 hours a day for a few days.

A number of residences are located more than 400 feet from pile driving activity (across Basin B) where exterior noise levels would be 67 dBA with the use of noise shrouds, and interior noise levels would be 43 dBA. An interior noise level of 43 dBA is quiet and compatible with sleeping.

As discussed above, other than pile driving, construction activity at the site would be limited and mostly confined to interior activity that would not result in substantial exterior or interior increases in ambient noise levels in the area.

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[1] SAE AIR 1081- 1971 House Reduction Measurements (Reaffirmed April 1991, November 2007)

In addition to noise shrouds, a number of other mitigation measures were included in the MND and Mitigation Monitoring Program to reduce potential construction noise impacts, including Mitigation Monitoring Program Mitigation No. 3 limiting the hours of construction activity:

> Noisy construction activity should be restricted to between the hours of 8:00 a.m. to 5:00 p.m. in order to minimize disturbance on surrounding residences and commercial land; pile driving shall be limited to the hours between 8:00 a.m. and 4:30 p.m.

Should another construction project be underway at the same time as the Project, there is the potential for overlapping impacts. For example, if two pile driving projects were underway at the same time, the maximum impact to a residence would be an additional 3 dBA (a doubling of sound power level results in an increase of 3 dBA). This periodic incremental increase would represent a negligible increase in daily time-averaged noise metrics. It would be expected that any other construction in the area would be required to include mitigation measures similar to those for the Project. While the sudden, intermittent nature of the noise associated with pile driving could be annoying to some residents, given the short duration of pile driving activities (2.5 hours a day for seven to eight days in each of three phases spread over 12 to 18 months) and the limited nature of other construction activity associated with the Project, the Project would not represent a cumulatively considerable contribution to a cumulative construction noise impact in the area.

Noise levels associated with construction of the Project would be typical of construction in the area, would be of short duration, and would not be cumulatively considerable.

Potential Cumulative Temporary Construction Impacts: Air Quality

Refer to Initial Study Resources Section 2, Air Quality (pages 16 – 18), for discussion regarding air quality impacts, which were determined to be less than significant with project mitigation.

The landside portion of the Project requires only ministerial approvals and consists of renovation to the existing improvements. It does not involve new construction. The renovation is primarily interior renovations of the apartment buildings and clubhouse, although the exterior of the buildings will also be upgraded. The landside renovation portion of the project would not involve the use of heavy construction equipment typically associated with significant air quality impacts such as bulldozers and other earth moving equipment. The landside renovation is not anticipated to result in significant air quality impacts or cumulatively considerable impacts.

The Project would require an average of 2 to 8 truck trips per day with up to 18 truck trips per day during the approximately five weeks of demolition for each phase.

As discussed in the Initial Study (pages 16 – 17), the emissions associated with truck activity would not result in a potentially significant air quality impact or a cumulatively considerable contribution to a cumulative impact, including on Via Marina and surrounding streets.

In addition to truck activity, the Project would include only one large piece of construction equipment (the pile driver) that would not add substantially to the emissions from the trucks. Construction emissions would be partially offset by reduced boat and associated activity on-site during Project renovation and construction activities.

Project construction activity would be significantly less than construction activity associated with new construction of apartments.

Project emissions would be well below the SCAQMD significance thresholds, as shown in the table below (the numbers in the table do not account for decreased boat and other activity on the site during project construction). The SCAQMD thresholds are used to determine project specific impacts, and they are also used to determine whether a project could result in a cumulatively considerable contribution to a cumulative air quality impact. Since the Project emissions would be well below the threshold for each criteria pollutant, the Project would neither result in a project specific impact nor in a cumulatively considerable contribution to a cumulative impact.

Construction Significance Thresholds

Pollutant	Regional Threshold (pounds per day)	Peak Project Emissions During Demolition (pounds per day)[2]
Nitrogen Oxides (NO_x)	100	20.81
Volatile Organic Compounds (VOC)	75	1.89
Particulate Matter (PM_{10})	150	3.04
Particulate Matter ($PM_{2.5}$)	55	1.26
Oxides of Sulfur (SO_x)	150	0.02
Carbon Monoxide (CO)	550	9.24

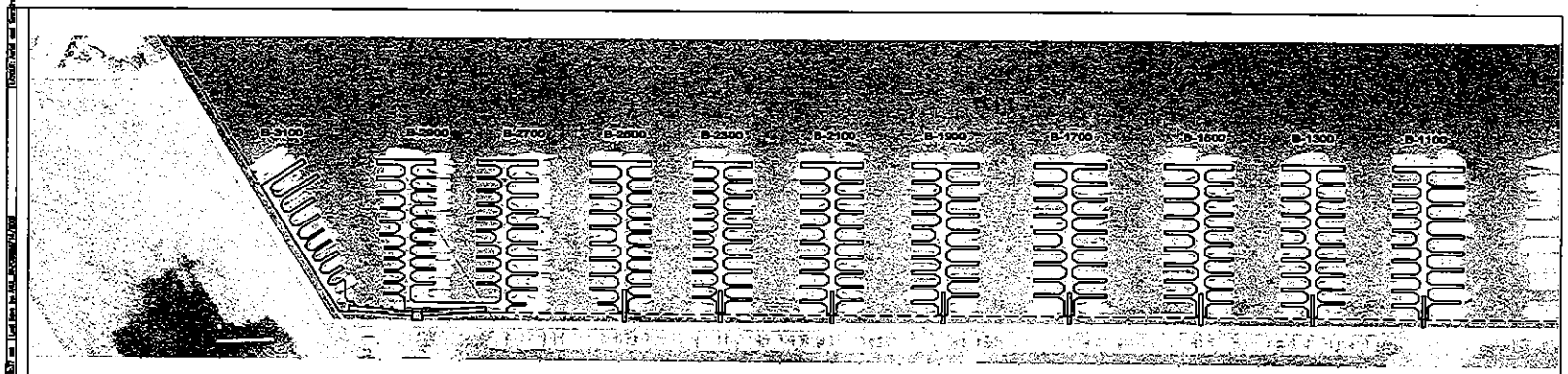
[2] To be conservative, the analysis assumes 9 round truck trips per day (18 one-way trips), 50 miles per round trip; 5 hours of a drill/pile driver per day and 5 hours of an excavator or similar piece of equipment per day.

Since the project would result in the long-term reduction of apartment units and boats on-site, operational emissions would decrease and there would be a beneficial impact on air quality in the long term.

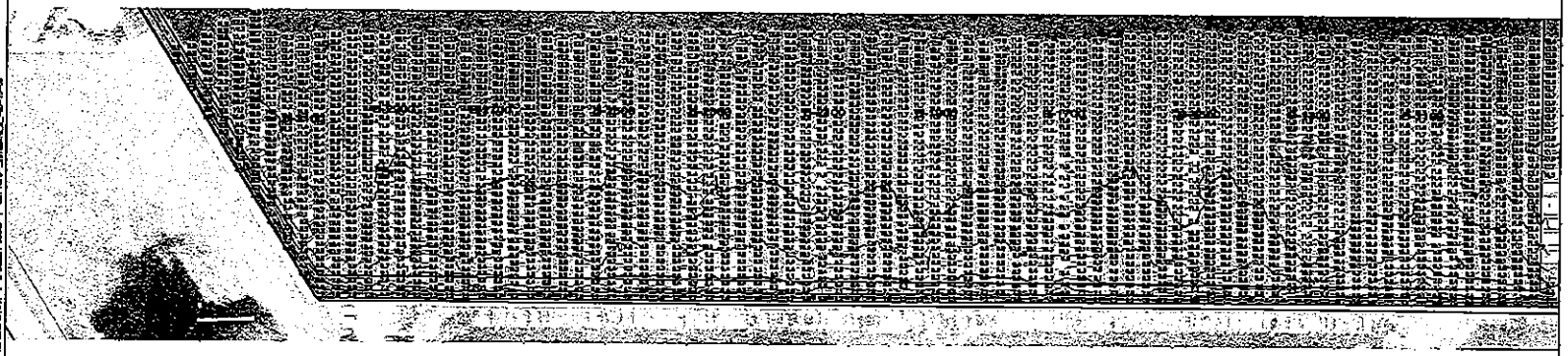
Corrections

Slip Configuration Correction

The County and Applicant have identified minor corrections to the existing Marina boat slip configuration from the existing slip configuration circulated with the Mitigated Negative Declaration and Initial Study. Specifically, the Mitigated Negative Declaration and Initial Study identified twenty-one 33-foot slips in the Marina; there are currently sixteen 33-foot slips in the Marina. The Mitigated Negative Declaration and Initial Study identified one 34-foot slip in the Marina; there are currently no 34-foot slips in the Marina. The Mitigated Negative Declaration and Initial Study identified seventy-six 35-foot slips in the Marina; there are currently eighty-one 35-foot slips in the Marina. With these corrections, the average length of slips in the Marina increases from 34.38 feet to 34.47 feet. These minor corrections are not substantial. These corrections will be reflected in the final Mitigated Negative Declaration. The total number of existing boat slips (230 plus 11 end ties) and the total number of proposed boat slips (207 plus 11 end ties) remains the same. The proposed reductions in slip counts are due only to changes in applicable Americans with Disabilities Act and California Department of Boating and Waterways guidelines.



PROPOSED LAYOUT WITH EX. AERIAL



EX. AERIAL WITH SOUNDINGS

Datum: MLLW

	Existing	Proposed	Diff. (%)
Floating Dock Area	52,600 SF	52,363 SF	0.4% decr.
Floating Dock ADA	0 SF	1,186 SF	
Sub-Total	52,600 SF	53,622 SF	2.5% incr.
Gangways General	602 SF	480 SF	
Gangways ADA, incl. Platform	0 SF	720 SF	
Sub-Total	602 SF	1,200 SF	114.3% incr.
Grand-Total	53,202 SF	55,212 SF	3.8% incr.

SHADING AREA COMPARISONS

THE BAY CLUB MARINA

URS

Decron Properties

Attachment – 1

Bay Club Marina
Lease No. 4985/ County Project No. R2008-01776 / Environmental Review No. RENV T200800101
Mitigation Monitoring Program

Impact Mitigation	Responsible Agency or Party	Action Required	Monitoring Agency or Party	Timing
Noise				
1. Noise impacts of the pile driving activities associated with the boat slip renovations shall be mitigated with the use of noise shrouds.	Project Applicant	Install noise shrouds before commencement of pile driving activities	Los Angeles County Department of Regional Planning, Public Works, and Public Health	During pile driving activity
2. Any stationary, or semi-stationary piece of equipment that operates under full power for more than sixty minutes per day shall have a temporary ¾ inch plywood screen if there is a direct line of sight from the equipment to any potentially occupied residential bedroom window.	Project Applicant	Installation of plywood screen between stationary or semi-stationary equipment and bedroom windows	Los Angeles County Department of Regional Planning	Throughout construction activities
3. Noisy construction activities should be restricted to between the hours of 8:00 a.m. to 5:00 p.m. in order to minimize noise disturbance on surrounding residences and commercial land; pile driving shall be limited to the hours between 8:00 a.m. and 4:30 p.m.	Project Applicant	Restrict noisy activity to hours noted.	Los Angeles County Department of Regional Planning	Throughout construction activities
4. The contractor shall ensure that all construction equipment, fixed and mobile, is regularly maintained and in proper operating condition and fitted with standard silencing devices. Proper engineering noise controls shall be implemented when necessary on fixed equipment.	Project Applicant	Maintenance of construction equipment and implementation of noise controls on fixed equipment	Los Angeles County Department of Regional Planning	Throughout construction activities
5. Engine idling shall be minimized to reduce noise (as well as emissions	Project Applicant	Minimize	Los Angeles County	Throughout

Impact Mitigation	Responsible Agency or Party	Action Required	Monitoring Agency or Party	Timing
of particulate matter and greenhouse gases).		engine idling	Department of Regional Planning	construction activities
6. Noise levels of mobile sources will be monitored periodically as part of the Mitigation Monitoring and Reporting Program.	Project Applicant	Monitoring and reporting of construction noise	Los Angeles County Department of Regional Planning	Throughout construction activities
7. The applicant will notify residents in the surrounding area (within 1,000 feet of construction activity) of the anticipated duration of construction and anticipated activities prior to the start of construction. The notice will provide a phone number where neighbors can register questions and complaints. A log of questions and complaints will be maintained and reasonable efforts shall be made to respond to questions and address complaints.	Project Applicant	Notification of residents within 1,000 feet of impending construction	Los Angeles County Department of Regional Planning	Prior to start of construction
8. The applicant shall post a notice at the construction site indicating the type of project, duration of construction activities and the phone number where questions and complaints can be registered.	Project Applicant	Posting of notice	Los Angeles County Department of Regional Planning	Throughout construction activities
9. Staging and delivery areas shall be located as far as feasible away from existing residences. Deliveries and hauling activities shall be scheduled between 9:00 a.m. and 4:00 p.m. to the extent feasible to minimize disturbance of residents in the area.	Project Applicant	Location of staged equipment to be as far as possible from residences and deliveries and hauling to be restricted to the hours noted	Los Angeles County Department of Regional Planning	Throughout construction activities
Water Quality				
10. Silt curtains shall be deployed when practicable to contain the spread of turbid waters beyond the project area and to reduce impacts to water quality during construction and installation of the boat slips.	Project Applicant	Install silt curtains before commencement of boat slip	Los Angeles County Department of Regional Planning, Public Works, Public Health,	During boat slip construction

Impact Mitigation	Responsible Agency or Party	Action Required	Monitoring Agency or Party	Timing
		construction	the California Regional Water Quality Control Board and the County National Pollutant Discharge Elimination System	
11. Spill kits and cleanup materials will be available at all locations of pile driving. Equipment used shall be leak-free.	Project Applicant	Ensure spill kits and cleanup materials are available. Ensure equipment is leak-free	Los Angeles County Department of Regional Planning	During pile driving activity
12. Hammers and other hydraulic attachments will be protected from run-on and run-off by placing them on plywood and covering them with plastic or a comparable material prior to the onset of rain.	Project Applicant	Provide plywood and appropriate covers for equipment	Los Angeles County Department of Regional Planning	Throughout construction activities
13. Sandbag barriers will be placed around the staging areas to control sediment and prevent run-off.	Project Applicant	Install sandbags	Los Angeles County Department of Regional Planning	Throughout construction activities
14. Employees and subcontractors will implement the appropriate measures for storage and use of materials and equipment.	Project Applicant	Ensure proper storage of materials and equipment	Los Angeles County Department of Regional Planning	Throughout construction activities
15. All debris and trash shall be disposed of in appropriate trash containers on land or on construction barges by the end of each construction day.	Project Applicant	Make available appropriate trash containers or barges. Ensure proper disposal of debris and trash	Los Angeles County Department of Regional Planning	Throughout construction activities

Impact Mitigation	Responsible Agency or Party	Action Required	Monitoring Agency or Party	Timing
16. Discharge of hazardous materials into the study area shall be prohibited.	Project Applicant	Prohibit discharge	Los Angeles County Department of Regional Planning	Throughout construction activities
17. Any dredge material will be tested and disposed of in accordance with applicable regulations -- at sea if clean or at an appropriate landfill if found to be contaminated.	Project Applicant	Testing of dredge materials and appropriate disposal	Los Angeles County Department of Regional Planning	Throughout construction activities
Air Quality				
18. To reduce emissions during construction, the following actions included in the project and BMPs would be implemented: • Construction parking shall be configured to minimize traffic interference. • Construction activities that affect traffic flow on the arterial system shall be scheduled at off-peak hours as permitted. • Truck deliveries will be consolidated when possible. • Maintain equipment and vehicle engines in good condition and in proper tune according to manufacturers' specifications and per SCAQMD rules, to minimize exhaust emissions. • Suspend use of construction equipment during second stage smog alerts. • Use electricity from power poles rather than temporary diesel- or gasoline-powered generators. • Use methanol- or natural gas-powered mobile equipment and pile drivers instead of diesel if readily available at competitive prices. • Use propane- or butane-powered on-site mobile equipment instead of gasoline if readily available at competitive prices.	Project Applicant	Monitoring construction activity to ensure emissions are minimized as indicated	Los Angeles County Department of Regional Planning	Throughout construction activities
Biota				

Impact Mitigation	Responsible Agency or Party	Action Required	Monitoring Agency or Party	Timing
19. To ensure that the project will not adversely affect eelgrass beds or result in the dissemination of invasive algae, the applicant will conduct pre-construction surveys for eelgrass no more than 60 days prior to construction and for Caulerpa no less than 30 days and no more than 90 days prior to construction during the period of active growth (i.e., March 1 to October 31). It is anticipated that neither species will be detected in the study area. In the unlikely event that eelgrass is detected, focused dive surveys will be performed to map the location and area of eelgrass beds and determine turion densities within patches. Locations of beds will be mapped using a GPS unit, and areal coverage will be determined by measuring the dimensions of the beds with transect tapes. If eelgrass is detected, the following Best Management Practices (BMPs) would be implemented to minimize adverse effects to eelgrass: • The locations of eelgrass beds will be marked with buoys by the project marine biologists prior to conducting renovations; • The project marine biologist will meet with construction crews to show areas where eelgrass occurs and discuss BMPs; • Vessel operation in the vicinity of eelgrass will be limited to tides higher than +2 to +4 feet mean lower low water (MLLW); and • Vessels shall avoid anchoring over eelgrass beds. In the unlikely event that Caulerpa are identified within the study area during preconstruction surveys, NMFS or CDFG contacts will be notified within 24 hours of the discovery. Within 96 hours of notification, the extent of the infestation will be documented. Caulerpa eradication will be performed using the best available technologies under the guidance of NMFS and CDFG contacts. Following eradication, surveys will be conducted to determine the effectiveness	Project Applicant	Conduct pre-construction eelgrass and Caulerpa surveys during the period of active growth and submit results to DRP. If either species is detected, perform focused dive surveys to map the location and determine turion densities. If eelgrass is detected, implement BMPs (mark location, meet with biologist and limit vessel activity over eelgrass bed). If Caulerpa is identified, perform appropriate mitigation measures	Los Angeles County Department of Regional Planning	Prior to any construction activity from March through October.

Impact Mitigation	Responsible Agency or Party	Action Required	Monitoring Agency or Party	Timing
of treatments prior to approval of the project.		followed by surveys to determine effectiveness of treatments.		
20. Upon completion of dock renovations, a post-project eelgrass survey will be conducted within 30 days to evaluate impacts to eelgrass. The survey will be repeated annually for two years to quantify the extent of eelgrass loss due to shading effects as required by the Southern California Eelgrass Mitigation Policy (NMFS 1991). If losses of eelgrass is observed at the end of the two-year monitoring period, then the applicant will be required to mitigate for losses at a ration of 1.2 to 1 either on site or at another site within Marina del Rey.	Project Applicant	Conduct post-construction eelgrass survey. Conduct annual survey for two years after construction. Submit all results to DRP. If losses occur, perform necessary mitigation measures	Los Angeles County Department of Regional Planning	Two years following project completion.
21. As required by the Migratory Bird Treaty Act and California Fish and Game Code Section 3500 (et seq.) it is recommended that pre-construction nesting bird surveys be conducted no more than 72 hours prior to the commencement of construction activities. The applicant will be required to include the following measures to ensure that there is no substantial adverse effect on any nesting habitats or wildlife foraging areas within the study area for residential and migratory species. • A qualified biologist will conduct a nesting bird and raptor survey prior to any vegetation clearing activities. For these purposes, a qualified biologist would be any individual with sufficient education and field experience in local California ecology and biology to adequately identify plant and wildlife	Project Applicant	Conduct pre-construction bird survey and submit result to DRP. Conduct any vegetation clearing activities prior to avian breeding seasons beginning in March and maintain buffer	Los Angeles County Department of Regional Planning	Prior to any construction

Impact Mitigation	Responsible Agency or Party	Action Required	Monitoring Agency or Party	Timing
species. Surveys will be performed no earlier than 72 hours prior to the initiation of construction activities to document that no occupied passerines and/or raptor nests would be impacted. • Vegetation clearing activities, if applicable, will be completed prior to the onset of the avian breeding season beginning in March, to the maximum extent practicable, in order to greatly reduced or avoid adverse impacts to avian species. The clearing of vegetation prior to commencement of the development activities would deter the majority of individuals from selecting nesting or breeding sites within the development areas. • Upon detection of an active nest within the study area or on immediately adjacent lands, a buffer zone from occupied nests will be maintained during construction activities. Once it is determined that nesting ceased, the buffer may be removed.		zones between project activities and active nests.		
22. In the event that noise-sensitive biota, specifically special status avian and marine mammalian species, are observed in the project area during preconstruction surveys and construction monitoring, the use of acoustic shrouds can be employed around the pile driving rig to reduce noise levels.	Project Applicant	Install acoustic shrouds around pile driving rig, if necessary.	Los Angeles County Department of Regional Planning	Throughout the life of the project
Utilities				
23. During construction, materials requiring disposal will be recycled to the extent feasible (untreated wood, concrete, asphalt, metals, glass, drywall, paper and rubble are potentially recyclable); other materials will be disposed of at local landfills as appropriate.	Project Applicant	Recycling of construction debris as feasible	Los Angeles County Department of Regional Planning	Throughout construction activities
24. During operation, a permanent full-service recycling program shall be implemented for residents and marina lessees that will include contracting for periodic onsite collection and physical improvements such as centralized receptacles to recycle paper, plastic, glass and	Project Applicant and Subsequent Owner(s)	On-site recycling services and facilities to be	Los Angeles County Department of Regional Planning	Throughout the life of the project

Impact Mitigation	Responsible Agency or Party	Action Required	Monitoring Agency or Party	Timing
metal waste products. The recycling program shall be fully maintained at all times by building management.		provided		
Mitigation Compliance				
25. As a means of ensuring compliance of the above mitigation measures, the applicant and subsequent owner(s) are responsible for submitting an annual mitigation compliance report to the Los Angeles Department of Regional Planning for review, and for replenishing the mitigation monitoring account if necessary until such time as all mitigation measures have been implemented and completed.	Project Applicant and Subsequent Owner(s)	Submittal of annual mitigation compliance report; replenishing mitigation monitoring account	Los Angeles Department of Regional Planning	Annually until such time as all mitigation measures have been implemented and completed

OPTION TO AMEND LEASE AGREEMENT
(PARCEL 8T)

THIS OPTION TO AMEND LEASE AGREEMENT ("**Agreement**") is made and entered into as of the 8th day of DECEMBER, 2009, by and between the COUNTY OF LOS ANGELES ("**County**") and NF MARINA LP, a California limited partnership ("**Lessee**").

R E C I T A L S

A. County and Vadim P. Kondratief dba V.P.K. Investment & Development Company (the "**Original Lessee**"), entered into Lease No. 4985, dated October 4, 1961, as amended (the "**Existing Lease**"), regarding the lease from County of certain real property in the Marina del Rey Small Craft Harbor now commonly known as Parcel No. 8T, as more particularly described in the Existing Lease (the "**Premises**").

B. Lessee is the current successor-in-interest to the Original Lessee's right, title and interest as lessee under the Existing Lease.

C. The term of the Existing Lease is currently scheduled to expire on June 7, 2021.

D. Lessee has requested County, and County is willing, to grant Lessee an option to extend the term of the Existing Lease through June 7, 2051, in accordance with and subject to the terms and provisions of this Agreement.

A G R E E M E N T

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 as follows:

1. Grant of Option. County hereby grants to Lessee an option (the "**Option**") to extend the term of the Existing Lease through June 7, 2051 (the "**Extended Expiration Date**"). If the Option is exercised by Lessee in accordance with the terms and provisions of this Agreement, such extension of the Existing Lease shall be consummated by the parties' execution and delivery of an Amended and Restated Lease Agreement in the form 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 (a) forty-five (45) days following the date of the satisfaction of the conditions to the exercise of the Option set forth in clauses (iv), (v) and (vi) of the first paragraph of Section 3 below, or (b) the first (1st) anniversary of the date of this Agreement (the date set forth in this clause (b) is referred to herein as the "**Outside Date**").

3. Exercise of Option. The Option shall be exercisable by Lessee only by strict satisfaction on or before the Option Expiration Date of the following terms and conditions: (i) Lessee shall notify County in writing of its exercise of the Option; (ii) Lessee shall

4985 Supplement 12

accompany the notice described in the preceding clause (i) with Lessee's (A) execution and delivery to County of the Restated Lease with any blank or bracketed terms set forth in Exhibit A completed in accordance with the terms and provisions of this Agreement, and (B) payment of the amount, if any, by which the Security Deposit required under Article 7 of the Restated Lease exceeds the amount of the security deposit then maintained by Lessee with County pursuant to Section 7 of the Existing Lease; (iii) as of the date of Lessee's delivery of the notice described in clause (i) above Lessee shall not be in material breach or default of any term or provision of the Existing Lease, after notice from County and the expiration of any applicable cure period thereunder; (iv) the Entitlement Conditions (as defined below) shall have been satisfied and as of the date of Lessee's exercise of the Option shall continue to be satisfied; (v) Lessee shall have provided County satisfactory evidence of having obtained commitments for the "Project Financing" (as defined below); and (vi) the Director of the Department of Beaches and Harbors of the County ("**Director**") shall have approved all plans, specifications and other materials for the Redevelopment Work required to be submitted to Director pursuant to Section 5.3 of this Agreement.

Upon Lessee's proper and timely exercise of the Option, County shall execute and deliver the Restated Lease 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 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 construction financing for the Redevelopment Work 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 such construction 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 construction financing; provided, however, in no event shall County be required to delay the execution and delivery of the Restated Lease beyond the foregoing forty-five (45) day period if Lessee's construction financing is not in a position to close within such period. In connection with Lessee's construction financing, County agrees to cooperate with regard to the execution and delivery by County of a ground lessor estoppel certificate with respect to the Restated Lease, on such terms and in such form as acceptable to County.

For purposes hereof, the "**Entitlement Conditions**" shall mean the following conditions: (a) Lessee shall have received all discretionary planning, zoning and other entitlement approvals required to be obtained from governmental authorities for the construction of the Redevelopment Work, including without limitation, approvals required by the Design Control Board, Department of Regional Planning, County Board of Supervisors (if applicable) and the California Coastal Commission (the "**Entitlements**"), (b) any appeal period to contest the issuance of the Entitlements shall have lapsed, and (c) there shall be no legal action or proceeding pending to appeal or contest the issuance of the Entitlements or to enjoin or restrain the performance of the Redevelopment Work. For purposes of this Agreement, the "Redevelopment Work" shall have the meaning given such term in Section 5.1 of the Restated Lease.

For purposes hereof, the "**Project Financing**" shall mean a construction loan and a commitment for permanent financing, from an institutional lender or lenders, at an interest rate or rates, and on terms that are commercially reasonable, in amounts that when combined with Lessee's equity will provide sufficient funds to complete the Redevelopment Work, all as approved by Director in accordance with Section 12.1 of the Restated Lease.

4. 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 except in the case of a termination of this Agreement due to a County Default (as defined in Section 9.2 below) under this Agreement.

5. Entitlements and Plan Preparation During Option Term.

5.1 Obtaining Entitlements. Prior to the date of this Agreement Lessee has obtained a portion of the Entitlements required for the Redevelopment Work. Lessee agrees to use its diligent efforts to obtain all remaining Entitlements and to satisfy the Entitlement Conditions as soon as reasonably possible following the date of this Agreement.

5.2 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 remaining 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 Restated Lease) 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 under this Agreement or the Restated Lease shall be approvals pursuant to its authority under Sections 25907 and 25536 of the California Government Code and given in its proprietary capacity; (b) any approvals given under this Agreement 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 (c) the Department's duty to cooperate and County's approvals under this Agreement 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 or the Restated Lease.

5.3 Plans and Specifications for Redevelopment Work. The Redevelopment Work shall be constructed by Lessee in accordance with and subject to the terms and provisions of Article 5 of the Restated Lease. The requirements of Article 5 of the 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, as set forth in more detail in Section 5.3 of the 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 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, any portions of the plans, specifications and other materials described in Section 5.3 of the Restated Lease that are required to be submitted to governmental authorities (including the County, the Design Control Board and the California Coastal Commission) 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 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 5.3 shall be in accordance with the terms and provisions of Section 5.3 of the Restated Lease, which terms and provisions are hereby incorporated into this Agreement by reference. Such plans, specifications and other materials shall be prepared and submitted to Director by Lessee in accordance with a schedule which shall facilitate Lessee's satisfaction of all conditions precedent to the exercise of the Option on or before the Option Expiration Date. In addition to the plans, specifications and materials required to be submitted by Lessee to Director pursuant to this Section 5.3, 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 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 Restated Lease. Such approved schematic plans and narrative description of the Redevelopment Work are set forth or referenced in the Renovation Plan attached as Exhibit B to the Restated Lease.

6. Delay in Exercise of Option.

6.1 Delay in Receipt of Entitlements. If Lessee submits all applications for the remaining Entitlements on a timely basis and diligently and continuously processes such applications for Entitlements as soon as reasonably possible after the date of this Agreement, but despite such efforts Lessee is unable to obtain the remaining Entitlements prior to the first (1st) anniversary of the date of this Agreement, then the Director may, in the exercise of its reasonable discretion, grant Lessee one or more extensions of the Outside Date. Any such extension shall be limited to the period required for Lessee's receipt of the remaining Entitlements assuming the diligent and continuous prosecution by Lessee of the applications for such Entitlements as soon as reasonably possible thereafter, and in no event shall such extensions, in the aggregate, extend beyond the second (2nd) anniversary of the date of this Agreement. If Director shall determine not to grant Lessee an extension as provided above, then Lessee shall have the right, within thirty (30) days following Director's denial, to submit a written request to the Board of Supervisors of County to reconsider such denial by the Director.

Director shall have no discretion or obligation to extend the Outside Date under this Section 6.1 at any time during which there is an uncured Lessee Breach (as defined in Section 9.1 below) under this Agreement and County has provided Lessee with written notice of such Lessee Breach, or at any time during which there is an uncured event of default under Section 21.A. of the Existing Lease. Lessee shall notify the Department of any delay incurred by Lessee in the receipt of the remaining Entitlements with reasonable promptness following Lessee first becoming aware of the delay. If Lessee desires to have the Outside Date extended pursuant to this Section 6.1, then Lessee must deliver written notice to Director of its request for the extension not later than thirty (30) days prior to the Outside Date, as such date may have been previously extended; provided, however, that if the basis for the extension does not arise until later than thirty (30) days prior to the Outside Date, then Lessee shall be required to deliver its written request for the extension promptly following its discovery of the basis for the requested extension.

6.2 Contest Delay Prior to Receipt of Entitlements. If as of the Outside Date (as the Outside Date may have been extended pursuant to Section 6.1 above) the Entitlements have not been received (i) because the Redevelopment Work is the subject of a pending proceeding or litigation brought by a third party to contest or appeal the issuance of the Entitlements or to enjoin or restrain the performance of the Redevelopment Work, or (ii) because of a moratorium, temporary restraining order, injunction or other court order which prohibits the issuance of the Entitlements for the Redevelopment Work and all other similar marina adjacent projects in Marina del Rey, then as long as Lessee continues to diligently prosecute or pursue the defense or removal of such proceeding, litigation, moratorium or court order, the Option Expiration Date shall be extended until not later than forty-five (45) days following the date that such proceeding, litigation, moratorium or court order is resolved in favor of the validity of the Entitlements (with no further right of appeal); provided, however, in no event shall the Option Expiration Date be extended beyond the third (3rd) anniversary of the date of this Agreement. Lessee shall not be required to pay County a fee for any extension of the Option Expiration Date pursuant to this Section 6.2. Notwithstanding any contrary provision hereof, in no event shall the Option Expiration Date be extended at any time during which there is an uncured Lessee Default under this Agreement or at any time during which there is an uncured event of default under Section 21.A. of the Existing Lease.

6.3 Contest Delay After Receipt of Entitlements. If Lessee obtains the Entitlements on or before the Outside Date (as the Outside Date may have been extended pursuant to Section 6.1 or 6.2 above), but the issuance of such Entitlements is contested by appeal or litigation brought by a third party, then upon the written request of Lessee, and provided that Lessee continues to use its diligent efforts to contest the appeal or litigation, Director shall extend the Option Expiration Date until forty-five (45) days after a final order or decision on such appeal or litigation is issued or such appeal or litigation is dismissed or otherwise resolved; provided, however, in no event shall the Option Expiration Date be extended beyond the third (3rd) anniversary of the date of this Agreement. For purposes of Section 6.2 above and this Section 6.3, a "**third party**" shall mean any person or entity other than (a) Lessee or any person or entity with any direct or indirect interest in Lessee, or (b) the governmental agency, commission, board or other instrumentality that issued (or has been requested to issue) the Entitlement that is the subject of the appeal or litigation. Lessee shall not be required to pay to County a fee for any extension of the Option Expiration Date pursuant to this Section 6.3. Notwithstanding any contrary provision hereof, in no event shall the Option Expiration Date be extended at any time during which there is an uncured Lessee Default under this Agreement or at any time during which there is an uncured event of default under Section 21.A. of the Existing Lease.

6.4 Delay For Unreasonable Financial Market Condition. Lessee shall use good faith, diligent efforts to obtain the Project Financing prior to the Option Expiration Date. Commencing not later than four (4) months prior to the expected Option Expiration Date set forth in Section 2 of this Agreement (without extension pursuant to Section 6 of this Agreement) and continuing every sixty (60) days thereafter (or more often in response to written (including electronic mail) inquiry by the Department, but not more often than monthly) until the Option is exercised, Lessee shall inform Director of Lessee's efforts to obtain, and the status of, the Project Financing. If Lessee is unable to obtain a commitment (or commitments) for the Project Financing by not later than two (2) months prior to the expected Option Expiration Date, or, if after receipt of such commitment, such commitment is withdrawn or Lessee is unable to

satisfy the requirements for funding, then Lessee shall provide written notice to Director of such occurrence (the "**Financing Delay Notice**"). In the case of the inability to obtain a commitment (or commitments) for the Project Financing by not later than two (2) months prior to the expected Option Expiration Date, Lessee must deliver the Financing Delay Notice not later than two (2) months prior to the expected Option Expiration Date. In the case of the withdrawal or inability to satisfy the requirements for funding of a commitment, Lessee must deliver the Financing Delay notice not later than three (3) business days after such commitment is withdrawn or Lessee become aware of the inability to satisfy the requirements for the funding of such commitment. The Financing Delay Notice shall include a description of Lessee's efforts to obtain the Project Financing and the status of those efforts, including any potential financing sources and the terms and requirements applicable to any such potential financing sources. If (a) Lessee has satisfied the Entitlement Conditions and the condition set forth in clause (vi) of the first paragraph of Section 3 of this Agreement, but has been unable to obtain Project Financing; (b) Lessee provides the Financing Delay Notice on a timely basis as provided above, (c) Lessee has exercised, and thereafter continues to exercise, its good faith, diligent efforts to obtain the Project Financing, and keeps the Department apprised of such efforts as provided above, (d) Lessee continues to be unable to obtain the Project Financing by the expected Option Expiration Date (as otherwise extended under this Agreement), and (e) the reason for Lessee's inability to obtain the Project Financing is the continued existence of an Unreasonable Financial Market Condition (as defined below), <u>then</u> the Option Expiration Date shall be extended until Lessee obtains the Project Financing, as long as the conditions set forth in clauses (a) through (e) of this sentence continue to be applicable during such period of delay. Notwithstanding the foregoing, in no event shall the Option Expiration Date be extended beyond the third (3rd) anniversary of the date of this Agreement.

For purposes of this Agreement, "**Unreasonable Financial Market Condition**" means an industry-wide commercially adverse condition, beyond Lessee's reasonable control, in the Los Angeles metropolitan area real estate construction and permanent financing markets for projects that include the construction or substantial rehabilitation of luxury rental housing units, such that, notwithstanding Lessee's exercise of good faith, diligent efforts, Lessee has been unable to secure Project Financing satisfying the Financing Criterion (as defined below) and it would have been unlikely that other developers could have obtained such Project Financing. For purposes hereof, the "**Financing Criterion**" mean construction and permanent financing on the following terms: (v) the lender is an institutional lender; (w) a loan to value ratio that is not required by the lender to be less than 65%; (x) with respect to construction financing, a completion guaranty is required from an entity with a net worth that is not required by the lender to exceed 3 times the total construction costs; (y) with respect to permanent financing, the loan is non-recourse subject to industry standard non-recourse carve-outs that are guaranteed by an entity with a net worth that is not required by the lender to exceed 3 times the amount of the loan; and (z) that is otherwise on commercially reasonable terms and is approved by County pursuant to Section 12.1 of the Restated Lease. There shall be no extension of the Option Expiration Date pursuant to this Section 6.4 unless Lessee demonstrates to the reasonable satisfaction of the Director that the requirements for such extension set forth herein have been met, including the occurrences, conditions or circumstances that constitute an Unreasonable Financial Market Condition. If Lessee and the Director are unable to resolve any dispute as to (i) whether an Unreasonable Financial Market Condition exists, (ii) whether the other requirements for an extension of the Option Expiration Date under this Section 6.4 have been satisfied, or (iii)

the duration of the extension to which Lessee is entitled, then the dispute shall be arbitrated pursuant to the same arbitration of disputes provision as set forth in Article 16 of the Restated Lease. Notwithstanding any contrary provision hereof, in no event shall the Option Expiration Date be extended at any time during which there is an uncured Lessee Default under this Agreement or at any time during which there is an uncured event of default under Section 21.A. of the Existing 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) the Existing Lease shall be considered to be automatically amended effective as of the Option Expiration Date (the "**Effective Amendment Date**") as follows (the "**Non-Exercise Amendment**"):

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

(ii) add Article 16 of the Restated Lease to the Existing Lease, and amend Section 15 of the Existing Lease to provide for the determination and resolution of square foot and percentage rental adjustments under Section 15 of the Existing Lease in accordance with the terms, provisions and procedures set forth in Subsections 4.4.2 through 4.4.5 and Article 16 of the Restated Lease (for purposes hereof, all references in such Subsections 4.4.2 through 4.4.5 to (I) "Renegotiation Date" shall mean and refer to each respective date on which the 10-year square foot and percentage rental adjustments are to be effective under Section 15 of the Existing Lease; (II) "Fair Market Rental Value" shall mean and refer to the fair market value referenced in Section 15 of the Existing Lease; and (III) "Annual Minimum Rent" and "Percentage Rent" shall mean and refer to the square foot and percentage rentals referenced in the Existing Lease);

(iii) amend and restate Sections 22A and 22C of the Existing Lease in full in accordance with Sections 11.1, 11.2 (excepting Subsections 11.2.4 and 11.2.5) and 11.3 of the Restated Lease;

(iv) add the last four (4) sentences of Section 4.5 of the Restated Lease to the Existing Lease;

(v) amend and restate Section 7 of the Existing Lease in full in accordance with Article 7 of the Restated Lease, except that all references to Section 10.4 shall be changed to Article 35;

(vi) 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 Restated Lease, to add to Section 26 of the Existing Lease the provisions of Subsection 9.1.7 of the Restated Lease, and to add to Section 26 of the Existing Lease the provisions of Section 9.6 of the Restated Lease;

(vii) 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;"

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

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

For purposes of the Non-Exercise Amendment, all references in the 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 neither the failure of County to request, nor the parties' failure to execute, such written document shall affect the Non-Exercise Amendment, which in all events shall become automatically effective as of 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) other than due to a County Default under this Agreement or a breach that will become a County Default if County does not cure such breach within thirty (30) days.

8. County Costs. Regardless of whether Lessee exercises the Option, within thirty (30) days after written request from County, Lessee shall promptly reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by County in the review, negotiation, preparation and documentation of the Restated Lease, this Agreement and the term sheets and memoranda that preceded this Agreement.

9. Definitions of Breaches and Defaults.

9.1 For purposes of this Agreement, a "**Lessee Breach**" 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**" means Lessee's failure to cure a Lessee Breach within (a) ten (10) days after Lessee's receipt of written notice from County in the case of the payment of money, or (b) within 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.

9.2 For purposes of this Agreement, a "**County Default**" means a breach by County of any material obligation or covenant of County under this Agreement and

County's failure to cure such breach within thirty (30) days after County's receipt of written notice from Lessee; provided, however, that if the nature of the County breach is such that it cannot with reasonable diligence be cured within thirty (30) days, then the thirty (30) day cure period shall be extended for such additional period as reasonably required for the cure by County of the breach as long as County commences cure of the breach within thirty (30) days after County's receipt of written notice from Lessee and diligently prosecutes such cure to completion.

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 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. 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 either (a) approved by County in accordance with the terms and provisions of the Existing Lease, or (b) does not require County's approval under the Existing Lease, if applicable.

10.7 Entire Agreement. This Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supercedes any

and all agreements, understandings and representations made prior hereto with respect to such matters.

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 executed 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 Exhibits. Exhibit A attached to this Agreement is hereby expressly incorporated herein by reference.

10.13 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 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 day and year first written above.

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
ACTING COUNTY COUNSEL

By: _____
Deputy

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

NF MARINA LP, a California limited partnership

By: NFM LLC, a California limited liability company, its General Partner

By: _____
Jack Nagel, Managing Member

ATTEST:

SACHI A. 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

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

4985 SUPPLEMENT 12

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#20 DEC 08 2009

SACHI A. HAMAI
EXECUTIVE OFFICER

8758971.2

LENDER CONSENT

The undersigned represents that it is the current beneficiary under that certain [Deed of Trust With Assignment of Rents dated _____, and recorded in the Official Records of Los Angeles County, California on _____ as Instrument No. _____ (the **"Deed of Trust"**). As such beneficiary the undersigned hereby consents to the foregoing Option to Amend Lease Agreement and agrees that the Deed of Trust is subject and subordinate to such Option to Amend Lease Agreement.

_____, a
_____

By: _____
Name: _____
Its: _____

EXHIBIT A

RESTATED LEASE

AMENDED AND RESTATED LEASE AGREEMENT

by and between

COUNTY OF LOS ANGELES

and

NF MARINA LP

(Parcel 8T -- Lease No. _____)

Dated as of _____, _____

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AMENDED AND RESTATED LEASE AGREEMENT
PARCEL 8T — MARINA DEL REY

THIS AMENDED AND RESTATED LEASE AGREEMENT ("**Lease**") is made and entered into as of the _____ day of _____, ____ ("**Effective Date**"), by and between the COUNTY OF LOS ANGELES ("**County**"), as lessor, and NF MARINA LP, a California limited partnership (together with its permitted successors and assigns, "**Lessee**"), as lessee.

RECITALS

WHEREAS, County and Vadim P. Kondratief dba V.P.K. Investment & Development Company (the "**Original Lessee**"), entered into Lease No. 4985, dated October 4, 1961 (as amended prior hereto, the "**Existing Lease**"), pursuant to which Lessee has leased from County that certain real property in the Marina del Rey Small Craft Harbor now commonly known as Parcel No. 8T and which is more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the "**Premises**"), the term of which commenced on June 8, 1961 and was originally scheduled to expire on June 7, 2021 (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 entered into that certain Option to Amend Lease Agreement (Parcel 8T) dated as of _____, 2009 (the "**Option Agreement**"), pursuant to which County granted Lessee an option (the "**Option**") to amend and restate the Existing Lease in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, (i) the extension of the term of the Existing Lease through June 7, 2051, and (ii) the renovation of the land-side improvements on the Premises and the replacement of all anchorage improvements on the Premises, all in accordance with the terms and provisions set forth in this Lease; and

WHEREAS, Lessee has exercised the Option in accordance with the terms and provisions of the Option Agreement.

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

1. BACKGROUND AND GENERAL.

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

1.1.1 "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 (including the use of County's environmental consultant), (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.

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

1.1.3 "ADDITIONAL DISPUTES" shall have the meaning set forth in Section 16(a).

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

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

1.1.9 "ANTENNAE" shall have the meaning set forth in Subsection 3.2.2.5.

1.1.10 "ANNUAL MINIMUM RENT" shall have the meaning set forth in Subsection 4.2.1.

1.1.11 "ANNUAL RENT" shall have the meaning set forth in Section 4.2.

1.1.12 "APPLICABLE LAWS" shall have the meaning set forth in Subsection 1.2.1.

1.1.13 "APPLICABLE RATE" shall mean an annually compounded rate of interest equal to the lesser of (a) ten percent (10%) per annum or (b) the Prime Rate, as defined in Subsection 4.4.5, plus three percent (3%) per annum; provided, however, that the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws.

1.1.14 “APPROVED APARTMENT/SLIP LEAS**E**” shall have the meaning set forth in Subsection 11.1.2.

1.1.15 “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.

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

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

1.1.18 “AWARD” shall have the meaning set forth in Subsection 6.1.3.

1.1.19 “BASE VALUE” shall have the meaning set forth in Subsection 4.8.1.1.

1.1.20 “BENEFICIAL INTEREST” shall have the meaning set forth in Subsection 4.6.4.

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

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

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

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

1.1.25 “CHANGE OF OWNERSHIP” shall have the meaning set forth in Subsection 4.6.1.

1.1.26 “CHANGE OF CONTROL” shall have the meaning set forth in Subsection 4.6.1.

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

1.1.28 “COMPLETION DATE” shall mean the date of receipt of a certificate or certificates of occupancy (whether temporary or permanent) or other applicable governmental permit(s), certificate(s) or approval(s) in connection with the Redevelopment Work permitting the legal occupancy of at least 195 of the renovated apartment units.

1.1.29 “CONDEMNATION” shall have the meaning set forth in Subsection 6.1.1.

1.1.30 “CONDEMNOR” shall have the meaning set forth in Subsection 6.1.4.

1.1.31 “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 reasonably agreed upon by County and Lessee.

1.1.32 “COST” shall have the meaning set forth in Subsection 4.2.2.3(6).

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

1.1.34 “COUNTY OPTION” shall have the meaning set forth in Subsection 11.2.4.

1.1.35 “COUNTY OPTION PRICE” shall have the meaning set forth in Subsection 11.2.4.

1.1.36 “COUNTY POOL RATE” shall have the meaning set forth in Subsection 4.4.5 of this Lease.

1.1.37 “CREDIT PERIOD” shall have the meaning set forth in Subsection 4.2.2(a).

1.1.38 “DATE OF TAKING” shall have the meaning set forth in Subsection 6.1.2.

1.1.39 “DEFAULT TERMINATION” shall have the meaning set forth in Subsection 2.3.2.

1.1.40 “DEMOLITION AND REMOVAL REPORT” shall have the meaning set forth in Subsection 2.3.2.

1.1.41 “DEMOLITION SECURITY” shall have the meaning set forth in Subsection 2.3.2.

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

1.1.43 “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.

1.1.44 “DISQUALIFICATION JUDGMENT” shall have the meaning set forth in Subsection 16.14.1.

1.1.45 “DOCUMENTED TRANSACTION COSTS” shall have the meaning set forth in Subsection 4.8.1.2.

1.1.46 “EFFECTIVE DATE” shall have the meaning set forth in the first paragraph of this Lease.

1.1.47 “ENCUMBRANCE” shall have the meaning set forth in Subsection 12.1.1.

1.1.48 “ENCUMBRANCE HOLDER” shall have the meaning set forth in Subsection 12.1.1.

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

1.1.50 “ESTIMATED COSTS” shall have the meaning set forth in Subsection 2.3.2.

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

1.1.52 “EXCLUDED TRANSFERS” shall have the meaning set forth in Subsection 4.6.2.

1.1.53 “EXISTING EXPIRATION DATE” shall have the meaning set forth in the first paragraph of the Recitals to this Lease.

1.1.54 “EXISTING LEASE” shall have the meaning set forth in the first paragraph of the Recitals to this Lease.

1.1.55 “EXCESS PERCENTAGE RENT PAYMENT” shall have the meaning set forth in Subsection 4.2.2.4.

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

1.1.57 “FAIR MARKET RENTAL VALUE” shall have the meaning set forth in Subsection 4.4.1.

1.1.58 “FINAL PLANS AND SPECIFICATIONS” shall have the meaning set forth in Subsection 5.3.3.

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

1.1.60 “FIRST ADJUSTMENT DATE” shall have the meaning set forth in Subsection 4.2.1.

1.1.61 “FORCE MAJEURE” shall mean any inability of a party to perform any non-monetary obligation under this Lease due to fire, storm, storm surge or tsunami, earthquake, high wind, other casualty or acts of God, civil riots, war, terrorist act, embargo, governmental order, industry-wide strikes or organized labor disputes, or other similar causes beyond the reasonable control of the party required to perform the subject obligation. In the case of the construction by Lessee of the Redevelopment Work, “Force Majeure” shall also include 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.

1.1.62 “GROSS ERROR” shall have the meaning set forth in Subsection 16.15.4.

1.1.63 “GROSS RECEIPTS” shall have the meaning set forth in Subsection 4.2.2.3.

1.1.64 “GROSS TRANSFER PROCEEDS” shall have the meaning set forth in Section 4.8.

1.1.65 “HAZARDOUS SUBSTANCES” shall mean 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.

1.1.66 “IMPROVEMENTS” means all buildings, structures, fixtures, fences, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems, slips, end-ties and other anchorage improvements, and other improvements now or hereafter located on the Premises.

1.1.67 “IMPROVEMENT COSTS” shall have the meaning set forth in Subsection 4.8.1.1.

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

1.1.69 “INITIAL CURE PERIOD” shall have the meaning set forth in Subsection 12.4.1(2)(a).

1.1.70 “INITIATING PARTY” shall have the meaning set forth in Section 16 (a).

1.1.71 “INSTITUTIONAL LENDER” shall have the meaning set forth in Subsection 12.1.3.1.

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

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

1.1.74 “LEASE” shall have the meaning set forth in the first paragraph above.

1.1.75 “LEASE YEAR” shall have the meaning set forth in Section 2.1.

1.1.76 “LESSEE” shall have the meaning set forth in the first paragraph of this Lease.

1.1.77 “LESSEE SALE PRICE” shall have the meaning set forth in Subsection 11.2.4.

1.1.78 “MAJOR SUBLEASE” shall have the meaning set forth in Subsection 11.1.1.

1.1.79 “MAJOR SUBLESSEE” shall have the meaning set forth in Subsection 11.1.1.

1.1.80 “MATERIAL MODIFICATION” shall mean a modification to the Redevelopment Work (or other Alterations, as applicable) with respect to which any one of the following applies: (1) the total cost of the modifications exceeds the greater of (a) One Hundred Thousand Dollars ($100,000.00), adjusted annually to reflect the percentage change in the ENR from the Effective Date to the date on which the modification is requested, or (b) 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 materially affects or is visible from the exterior of the Improvements; (4) the modification is not in compliance with the Permitted Uses under this Lease; or (5) the modification (a) changes the total square footage of the Improvements by more than two percent (2%), (b) changes the total number of apartment units, (c) reduces the number of parking spaces, except for a reduction in the number of parking spaces consistent with the reduction in the number of parking spaces required for the Improvements under Applicable Law (without variance) resulting from either a reduction in the square footage of the Improvements, a reduction in the number of units of the Improvements or another permitted modification to the Improvements or their use, (d) changes the number of anchorage slips or end-ties, or (e) alters the Promenade.

1.1.81 “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 residential apartment project and marina facilities in Marina del Rey.

1.1.82 "MONTHLY MINIMUM RENT" shall have the meaning set forth in Subsection 4.2.1.

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

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

1.1.85 "NET REFINANCING PROCEEDS" shall have the meaning set forth in Subsection 4.8.5.

1.1.86 "NET TRANSFER PROCEEDS" shall have the applicable meaning set forth in Subsection 4.8.1 or 4.8.2.

1.1.87 "NOTICE OF COMPLETION" shall have the meaning set forth in Subsection 5.7.7.

1.1.88 "OPTION" shall have the meaning set forth in the third paragraph of the Recitals to this Lease.

1.1.89 "OPTION AGREEMENT" shall have the meaning set forth in the third paragraph of the Recitals to this Lease.

1.1.90 "OPTION FEE" shall have the meaning set forth in Subsection 4.8.1.1.

1.1.91 "ORIGINAL LESSEE" shall have the meaning set forth in the first paragraph of the Recitals to this Lease.

1.1.92 "PARTIAL TAKIN**G**" shall have the meaning set forth in Section 6.5.

1.1.93 "PAYMENT BOND" shall have the meaning set forth in Subsection 5.4.3.2.

1.1.94 "PERCENTAGE RENT" shall have the meaning set forth in Subsection 4.2.2.

1.1.95 "PERFORMANCE BOND" shall have the meaning set forth in Subsection 5.4.3.1.

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

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

1.1.98 “PORTION SUBJECT TO DEMOLITION” shall have the meaning set forth in Subsection 2.3.2.

1.1.99 “POST TERM REMOVAL PERIOD” shall have the meaning set forth in Subsection 2.3.2.

1.1.100 “PREMISES” shall have the meaning set forth in the first paragraph of the Recitals to this Lease.

1.1.101 “PRIMARY COVERAGE” shall have the meaning set forth in Subsection 9.1.1.

1.1.102 “PRIME RATE” shall mean the prime or reference rate announced from time to time by Bank of America, N.A. or it successor, or if Bank of America, N.A. and its successor cease to exist then the prime or reference rate announced from time to time by the largest state chartered bank in California in term of deposits.

1.1.103 “PROMENADE” shall have the meaning set forth in Section 15.20 and in the Renovation Plan.

1.1.104 “PROPOSED TRANSFER” shall have the meaning set forth in Subsection 11.2.4.

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

1.1.106 “PURCHASE MONEY NOTE” shall have the meaning set forth in Subsection 4.7.2.

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

1.1.108 “REDUCTION REQUIREMENT” shall have the meaning set forth in Section 7.1.

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

1.1.110 “RENOVATION PLAN” shall have the meaning set forth in Section 5.1.

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

1.1.112 “REQUEST FOR ARBITRATION” shall have the meaning set forth in Section 16(a).

1.1.113 “REQUESTING PARTY” shall have the meaning set forth in Section 16(a).

1.1.114 “REQUIRED ANCHORAGE IMPROVEMENTS COMPLETION DATE” shall have the meaning set forth in Section 5.1.

1.1.115 “REQUIRED COMPLETION DATE” shall have the meaning set forth in Section 5.1.

1.1.116 “REQUIRED CONSTRUCTION COMMENCEMENT DATE” shall have the meaning set forth in Section 5.1.

1.1.117 “REQUIRED COST AMOUNT” shall have the meaning set forth in Section 5.1.

1.1.118 “RESPONSE” shall have the meaning set forth in Section 16(a).

1.1.119 “RESPONDING PARTY” shall have the meaning set forth in Section 16(a).

1.1.120 “REVERSION AMENDMENT” shall have the meaning set forth in Section 5.1.

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

1.1.122 “SEPARATE DISPUTE” shall have the meaning set forth in Subsection 16.10.1.

1.1.123 “STATE” shall mean the State of California.

1.1.124 “STATEMENT OF POSITION” shall have the meaning set forth in Subsection 16.5(2)(a).

1.1.125 “SUBLEASE” shall have the meaning set forth in Subsection 11.1.1.

1.1.126 “SUBLESSEE” shall have the meaning set forth in Subsection 11.1.1.

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

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

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

1.1.130 “TAKE OUT FOOD OPERATION” shall have the meaning set forth in Subsection 4.2.2 (j).

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

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

1.1.133 "UMBRELLA COVERAGE" shall have the meaning set forth in Subsection 9.1.1.

1.1.134 "UNINSURED LOSS" shall have the meaning set forth in Section 10.5.

1.1.135 "WRITTEN APPRAISAL EVIDENCE" shall have the meaning set forth in Section 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, replaces and supersedes the Existing 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 1961, and (3) the Improvements now existing on the Premises were constructed by Lessee or its predecessors with contractors selected by them. Except as provided in Subsection 1.2.2, Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party as of the Effective Date, and Lessee hereby represents that it has performed all investigations that it deems necessary or appropriate with respect to the condition of the Premises or Improvements. Lessee hereby accepts the Premises on an "AS-IS, WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises 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, heating, ventilating and air conditioning, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land or Improvements, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises and the 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 or any Improvements located thereon for any particular purpose, (v) the zoning, entitlements or other legal status of the Premises or Improvements, and any public or private restrictions affecting use or occupancy of the Premises or Improvements, (vi) the compliance of the Premises or Improvements with any applicable codes, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions or laws of the County, State, United States of America,

California Coastal Commission or any other local, state or federal governmental or quasi-governmental entity ("**Applicable Laws**"), including, without limitation, relevant provisions of the Americans with Disabilities Act ("**ADA**"), (vii) the presence of any underground storage tank or Hazardous Substances on, in, under or about the Premises, Improvements, the adjoining or neighboring property, or ground or other subsurface waters, (viii) the quality of any labor and materials used in any Improvements, (ix) the condition of title to the Premises or Improvements, and (x) the economics of the operation of the Premises or Improvements.

1.2.2 Title. County represents that County owns fee title to the Premises and that County has authority to enter into this Lease. Lessee hereby acknowledges the title of County and/or any other public entity or agency having jurisdiction thereover, in and to the Premises, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure and enforce Lessee's rights under this Lease, as amended from time to time.

2. TERM; OWNERSHIP OF IMPROVEMENTS.

2.1 Term. The term of the Lease ("**Term**") commenced on June 8, 1961 and, unless terminated sooner in accordance with the provisions of this Lease, shall expire at 11:59 p.m. on June 7, 2051. For purposes of this Lease, "**Lease Year**" shall mean each calendar year (or partial calendar) during the Term of this Lease.

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 and constructed by Lessee or its predecessors on the Premises, or hereafter constructed by Lessee upon the Premises, and all alterations, additions or modifications 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. Unless Lessee is expressly directed by County in writing in accordance with this Section 2.3 to demolish and remove Improvements upon the expiration or earlier termination of the Term, all Improvements located on, in, or under the Premises (including all fixtures or equipment affixed thereto) shall remain upon and be surrendered with the Premises as part thereof, and title to such Improvements shall vest in County without any compensation 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 (a) receive any and all proceeds which are attributable to the Condemnation of Improvements belonging to Lessee immediately prior to the taking of possession by the Condemnor, to the extent provided in Article 6 of this Lease, or (b) remove any furniture or equipment that is neither permanently affixed to, or reasonably necessary for the operation of, the Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the Premises and Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term,

subject to Lessee's obligations under this Lease to use the Premises for the Permitted Uses.

2.3.2 Duty to Remove. No earlier than eleven (11) years, and no later than ten (10) years prior to the expiration of the Term, Lessee shall deliver to County a report prepared by a construction and demolition expert reasonably approved by County that details and estimates the cost and required time period for the removal of all Improvements on the Premises at the expiration of the Term (the "**Demolition and Removal Report**").

County may elect to require Lessee at the end of the Term or any earlier termination of this Lease to remove, at the sole cost and expense of Lessee, all or any portion of the Improvements located on, in or under the Premises, whether placed or maintained thereon by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings; provided, however, such portion ("Portion Subject to Demolition") of the Improvements designated by County for demolition must be reasonably subject to being demolished separately from other portions of the then-existing Improvements which County has designated to remain. Lessee shall complete the required demolition and removal and shall restore and surrender to County possession of the Premises in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps.

In the case of the termination of the Lease at the scheduled expiration date of the Term, any election by County to require Lessee to demolish and remove the Improvements or a Portion Subject to Demolition must be made by County in writing to Lessee not later than five (5) years prior to the then-scheduled expiration date of the Term. If County elects to require Lessee to demolish and remove all of the Improvements or a Portion Subject to Demolition, Lessee shall complete such demolition and removal and otherwise comply with Lessee's surrender obligations under this Section 2.3 on or before the expiration of the Term of the Lease. In the case of the termination of the Lease at the scheduled expiration date of the Term, Lessee shall have the right, by written notice to County not later than thirty (30) days prior to the scheduled expiration date of the Term, to extend the date by which Lessee must complete the Improvement removal and Premises surrender obligations under this Subsection 2.3.2 and/or the Lessee's removal obligations under Subsection 2.3.4 below to a date not more than one hundred twenty (120) days after the expiration of the Term (the "Post Term Removal Period"); provided, however, that all of the Lessee's obligations and liabilities under the Lease (other than the obligation to affirmatively operate the Premises) shall be applicable during the Post Term Removal Period, including without limitation, the Lessee's obligations with respect to insurance and indemnification, and Lessee's obligation to pay County compensation for the Post Term Removal Period in an amount equal to the Monthly Minimum Rent rate in effect immediately prior to the expiration of the Term.

In the case of a termination of the Lease prior to the scheduled expiration date of the Term, any election by County to require Lessee to remove the Improvements or a Portion Subject to Termination must be made by County in writing to Lessee not later than sixty (60) days after the effective date of such termination, and if County elects to

require Lessee to demolish and remove all or a portion of the Improvements on a termination of the Lease prior to the scheduled expiration of the Term, Lessee shall complete such demolition and removal and otherwise comply with Lessee's surrender obligations under this Section 2.3 on or before the later of (a) ninety (90) days after the date on which this Lease terminated, or (b) if Lessee has submitted a Demolition and Removal Report to County, that period after the date on which this Lease terminated equal to the estimated demolition and removal period set forth in the Demolition and Removal Report.

Upon receipt of County's written notice of election to require Lessee to remove all of the Improvements or a Portion Subject to Demolition, Lessee shall, within ninety (90) days after the date of such County notice, provide County with a letter of credit, bond, guaranty, deposit of funds or other security, in form, from such issuer and in such amount, as reasonably satisfactory to Director ("Demolition Security"), to secure the performance of Lessee's removal and restoration obligations pursuant to this Subsection 2.3.2. The amount of any Demolition Security shall be equal to the estimated costs to remove the Improvements as set forth in the Demolition and Removal Report (the "Estimated Costs"), adjusted to reflect the percentage change in the ENR Index from the date on which the Estimated Cost was determined until the date on which Lessee delivers the Demolition Security. Thereafter, Lessee shall increase the amount of the Demolition Security on an annual basis (on or before each successive anniversary of the required date for Lessee's original delivery to County of the Demolition Security) by the same percentage as the percentage increase (if any) in the ENR Index over the preceding year. County shall have the right to revoke County's election to require the removal of all Improvements or a Portion Subject to Demolition at the end of the scheduled expiration of the Term of the Lease by written notice to Lessee of such revocation at any time not later than ninety (90) days prior to the scheduled expiration date of the Lease. If County revokes its prior demolition and removal notice, then any Demolition Security previously delivered by Lessee to County pursuant to this paragraph shall be returned to Lessee within thirty (30) days following the date of such revocation. Upon completion of all of Lessee's obligations under this Section 2.3, the remaining balance of any Demolition Security held by County (and not used by County pursuant to Subsection 2.3.3 or 2.3.4 below) shall be returned to Lessee.

If County fails to elect to require Lessee to remove all of the Improvements on the Premises in accordance with the terms of this Section 2.3 (or revokes such election as provided above), then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall surrender possession to County of the Premises and those Improvements not required to be removed by Lessee, in the condition in which such Improvements are required to be repaired and maintained under this Lease.

2.3.3 <u>County's Right to Remove Improvements</u>. If County elects to have Lessee demolish and remove Improvements and Lessee fails to do so in accordance with this Lease, County may, at its election, retain, sell, remove or demolish such Improvements. In the event of any demolition or removal by County of Improvements required to have been demolished and removed by Lessee, Lessee shall reimburse County for any Actual Costs incurred by County in connection with such demolition and removal

in excess of any funds used by County from the Demolition Security for such purpose and any consideration received by County as a result of any sale of the demolished Improvements; provided, however, that County shall be under no obligation to Lessee to effectuate any such sale or, in the case of a sale, to obtain any required level of compensation therefor.

2.3.4 Duty to Remove Personal Property. No later than the expiration of the Term or sooner termination of this Lease (subject to Lessee's rights with respect to the Post Term Removal Period described in Subsection 2.3.2 above), Lessee shall in all events remove, at its cost and expense, all furniture, equipment and other personal property that is not affixed to the Improvements or reasonably necessary for the orderly operation of the Premises or Improvements. Should Lessee fail to remove such furniture, equipment and other personal property within said period, and said failure continues for ten (10) days after written notice from County to Lessee, Lessee shall lose all right, title and interest therein, and County may elect to keep the same upon the Premises or to sell, remove, or demolish the same, in which event Lessee shall reimburse County for its Actual Costs incurred in connection with any such sale, removal or demolition in excess of any consideration received by County as a result thereof.

2.3.5 Title to Certain Improvements Passes to County; Lessee to Maintain. As between County and Lessee, title to all utility lines, transformer vaults and all other utility facilities constructed or installed by Lessee upon the Premises shall vest in County upon construction or installation to the extent that they are not owned by a utility. Notwithstanding the foregoing sentence, such utility lines, transformer vaults and all other utility facilities, shall be maintained, repaired, and replaced, if and as needed, by Lessee during the Term.

3. USE OF PREMISES.

3.1 Specific Primary Use. The Premises and Improvements shall be used by Lessee for the operation and management of (i) a residential apartment project, (ii) boat anchorage facilities, and (iii) such other related and incidental uses as are specifically approved by County (collectively, the "**Permitted Uses**"). Except as specifically provided herein, the Premises and Improvements shall not be used for any purpose other than the Permitted Uses, without the prior written consent of County. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

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 or the Improvements, 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 for trash collected in appropriate receptacles intended for such purposes, nor shall any portion of the Premises or Improvements be permitted to be

operated or maintained in a manner that renders the Premises or Improvements a fire hazard.

3.2.2 Restrictions and Prohibited Uses. Without expanding upon or enlarging the Permitted Uses of the Premises and Improvements as set forth in this Lease, the following uses of the Premises and Improvements are expressly prohibited:

3.2.2.1 The Premises and Improvements shall not be used or developed in any way which violates any Applicable Law.

3.2.2.2 The Premises and Improvements 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; provided, however, that this Subsection 3.2.2.2 shall not be interpreted to regulate in violation of Applicable Law the private activity of an individual that is confined to such individual's private residence;

3.2.2.3 All Improvements shall at all times be kept in good condition and repair consistent with the requirements of Section 10.1 of this Lease, except as such condition is affected by the performance of the Redevelopment Work or Alterations in accordance with the requirements of Article 5 of this Lease.

3.2.2.4 No condition shall be permitted to exist upon the Premises or Improvements which induces, breeds or harbors 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 or Improvements which create a danger to the health or safety of any persons occupying, using, working at, or patronizing the Premises or Improvements.

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 (collectively, "**antennae**") 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 shall be inapplicable to the extent that such requirement violates Applicable Law; and provided, further, that Lessee shall not be required to obtain Director's approval of any antennae that exists on the Premises prior to the Effective Date to the extent that prior to the Effective Date Lessee and Department engaged in a site inspection of such existing antennae and Department did not disapprove such existing antennae as being unsightly or creating a risk of injury or damage to person or property.

3.2.2.6 No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or

placed upon or adjacent to the Premises, except as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease.

3.2.2.7 No adverse environmental condition in violation of Applicable Laws shall be permitted to exist on 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. In addition, Lessee shall not be required to remove Hazardous Substances existing in the building materials of the existing Improvements as of the Effective Date if and to the extent that such Hazardous Substances in their condition in such Improvements as of the Effective Date do not require remediation or removal under Applicable Laws in effect as of the Effective Date; provided, however, that (i) such Hazardous Substances shall be removed or remediated if and to the extent required under any Applicable Laws hereafter applicable to the Premises and/or the Improvements located thereon, (ii) such Hazardous Substances shall be removed or remediated if and to the extent required under the Renovation Plan or the Final Plans and Specifications for the Redevelopment Work, or if required under Applicable Laws that apply to the performance of the Redevelopment Work, and (iii) any removal or remediation of such Hazardous Substances, including without limitation, any disposal thereof, shall be performed 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 following uses shall not be permitted: (a) fuel sales; (b) boat or vehicle repair, other than minor servicing or owner maintenance; (c) live bait sales; (d) commercial sport fishing and tour boats; and (e) trailer boat launching or storage; provided, however, that facilities for handling and storing dinghies, small skiffs and similar craft may be permitted upon prior approval in writing from Director, which approval shall not be unreasonably withheld, conditioned or delayed.

3.3 Active Public Use. The parties acknowledge that County's objective in entering into 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, and for the generation and realization by County of revenue therefrom. Accordingly, Lessee

agrees and covenants that it will operate the Premises and Improvements fully and continuously in light of these objectives, consistent with the operation of comparable residential apartment and anchorage 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. Beginning on the date on which all phases of the initial construction of the Anchorage Improvements have been substantially completed, the Promenade (as defined in Section 15.20) shall be open every day of the year, except for any closure approved by Director required to perform (a) any Alteration permitted under this Lease, or (b) maintenance, repair, replacement or restoration work permitted or required under this Lease. Lessee shall maintain a dockmaster on duty with respect to the Anchorage Improvements pursuant to the terms and provisions of Section 15.21 of this Lease, on a schedule approved by County, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes in the days or hours of operation of the Promenade or the dockmaster shall be subject to the written approval of Director, which approval shall not be unreasonably withheld, conditioned or delayed.

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 or Improvements 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), in writing, whether pursuant to Article 5 of this Lease or otherwise, 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.

3.6 Compliance with Regulations. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all required licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises or Improvements. Without limitation of the foregoing, Lessee shall comply with (i) all conditions and requirements of Coastal Development Permit No(s). _____ **[PRIOR TO LEASE EXECUTION INSERT ANY COASTAL DEVELOPMENT PERMIT NO(S). ISSUED FOR REDEVELOPMENT WORK]**, which conditions and requirements are attached to this Lease as Exhibit D and incorporated herein by this reference, and (ii) 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 and Improvements as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other residential apartment and anchorage facilities in Marina del Rey, and delivered in writing to Lessee.

3.8 Reservations. Lessee and County expressly agree that this Lease and all of Lessee's rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way existing as of the date or otherwise referenced in this Lease in, to, over or affecting the Premises for any purpose whatsoever, and also subject to any other

encumbrances, reservations, licenses, easements and rights of way consented to by Lessee in writing.

Without limiting the foregoing, Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record or other matters disclosed to or known to Lessee, as of the Effective Date, which provide a right 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 to convey such easements and transfer such rights to others.

3.9 Tahiti Way. The County, in its governmental capacity and in its capacity as owner of Tahiti Way, a private and physically open street, agrees that Lessee, together with its Sublessees, assignees, contractors, employees, agents, permittees, and invitees shall have full access to and from Tahiti Way, which provides access to and from Villa Marina, a publicly dedicated and physically open street, during the entire Term of the Lease, subject to any and all rights of County regarding any repair, reconstruction, diversion and replacement of said roadway which it might lawfully undertake consistent with its obligation to Lessee under this Lease and Applicable Laws.

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 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 and Improvements, 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 and Improvements.

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 or the Improvements thereon for any reason, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Premises. Lessee's obligation to pay taxes and assessments hereunder shall include but is not limited to the obligation to pay any taxes and/or assessments, or increases in taxes and/or assessments arising as a result of the grant to Lessee of the Option or Lessee's exercise thereof. Lessee shall have the right to contest the amount of any assessment imposed against the Premises or the possessory interest therein; provided,

however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Lessee.

The parties acknowledge that the Premises are and shall continue to be subject to possessory interest taxes, and that such taxes shall be paid by Lessee. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. Lessee shall include a statement in all Subleases to the effect that the interests created therein 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) the Annual Minimum Rent described in subsection 4.2.1 below, and (b) the Percentage Rent described in subsection 4.2.2 below. For purposes of this Lease "**Annual Rent**" shall mean the aggregate of the Annual Minimum Rent and Percentage Rent.

4.2.1 Annual Minimum Rent and Monthly Minimum Rent. Lessee shall pay to County the minimum rent described in this Subsection 4.2.1 (subject to adjustment pursuant to Sections 4.3 and 4.4 below) during each Lease Year during 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 than a calendar year, then the Annual Minimum Rent shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to 365, and Monthly Minimum Rent shall be payable in equal monthly installments of such pro rata Annual Minimum Rent.

During the period from the Effective Date through the earlier of the Completion Date or the Required Completion Date (as defined in Section 5.1), the Annual Minimum Rent shall be equal to the annual square foot rental required to be paid under Section 12 of the Existing Lease as of the date immediately prior to the Effective Date.

Commencing upon the earlier of the Completion Date or the Required Completion Date, and continuing for the three (3) year period thereafter, the Annual Minimum Rent shall be equal to the greater of (a) the Annual Minimum Rent in effect during the period described in the immediately preceding paragraph, or (b) seventy-five percent (75%) of the average Annual Rent projected to be payable by Lessee during the period described in this paragraph. Not later than ninety (90) days prior to the earlier of the projected Completion Date or the Required Completion Date, Lessee shall deliver to County for County's reasonable approval Lessee's projected Gross Receipts for the three (3) year period following the Completion Date, which projected Gross Receipts, as reasonably approved by County, shall be used to calculate the average total Annual Rent projected to be payable by Lessee for such three (3) year period.

Commencing on the day after the third (3rd) anniversary of the earlier of the Completion Date or the Required Completion Date (the "**First Adjustment Date**"), and continuing

every three (3) years thereafter, the Annual Minimum Rent shall be as set forth in Sections 4.3 and 4.4 below.

4.2.2 Percentage Rent. For the purposes of this Lease, "**Percentage Rent**" for any given month or year shall be defined as the sum of the amounts set forth in this Subsection 4.2.2, less the Annual Minimum Rent for such month or year. Gross Receipts (as defined herein) from each transaction, sale or activity of Lessee (or any Sublessee) on, from or within the Premises or Improvements shall be reported under one or more of the percentage categories set forth below, as applicable. It is understood that Article 3 of this Lease provides for the Permitted Uses of the Premises and that the percentage categories listed below are not all applicable to this Lease and are in no way intended to expand or modify the Permitted Uses. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel, has interpreted and may further interpret the percentage categories as set forth in this Subsection 4.2.2, with such determinations and interpretations to be a guideline in determining the appropriate categories. Within fifteen (15) days after the close of each and every calendar month of the Term, Lessee shall file a report of Gross Receipts and pay to County a sum equal to the total of the following percentages of Gross Receipts for such previous month, less the amount of the installment of Monthly Minimum Rent paid 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 storage space, and other water-side facilities and services ancillary thereto as are generally provided in common to tenants thereof, including receipts obtained from persons who live on their boats; notwithstanding the foregoing, during the twenty (20) year period following the earlier of the Completion Date or the Required Completion Date (the "Credit Period"), Lessee shall be entitled to a rent credit under this category (a) in the form of a reduction equal to 1.7% in the percentage applicable under this category (c), as follows: (1) during that portion of the Credit Period that occurs prior to the first Renegotiation Date, the percentage applicable under this category (a) shall be reduced from 25% to 23.3%; and (2) during that portion of the Credit Period that occurs after the first Renegotiation Date, the percentage applicable under this category (a) shall be equal to the Fair Market Rental Value percentage established under Section 4.4 below minus 1.7%, but not less than a resulting percentage (after application of the credit) of 23.3%;

(b) TWENTY PERCENT (20%) of Gross Receipts from the rental or other fees charged for the use of dry storage facilities, landside storage space, boats, motors, tackle, recreational equipment, tools, equipment, launch and retrieval of small boats and from the sale of live bait;

(c) FOURTEEN AND ONE-HALF PERCENT (14.5%) of Gross Receipts or other fees charged for (1) the occupancy of apartments, (2) the rental or use of meeting rooms, or (3) the rental or use of land and/or water or facilities for activities not otherwise provided for in this section, such as but not limited to television, motion pictures or other media filming purposes; notwithstanding the foregoing, (i) during the period from the Effective Date through the earlier of the Completion Date or the Required Completion Date, the percentage set forth in this category (c) shall be TEN AND ONE-HALF

PERCENT (10.5%) instead of FOURTEEN AND ONE-HALF PERCENT (14.5%); and (ii) during the twenty (20) year period following the earlier of the Completion Date or the Required Completion Date, Lessee shall be entitled to a 1.8% reduction in the percentage otherwise applicable under this category (c) such that during such twenty (20) year period the percentage applicable under this category (c) shall be 12.7%;

(c1) TWELVE PERCENT (12%) of Gross Receipts or other fees charged for the occupancy of (1) offices utilized for banking, financial or investment activities, internal clerical or administrative activities (other than Lessee's management office), business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies, yacht club purposes, or similar uses; or (2) restaurants, stores, shops, or other commercial establishments; provided that, except as provided in subsection 4.2.2.5, Gross Receipts or other fees charged for the occupancy of restaurants, stores, shops or other commercial establishments shall not be included in the calculation of Percentage Rent under this subsection (c1) if the Gross Receipts from the operation of such businesses (as opposed to the rentals paid for the occupancy of the space) are required to be reported under another percentage rent category;

(d) Intentionally omitted;

(e) FIVE PERCENT (5%) of commissions or other fees earned from boat brokerage, car rental agencies, marine insurance commissions where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage, laundry and dry cleaning commissions and other similar activities where earnings are normally on a commission basis;

(f) With respect to service enterprises, including, without limitation, cable television, internet, satellite, telecommunication or other antennae fees, telephone and other utility services, and valet parking services, FIVE PERCENT (5%) of the Gross Receipts received by Lessee (or a subtenant) from such enterprise if Lessee (or such subtenant) is the operator of such enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee (or a subtenant) from such enterprise if a third party provider is the operator of such enterprise;

(g) SIX PERCENT (6%) of the Gross Receipts received by Lessee (or a subtenant) if Lessee (or a subtenant) is the operator of the enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee (or a subtenant) if a third party provider is the operator of the enterprise, from commercial boating activities including, but not limited to, charter boat, bareboat charters and sport fishing boats;

(h) With respect to the installation or operation of coin-operated vending or service machines, including pay telephones, FIVE PERCENT (5%) of the Gross Receipts received by Lessee (or a subtenant) from such enterprise if Lessee (or a subtenant) is the operator of such enterprise, or TWENTY-FIVE PERCENT (25%) of any commissions or fees collected by Lessee (or a subtenant) from such enterprise if a third party provider is the operator of such enterprise;

(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 AND ONE-HALF PERCENT (3½%) of Gross Receipts from the operation of a restaurant, restaurant/cocktail lounge combination, coffee shop, beach or theater food facility, except that Gross Receipts from facilities established and operated as a take-out food operation shall be reported under category; a "take-out food operation" shall mean a restaurant or other food operation a majority of the Gross Receipts from which are derived from the sale of food or beverages to be consumed off-site;

(k) Intentionally omitted;

(l) Intentionally omitted;

(m) FIFTEEN PERCENT (15%) of Gross Receipts from club dues, initiation fees and assessments, except that separate assessments for capital improvements may be exempted; provided that to qualify for such an exemption Lessee must comply with the "Criteria for Eligibility for Exemption of Special Assessments from Gross Receipts" issued by Director;

(n) Intentionally omitted;

(o) Intentionally omitted;

(p) Intentionally omitted;

(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 reportable under category (s);

(r) TWENTY PERCENT (20%) of Gross Receipts from parking fees, except that (1) parking fees or charges, if any, which are collected in conjunction with an activity the Gross Receipts from which are required to be reported in a percentage category higher than twenty percent (20%) shall be included in Percentage Rent at such higher percentage; and (2) valet parking charges, fees and tips shall not be included in Percentage Rent under this category, but instead shall be included in Percentage Rent under category (f) above;

(s) FIVE PERCENT (5%) of Gross Receipts from the sale of miscellaneous goods and services, but not specifically provided for elsewhere in this Subsection 4.2.2; and

(s1) FIVE PERCENT (5%) of the Gross Receipts from the operation of all stores, shops or boutiques selling items at retail.

If with the prior approval of County or Director Lessee hereafter engages in a use that is not currently permitted under this Lease and as to which there is no specific

percentage set forth above applicable to such additional or related use, then concurrent with the approval by County or Director of such specific additional use, Director and Lessee shall negotiate in good faith with Lessee to establish the specific percentage to be applied to such use. Such percentage shall be the greater of (1) the average percentage received by County with respect to that category of activities within Marina del Rey, California at the time of approval of the additional or related use, and (2) the most recent agreement between County and a Marina del Rey lessee, whether by arbitration or otherwise, with respect to the appropriate percentage to be applied to that use. The percentage rent for the additional or related use as determined pursuant to this paragraph shall remain in effect until the next Renegotiation Date.

4.2.2.1 Payment of Percentage Rent. Within fifteen (15) days after the close of each and every calendar month of the Term hereof, Lessee shall file with County a report of Gross Receipts by category for such previous month, and the amount of Percentage Rent resulting therefrom. Lessee shall include with such report a payment to County of the amount by which the Percentage Rent for such previous month exceeds the Monthly Minimum Rent paid by Lessee for such previous month.

4.2.2.2 Accounting Records and Procedures. Lessee agrees to and shall comply with, and shall cause all of 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.

4.2.2.3 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 and other payments or reimbursements), fees and commissions made or earned by Lessee and/or all Sublessees, whether collected or accrued from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares, food, beverages or merchandise.

(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, collection costs, discounts from credit card operations, 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 shall not include security deposits paid by a Sublessee to Lessee to be held by Lessee as security for Sublessee's obligations under its Sublease, license or permit, except to the extent Lessee allocates or applies any

portion of such security deposit to unpaid rent or other amounts owed by such Sublessee to Lessee, in which event the sum so allocated or applied shall be included in Gross Receipts as of the date of such allocation or application.

(4) Gross Receipts must include the usual charges for any services, goods, rentals or facilities provided by Lessee or 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.

(5) In those instances where Gross Receipts are based on the sale of merchandise, food, beverages or services, Gross Receipts shall not include any of the following items:

a. goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to any retailers without profit to Lessee, where such returns or deliveries are made solely for the convenient operation of the business of Lessee or Sublessee and not for the purpose of consummating a sale made in, about or from the Premises;

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

c. sales of fixtures, equipment or property which are not Lessee's 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 one percent (1%) of the Gross Receipts from such business operation in any year;

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

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

l. amounts received for services rendered by a Sublessee of an individual apartment unit (or by a live-aboard) in connection with the operation by such Sublessee (or live-aboard) of an in-home business in such apartment unit (or the boat of such live-aboard), as long as the primary purpose of Sublessee's use of the apartment unit (or boat) is for residential occupancy and such in-home business is an incident to such residential use.

(6) Gross Receipts shall not include payments received by Lessee from a Sublessee for the Cost of such Sublessee's submetered electricity, provided (A) each Sublessee's obligation to reimburse Lessee for such Sublessee's electrical charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Premises; (B) the reimbursed sum is in an amount equal to the Cost of the Sublessee's electricity; and (C) the amount received is actually credited against the cost of the Sublessee's electricity. For the purpose of this paragraph (6), the "**Cost**" of a Sublessee's electricity shall mean the actual out-of-pocket costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility's electric bill that is allocable to the Sublessee based on such Sublessee's submetered consumption of electricity, and in paying the portion of any third party submeter reading and service charge to each submeter that is actually read and a direct allocation of the submeter service charge to each such submeter that is serviced. County shall have the right to approve all submeters and to challenge the legitimacy or amount of any Cost, and all disputes regarding such County approvals or challenges, if not resolved by the parties within thirty (30) days after notice to Lessee of such disapproval or challenge, shall be resolved by arbitration pursuant to Article 16 of this Lease. The terms and provisions of this paragraph 6 shall also be applicable to other submetered utility charges to the extent that it is customary for Sublessees to be responsible for such other utility charges.

4.2.2.4 Excess Payments Credit. If payments of Monthly Minimum Rent and Percentage Rent actually made by Lessee in a particular Lease Year exceed the total Annual Minimum Rent and Percentage Rent that would have been due for such Lease Year if computed on an annual basis at the end of such Lease Year, Lessee shall be permitted to credit that excess amount ("**Excess Percentage Rent Payment**") against the succeeding monthly installments of Percentage Rent otherwise due under this Subsection 4.2.2 until such time as the entire Excess Percentage Rent Payment has been recouped. If Lessee makes an Excess Percentage Rent Payment in the final Lease Year of the Term, County shall refund such amount to Lessee within thirty (30) days after County's verification of such overpayment, which County agrees to use its reasonable efforts to diligently complete after receipt by County of all information required for County to calculate the Excess Percentage Rent Payment and to resolve of any audits of Percentage Rent.

4.2.2.5 Effect of Sublessee Doing Business. Except as specifically provided to the contrary in this Lease, where a Sublessee is conducting a business or engaged in any use or occupation or any combination thereof on Lessee's leasehold except for a business conducted under Item (1) of category (c1) of Subsection 4.2.2, for purposes of determining Percentage Rent Lessee shall report whichever of the following results in the greater Percentage Rent: (i) the Gross Receipts received by each Sublessee under one or more of categories (a) through (s1) of Subsection 4.2.2; or (ii) the Gross Receipts received by Lessee from such Sublessee under category (c) or (c1) of Subsection 4.2.2.

4.2.2.6 Interest, Service Fees or Late Charges. Interest, service fees or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be reported in the same percentage category as the transaction, sale or activity is reported.

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

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

4.3 Adjustments to Annual Minimum Rent. As of the First Adjustment Date and every three (3) years thereafter until the first Renegotiation Date, and thereafter each third (3rd), sixth (6th) and ninth (9th) anniversary 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 4.3. The Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy five percent (75%) of the average of the total Annual Rent payable by Lessee to County each year under Section 4.2 of this Lease during the three (3) year

period immediately preceding the Adjustment Date; provided, however, that the Annual Minimum Rent shall be never be reduced to less than the Annual Minimum Rent in effect immediately prior to the then-applicable Adjustment Date.

4.4 Renegotiation of Annual Minimum and Percentage Rents. Effective on the twentieth (20th) anniversary of the Effective Date, and each subsequent tenth (10th) anniversary 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.

4.4.1 Fair Market Rental Value. As used herein, "**Fair Market Rental Value**" shall mean, as of each Renegotiation Date, the fair market rent (including an annual minimum rent), expressed as respective percentages of Gross Receipts in accordance with the categories enumerated in Subsection 4.2.2, which the Premises 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, the percentage applicable for Percentage Rent category (c) of Subsection 4.2.2 shall be FOURTEEN AND ONE-HALF PERCENT (14.5%) during the entire Term of the Lease (subject to the reduction during the Credit Period described in category (c)) and such percentage shall not be subject to adjustment at any Renegotiation Date pursuant to this Section 4.4. The requirement in the immediately preceding sentence that the percentage applicable for Percentage Rent category (c) not be subject to adjustment pursuant to this Section 4.4 shall have no effect upon the determination of the Fair Market Rental Value percentages for the other Percentage Rent categories set forth in Subsection 4.2.2, each of which shall be determined in accordance with the terms and provisions of this Section 4.4 without regard to whether the actual Fair Market Rental Value percentage for Percentage Rent category (c) is higher or lower than that set forth in category (c).

Notwithstanding any contrary provision of this Lease, in connection with the Fair Market Rental Value adjustments to the percentages for categories (a), (b) and (c1) through (s1) of Subsection 4.2.2, in no event shall any individual percentage ever be reduced below the percentage for such Percentage Rent category set forth in Subsection 4.2.2, and the requirement set forth in this sentence that no individual Percentage Rent category percentage shall be reduced below that set forth in Subsection 4.2.2 shall have no affect on the determination of the Fair Market Rental Value for any other Percentage Rent category in which the Fair Market Rental Value percentage might be greater than that set forth in Subsection 4.2.2.

4.4.2 Renegotiation Period. Not more than one (1) year nor less than nine (9) months prior to the Renegotiation Date, Lessee shall deliver to County written notice setting forth Lessee's determination of the Fair Market Rental Value of the Premises for each of the rental categories set forth in Subsection 4.2.2 (excepting category (c)), including both Gross Receipts percentages and an Annual Minimum Rent. 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 thirty (30) 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 thirty (30) day period.

If Lessee fails to deliver the notice described in the first sentence of this Subsection 4.4.2, setting forth Lessee's determination of Fair Market Rental Value, and such failure continues for thirty (30) days after receipt of written notice from County, then County shall submit its determination of Fair Market Rental Value to Lessee, and Lessee shall have fifteen (15) days 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, then County's determination of Fair Market Rental Value shall be binding on Lessee as of the Renegotiation Date.

4.4.3 Negotiation of Fair Market Rental Value. If County (or Lessee, as the case may be) does so notify Lessee (or County, as the case may be) of its disagreement as provided in Subsection 4.4.2, County and Lessee shall have sixty (60) days from the end of the applicable response period in which to agree upon the Fair Market Rental Value for the Premises. County and Lessee shall negotiate in good faith during said sixty (60) day period. If the parties do so agree, they shall promptly execute an amendment to this Lease that documents the new Percentage Rent and Annual Minimum Rent 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.

4.4.4 Arbitration. If County and Lessee fail to reach agreement during the sixty (60) day period set forth in Subsection 4.4.3, then, unless the parties agree otherwise, the Fair Market Rental Value of the Premises shall be determined by arbitration as set forth in Article 16 of this Lease and the parties shall execute an amendment to this Lease setting forth the Fair Market Rental Value as determined by arbitration. In order to determine the Fair Market Rental Value of the Premises, the arbitrator shall take into consideration the terms and provisions applicable to the calculation of the Fair Market Rental Value set forth in Subsection 4.4.1. During the period of arbitration, County and Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to Lessee's obligation to pay to County Annual Minimum Rent and Percentage Rent at then existing levels.

4.4.5 Retroactivity. In the event that, pursuant to Subsections 4.4.3 or 4.4.4 hereof, the parties execute an amendment to this Lease setting forth the Fair Market Rental Value and the Annual Minimum Rent, such amendment, if executed prior to the Renegotiation Date, shall be effective as of the Renegotiation Date; if executed after the Renegotiation Date, such amendment shall be retroactive to the Renegotiation Date. In the event that such amendment is executed after the Renegotiation Date, then, within thirty (30) days after such execution, Lessee shall pay to County, or County shall pay or, at its election, 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:

(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 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.

No late fee shall be payable under Section 4.5 with respect to any underpayment of rent retroactively readjusted pursuant to this Subsection 4.4.5 as long as Lessee pays to County any such rent underpayment and accrued interest within the thirty (30) day period prescribed in this Subsection 4.4.5.

4.5 Payment and Late Fees. Monthly Minimum Rent shall be paid by Lessee in advance. Payments of Minimum Monthly Rent shall be received by County on or before the first day of each calendar month of the Term. Percentage Rent shall be paid by Lessee in arrears. Percentage Rent due, if any, for a given month of the Term shall be received by County on or before the fifteenth (15th) 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 4.2.2.5. Payment may be made by check or draft issued and payable to The County of Los Angeles, and mailed or otherwise delivered to the Department of Beaches and Harbors, Los Angeles County, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, or such other address as may be provided to Lessee by County.

Lessee acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand. In the event any payment is not received by County 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 no Late Fee shall be assessed in the case of the first late payment by Lessee during any Lease Year as long as such late payment is cured within one (1) business day after Lessee receives 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) a Net Proceeds Share, in the event such Change of Ownership or Financing Event 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 12 and 13 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 subsections 4.6.1(a) or (b) which constitute an Aggregate Transfer of fifty percent (50%) or more of the beneficial 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 interest in Lessee or a Major Sublessee which brings its cumulative beneficial interest in Lessee or a Major Sublessee, as applicable, to greater than 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:

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) as of the Effective Date, to any other 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) as of the Effective Date, 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, shareholder or member of Lessee who is an individual;

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 of Control of Lessee or a change in the managing member or general partner 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, or (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;

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

4.6.2.5 a mere change in the form, method or status of ownership, as long as there is no change in the actual beneficial ownership of this Lease, Lessee or a Major Sublease, and such transfer does not involve an intent to avoid Lessee's obligations under this Lease with respect to a Change of Ownership; or

4.6.2.6 any transfer resulting from a Condemnation by County.

4.6.3 Aggregate Transfer. "**Aggregate Transfer**" shall refer to the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial interests in Lessee or a Major Sublessee, as applicable) 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 applicable, 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 transactions 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 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 applicable, 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. Notwithstanding any contrary provision hereof, no limited partner, member or shareholder having a direct or indirect ownership interest in Lessee or a Major Sublease shall have any liability to County under this Lease.

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 applicable, 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, as applicable.

4.7 Calculation and Payment. A deposit of Fifteen Thousand Dollars ($15,000) toward the Administrative Charge shall be due and payable upon Lessee's notification to County of the proposed Change of Ownership (other than 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 (other than an Excluded Transfer) or Financing Event giving rise to the obligation to pay such fee, regardless of whether or not money is transferred by the parties in connection with such consummation. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the Administrative Charge, together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 4.6. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay County the balance of the Administrative Charge otherwise allowable under Section 4.6. within thirty (30) days after receipt of the notice from County setting forth the Administrative Charge and any supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice. Together with its request for County approval of the proposed transaction, Lessee, a Major Sublessee or the holder of a beneficial interest in this Lease or a Major Sublease, as applicable, 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. If County disagrees with the amounts set forth in the Calculation Notice, County shall provide Lessee with the reason or reasons for such disagreement. Failing mutual agreement within thirty (30) days after the expiration of County's thirty (30) day review period, the dispute shall be resolved by arbitration as set forth in Article 16 of this Lease in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Net Proceeds Share and (ii) Lessee shall deposit the disputed portion of the Net Proceeds Share into an interest bearing escrow account at the closing of the transaction, which portion shall be distributed in accordance with the arbitration of the dispute pursuant to Article 16 of this Lease, in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value.

4.7.1 Transfer of Less Than Entire Interest. Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial interest in Lessee or a Major Sublessee, the Net Proceeds Share shall be due and payable with respect to those portions of such beneficial interest that have been acquired by the transferee since the latest of (a) the Effective Date, or (b) the date of 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, a Major Sublease or a

Change of Ownership that included a transfer of the beneficial interest that is the subject of the current transfer.

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 obligation of Lessee, and in the case in which the identity of the Lessee changes with the transfer, shall be the joint and several obligation of both the Lessee entity prior to the transfer and the Lessee entity after the transfer. In the event that the Administrative Charge or Net Proceeds Share is not paid when due with respect to the beneficial interest in this Lease, then County shall have the remedies set forth in Section 13.3 hereof.

4.8 Net Proceeds Share. In the event of a Change of Ownership, the "**Net Proceeds Share**" shall be the amount by which the greater of the following exceeds the Administrative Charge paid by Lessee to County in connection with such Change of Ownership: (a) the lesser of (i) the Net Transfer Proceeds from such Change of Ownership, or (ii) five percent (5%) of the Gross Transfer Proceeds from such Change of Ownership; or (b) twenty percent (20%) of the Net Transfer Proceeds from such Change of Ownership. Notwithstanding the foregoing, with respect to the first Change of Ownership that occurs prior to the tenth (10th) anniversary of the earlier of the Completion Date or the Required Completion Date (but not with respect to the second or any subsequent Change of Ownership during such ten (10) year period, and not with respect to any Change of Ownership after the tenth (10th) anniversary of the earlier of the Completion Date or the Required Completion Date), the reference to "five percent (5%)" in the immediately preceding sentence shall instead be "two percent (2%)" and the reference to "twenty percent (20%)" in the immediately preceding sentence shall instead be "eight percent (8%)."

With respect to a Financing Event, the "Net Proceeds Share" shall be the amount (if any) by which (I) twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event exceeds (II) the Administrative Charge paid by Lessee to County in connection with the transaction.

"**Gross Transfer Proceeds**" shall mean an amount equal to the gross sale or transfer proceeds and 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 which constitutes a Change of Ownership that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair value of the interests transferred).

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 Gross Transfer Proceeds or the gross principal amount of any Financing Event (as applicable), 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 transfer by a successor or assignee of Lessee) constituting a Change of Ownership for which a Net Proceeds Share is payable, "**Net Transfer Proceeds**" shall mean the Gross Transfer Proceeds from the transfer, less the following costs with respect to Lessee (but not its successors or assignees):

4.8.1.1 The sum of (a) Thirty-Four Million Four Hundred Six Thousand Five Hundred Ninety-Four Dollars ($34,406,594.00), plus (b) the amount of the "Option Fee" paid by Lessee under the Option Agreement, plus (c) actual out-of-pocket costs incurred by Lessee for its third party consultants and attorneys in connection with the negotiation and consummation of the Option Agreement and this Lease, plus (d) the Actual Costs reimbursed by Lessee to County in connection with the negotiation and consummation of the Option Agreement and this Lease (the sum of the amounts in (a), (b), (c) and (d) are referred to as the "**Base Value**"), plus (e) the final actual out-of-pocket design, permitting, entitlement and construction (including construction of the Promenade) costs paid by Lessee in connection with the Redevelopment Work or other physical capital Improvements or Alterations to the Premises after the Effective Date constructed by Lessee in compliance with Article 5 of this Lease, which costs have been submitted to County within ninety (90) days after the completion of such Improvements (or in the case of phased construction, within ninety (90) days after the completion of the applicable phase of such Improvements), together with a written certification from Lessee and Lessee's construction lender that such costs are accurate, and which costs shall have been approved in writing by Director (the amounts described in this clause (e) are referred to as "**Improvement Costs**"). Without limitation of the immediately preceding sentence, Improvement Costs shall include all actual out-of-pocket hard and soft construction costs paid to unaffiliated third parties (except that Lessee shall be entitled to include, to the extent actually incurred, construction management and/or development fees paid to an affiliate as long as the total amount of all construction management, development and similar fees paid to unaffiliated and affiliated parties does not exceed an aggregate of four percent (4%) of the hard construction costs), and actual construction period interest on Lessee's construction loan from an unaffiliated third party lender.

4.8.1.2 Commissions, title and escrow costs, legal fees and expenses, 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**").

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

4.8.2 Transfer by Lessee's Successor. In the case of a transfer by a Lessee other than the original Lessee, "Net Transfer Proceeds" shall mean the Gross Transfer Proceeds received by that successor, minus the following costs with respect to such successor Lessee:

4.8.2.1 The greatest of (a) the sum of the Base Value, plus Improvement Costs incurred subsequent to the Effective Date but 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 (c) the original principal amount of any Financing Event or Financing Events (on a non-duplicative basis) after such successor Lessee's acquisition of the leasehold, and with respect to which County was paid a Net Proceeds Share, plus the principal amount of any financing existing as of the date on which such seller acquired the leasehold or subsequently obtained by Lessee, if such financing has not been refinanced, but without duplication;

4.8.2.2 Improvement Costs actually paid by such successor Lessee after such successor Lessee's acquisition of its leasehold interest in the Premises (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 lender and Lessee certification, as provided in Subsection 4.8.1.1; and

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

4.8.3 Transfers of Major Sublessee's Interest. With respect to any Change of Ownership described in Subsection 4.6.1(b), Subsections 4.8.1 and 4.8.2 shall apply, except that any rents or other amounts received by Lessee from the Major Sublessee a percentage of which 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 Base Value and Improvement Costs 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 Base Value and Improvement Costs (or following a transfer by the original Lessee, such cost shall in no event be deemed to be less than a prorata share of the sum of Subsections

4.8.2.1 plus 4.8.2.2 as of the respective date of the transfer of each interest in the aggregation pool)) 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 applicable.

4.8.5 Net Refinancing Proceeds. "**Net Refinancing Proceeds**" shall mean the gross principal amount of any Financing Event after the Effective Date, 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 (a) the greatest of (i) the Base Value, (ii) the original principal amount of any subsequent refinancing by Lessee in connection with which County was paid a share of Net Refinancing Proceeds (plus if the financing described in this clause (ii) was secondary financing, the original principal balance of any then existing financing that was not repaid as a part of such secondary financing), or (iii) in the case of a successor Lessee the purchase price such successor paid to Lessee or such successor's seller for the interest acquired, (b) any portion of the proceeds of the Financing Event which shall be used for Improvement Costs, (c) other Improvement Costs incurred by Lessee and not paid for or repaid with the proceeds of any Financing Event, and (d) 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 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 at the Applicable Rate from the date due until paid; provided, however, 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) to secure payment thereof. 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. As part of the submission for approval of a 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 commercially reasonable 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 (a) renovate all existing land-side Improvements located on the Premises, including without limitation all existing apartment buildings, the interiors of all existing two hundred five (205) apartment units, building facades, club house, interior and exterior common areas, landscaping, hardscapes and other portions of the land-side Improvements, all as set forth in the renovation plan attached to this Lease as Exhibit B (the "Renovation Plan"), and (b) replace all existing two hundred thirty (230) anchorage slips and eleven (11) end-ties with two hundred seven (207) new anchorage slips and eleven (11) end-ties in accordance with the Renovation Plan and according to specifications and in a configuration and design meeting current Marina del Rey standards for new anchorage improvement construction, as shown on the Renovation Plan, with concrete construction, ADA access, in-dock pump-out facilities, Promenade and other associated Improvements, all as set forth in the Redevelopment Plan (the Improvements described in this clause (b) collectively referred to as the "**Anchorage Improvements**"). All required parking for the Improvements shall be located on the Premises. All of the work described in this Section 5.1 or in the Renovation Plan is referred to herein as the "**Redevelopment Work**." The Redevelopment Work shall be performed

in accordance with the Renovation Plan and the Final Plans and Specifications for the Redevelopment Work (as established under the Option Agreement if the Final Plans and Specifications for the Redevelopment Work are approved by Director prior to the Effective Date, or as established under Subsection 5.3.3 below if the Final Plans and Specifications for the Redevelopment Work are not approved by Director until after the Effective Date).

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 required to perform the Redevelopment Work.

Lessee shall be solely responsible for all costs and expenses incurred in connection with the performance of the Redevelopment Work (including all design, entitlement and construction activities). Lessee shall expend on the Redevelopment Work not less than the applicable Required Cost Amount (as defined below) for (i) out-of-pocket hard costs, excluding land or the value of the existing leasehold or existing Improvements, but including (A) hard costs expended for the Redevelopment Work on the apartment units, the clubhouse, the building facades, the interior and exterior common areas, the Anchorage Improvements, the Promenade, landscaping, hardscapes and all parking and storage areas, as applicable; (B) general conditions and supervision not to exceed a total of five percent (5%) of hard costs; and (C) profit and overhead not to exceed a total of ten percent (10%) of hard costs; and (ii) soft costs not to exceed seven and one-half percent (7.5%) of hard costs. The "**Required Cost Amount**" for all of the Redevelopment Work other than the Anchorage Improvements means $12,042,030, as increased (but not decreased) by the same percentage increase (if any) in the Consumer Price Index during the period from (I) the month of the date of the Option Agreement until (II) the month of the later of the commencement of the construction of the portion of the Redevelopment Work that excludes the Anchorage Improvements or the Effective Date of this Lease. The "**Required Cost Amount**" for the Anchorage Improvements means $7,941,442, as increased (but not decreased) by the same percentage increase (if any) in the Consumer Price Index during the period from (I) the month of the date of the Option Agreement until (II) the month of the later of the commencement of the construction of the Anchorage Improvements or the Effective Date. For purposes of determining the month of the commencement of the applicable portion of the Redevelopment Work in connection with the calculation of the Required Cost Amount for such portion of the Redevelopment Work as set forth above, Lessee shall not be considered to have commenced such portion of the Redevelopment Work unless Lessee thereafter diligently and continuously prosecutes the completion of such portion of the Redevelopment Work, and if there is a cessation in the work with respect to such applicable portion of the Redevelopment Work, then the date of commencement of construction shall be the date that the applicable work is re-commenced after such cessation and thereafter diligently and continuously prosecuted to completion. Lessee's expenditures to satisfy the Required Cost Amount for the Redevelopment Work shall be subject to the reasonable verification and approval by Director. If and to the extent Lessee has performed any of the Redevelopment Work after the date of the Option Agreement but prior to the Effective Date, then subject to the immediately preceding sentence, and subject to the requirement that prior to the commencement of such Redevelopment Work Lessee provided written notice to Director of the specific components of the Redevelopment Work that Lessee intended to perform prior to the Effective Date, Lessee shall be entitled to include the permitted costs (as described above) incurred by Lessee for such components of the

Redevelopment Work performed after the date of the Option Agreement and prior to the Effective Date for purposes of satisfying the Required Cost Amount.

Lessee shall comply with all time deadlines and schedules described in this Article 5 relating to the completion of the design and construction of the Redevelopment Work (subject to an extension set forth in this Article 5 for Force Majeure delay). Lessee's failure to do so shall, if not cured within the applicable cure period set forth in Subsection 13.1.2, constitute an Event of Default. Except to the extent Lessee is prevented from so doing by Force Majeure as provided in Section 5.6, Lessee shall cause (1) the commencement of construction of the Redevelopment Work, other than the Anchorage Improvements, to occur on or before that date (the "**Required Construction Commencement Date**") which is sixty (60) days following the Effective Date; (2) all of the Redevelopment Work, other than the Anchorage Improvements, to be completed in accordance with the Final Plans and Specifications for the Redevelopment Work on or before the date (the "**Required Completion Date**") that is the third (3rd) anniversary of the Effective Date; (3) the commencement and performance of the Redevelopment Work with respect to the Anchorage Improvements in accordance with a phasing schedule reasonably approved by Director that is structured to facilitate the completion of all of the Anchorage Improvements not later than the Required Anchorage Improvements Completion Date; and (4) the completion of the Redevelopment Work with respect to the Anchorage Improvements in accordance with the Final Plans and Specifications for the Redevelopment Work not later than the fifth (5th) anniversary of the Effective Date (the "**Required Anchorage Improvements Completion Date**"). Unless approved by Director prior to the Effective Date, Lessee shall submit to Director for Director's approval a phasing schedule for the construction of the Redevelopment Work pertaining to the Anchorage Improvements not later than sixty (60) days after the Effective Date.

Lessee acknowledges that the principal inducement to County to enter into this Lease, including the extension of the Term as provided herein, is the timely commencement, performance and completion by Lessee of the Redevelopment Work. In the event that Lessee fails to comply with its obligations under this Section 5.1 to commence and complete the Redevelopment Work by the applicable dates set forth herein, as extended by Section 5.6, then in addition to any other right or remedy which County may have in connection therewith, this Lease shall be automatically amended such that the terms and provisions of this Lease revert back to the terms and provisions of the Existing Lease (including, without limitation, the Existing Expiration Date), as modified by the "Non-Exercise Amendment" described in the Option Agreement (the "**Reversion Amendment**").

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, which approval shall not be unreasonably withheld, conditioned or delayed. 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 (except to the extent such submittals and approvals have been previously completed with respect to Redevelopment Work pursuant to the Option Agreement). 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 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 the boundaries of the Premises and all rights-of-way or other areas reserved to County or third parties located thereon. After receipt of such plans, Director shall have sixty (60) days within which to approve or disapprove such submission in writing. 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 plans or Final Plans and Specifications and costs) 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 thereover, 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. As soon as practicable, but in no event later than thirty (30) days 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 from receipt 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, 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 AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

Following any 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. As soon as practicable, but in no event later than sixty (60) days after the later of (a) approval of the preliminary plans, outline specifications and construction cost estimate by Director, or (b) final approval by the California Coastal Commission (if required), Lessee shall submit for approval by Director six (6) complete sets of final plans, detailed specifications and a construction cost estimate 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 after receipt 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 final plans and related 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 specifications and construction cost estimate contain substantial changes

from the approved preliminary plans and specifications, 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 specifications and construction cost estimate, 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 AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY-ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

Following any 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, conditioned or delayed; 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, conditioned or delayed.

5.4 Conditions Precedent to the Commencement of Construction. No Redevelopment Work or other 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 other Alterations.

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 other Alterations.

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 (or with the substitute security set forth below) not less than ten (10) days prior to the

commencement of construction, which bonds (or other security) 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 Alteration. 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 (and which may include an Encumbrance Holder as an additional 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 (and which may include an Encumbrance Holder as an additional 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.

5.4.4 Alternative Security. In lieu of providing the Payment and Performance Bonds, Lessee may provide any of the following alternative security: (i) a certificate of deposit, cash or United States governmental security, (ii) a letter of credit, or (iii) a Set Aside Letter from Lessee's construction lender. The foregoing security shall be in an amount equal to one hundred percent (100%) of the construction contract price, and shall permit County to draw thereon to complete the construction of the Improvements if the same have not been completed by Lessee or if an Event of Default has occurred under this Lease. In addition, Director also shall have the authority to accept in lieu of the Payment and Performance Bonds, so-called "Subguard" insurance in such amount, on such terms and issued by such carrier as approved by Director, in combination with such other security, such as a completion guaranty, as acceptable to Director. 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 law 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 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 reasonably satisfactory to County of its having sufficient financial resources, as reasonably determined by Director, to complete the Redevelopment Work or other 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, as applicable, evidence of equity, 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.

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 completion of the Redevelopment Work on or before the Required Completion Date or Required Anchorage Completion Date (as applicable).

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 Sections 25536 and 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 Delays in Commencement and Completion of Redevelopment Work. Upon commencement of construction of the Redevelopment Work Lessee shall thereafter diligently pursue the completion of such construction by the Required Completion Date or the Required Anchorage Completion Date, as applicable (subject to Force Majeure as set forth below). If Lessee is delayed in the commencement of construction or completion of the Redevelopment Work due to Force Majeure, then the Required Construction Commencement Date, the Required Completion Date and/or the Required Anchorage Improvements Completion Date (if and to the extent that the event actually causes a delay in the commencement or completion of construction

of the applicable components of the Redevelopment Work) shall be extended by the period of the delay caused by such Force Majeure; provided, however, that any such extension shall be limited to the period of the delay caused by such events and no such delay shall be considered to have commenced unless Lessee notifies Director in writing of the commencement of such delay within ten (10) business days after Lessee's discovery of the delay; and provided, further, that the aggregate amount of extensions to any of the Required Construction Commencement Date, the Required Completion Date or the Required Anchorage Improvements Completion Date (as applicable) shall not exceed two (2) years. Lessee and Director shall discuss and attempt to agree on the length of time of any entitled delay due to Force Majeure pursuant to this Section 5.6. If they are unable to agree within thirty (30) days after written notice from Lessee of the event or occurrence giving rise to Lessee's claim to an entitlement to a delay under this Section 5.6, the matter shall be arbitrated as set forth in Article 16.

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 commercially 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, its employees, contractors or agents. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control materially adverse 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 material 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 Laws. 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 timely inspect the Premises to assure proper safeguarding of any County-owned improvements existing on or around the Premises, including but not limited to seawalls, underground conduits and utility lines. If any such County-owned improvement is damaged in connection with said construction activity, Lessee agrees to repair such damage immediately at no cost or expense to County or, in the event that Lessee fails to effectuate such repair within five (5) business days after written notice from County (or such longer period as may be reasonably required to complete such repair so long as Lessee commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), County may enter upon the Premises to make such repairs, the Actual Cost of which shall be paid by Lessee within two (2) business days after demand by County. In the case of damage to a County-owned improvement that does not involve risk of personal injury, risk of damage to other improvements, risk of curtailment or diminishment of service or access, or any other emergency situation, the references to "five (5) business days" in this Subsection 5.7.5 shall be changed to "thirty (30) days."

5.7.6 Rights of Access. Representatives of the Department of Beaches and Harbors of County shall, upon reasonable notice and at reasonable times, have the right of reasonable access to the Premises and the Improvements thereon without charges or fees, for the purpose of ascertaining compliance with the terms and conditions of this Lease, including but not limited to the inspection of the construction work being performed. Such access shall be reasonably calculated to minimize interference with Lessee's construction and/or operations. Lessee shall have the right to have a representative present to accompany the representatives of the Department of Beaches and Harbors of 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; As-Built Drawings. 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 Conoflex or Mylar final as-built plans and specifications of the Improvements.

5.8 Use of Plans. Contracts between Lessee and any architect, design professional or licensed contractor in connection with Alterations shall provide, in form and content reasonably satisfactory to County, for the assignment thereof to County as security to County for Lessee's performance hereunder, and County shall be furnished with a copy of any such contract, together with the further agreement of the parties thereto, that if this Lease is terminated by County due to Lessee's default, County may, at its election, use any plans and specifications created by such

architect, design professional or contractor in connection with the contract for such Alterations, 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, or the right to use such plans for anything other than Alterations on the Premises.

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 materially 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 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, the Premises and the Improvements thereon from mechanics' liens or other claims. Lessee shall give County at least ten (10) business days prior written notice of the commencement of any work to be done on the Premises, in order to enable County timely to post such notices.

5.10.2 Prompt Payment. Lessee shall make, or cause to be made, prompt payment (subject to reasonable dispute) 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 twenty (20) days after demand, furnish the bond described in California Civil Code Section 3143, or successor statute, which results in the removal of such lien from the Premises, together with any other evidence requested by County to evidence that such claim will be paid, removed or discharged as a claim against the Premises and/or County.

5.11 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, ____ [INSERT YEAR THAT IS 19 YEARS AFTER EFFECTIVE DATE] and completed by Lessee not later than December 31, ____ [INSERT YEAR THAT IS 21 YEARS AFTER EFFECTIVE DATE]. The Subsequent Renovation shall consist of such renovation and construction work as necessary to re-position the Improvements to then current market conditions, including without limitation, the renovation of the residential Improvements to a condition and appearance commensurate with that of other then recently constructed or renovated residential apartment projects in Marina del Rey. 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 Majuere 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 following the month during which the fifth (5th) anniversary of the earlier of the Completion Date or the Required Completion Date occurs, and continuing 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 percent (1.0%) of total Gross Receipts 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; provided, however, if funds remain in the Subsequent Renovation Fund after the Subsequent Renovation has been completed and all costs for the Subsequent Renovation paid in full, then any such excess funds shall be released promptly to Lessee. 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.

5.13 Capital Improvement Fund. Commencing with the month following the month during which the fifth (5th) anniversary of the 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, communications, structural 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**"). Notwithstanding any contrary provision herein, the Capital Improvement Fund shall not be used to fund any portion of the cost of the Redevelopment Work or the Subsequent Renovation. In addition, the Capital Improvement Fund shall not be used for such items as remodels and building additions, new project amenities (e.g., barbeques or fitness equipment) or new common area furniture. 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 materially 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. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Lessee. By way of example, set forth on Exhibit E attached to this Lease are categories of Permitted Capital Expenditures that qualify as proper costs to be funded from the Capital Reserve Fund. All specific purposes and costs for which Lessee desires to utilize amounts from the Capital Improvement Fund shall be subject to Director's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

The Capital Improvement Fund shall be held in an account established with a reputable financial institution (including Lessee's Encumbrance Holder) reasonably acceptable to Director into which deposits shall be made by Lessee pursuant to this Section 5.13. Lessee shall have the right to partly or fully satisfy the Capital Improvement Fund obligations of this Section 5.13 with capital improvement reserves required by Lessee's Encumbrance Holder, as long as such capital improvement reserves are in all material respects administered in accordance, and otherwise comply, with the terms, provisions and requirements of this Section 5.13.

Commencing on the fifteenth (15th) day of the month following the month during which the fifth (5th) anniversary of the Completion Date occurs 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 two percent (2.0%) of total Gross Receipts 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.

No disbursements shall be made from the Capital Improvement Fund until after the tenth (10th) anniversary of the Completion Date. In addition, no disbursements shall be made from the Capital Improvement Fund after the tenth (10th) anniversary of the Completion Date to cure deficiencies arising from the failure of Lessee to maintain and repair the Improvements in accordance with the requirements of this Lease prior to the tenth (10th) anniversary of the Completion Date. Disbursements shall be made from the Capital Improvement Fund for costs reasonably approved by Director which have been incurred after the tenth (10th) anniversary of the Completion Date and that satisfy the requirements of this Section 5.13. Capital Improvement Funds shall be used only after all other sources such as warranty proceeds and product insurance funds are exhausted (or determined to be unavailable). 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 that 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, conditioned or delayed. 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 amounts then-existing in the Capital Improvement Fund shall be expended for Permitted Capital Expenditures not later than ten (10) years prior to the expiration of the Term of the Lease. Capital Improvement Fund deposits made after such date shall continue to be used for Permitted Capital Expenditure purposes under this Section 5.13; provided, however, if County elects to require Lessee to remove the Improvements at the end of the Term and requires Lessee to provide security 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 security requirements 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 reasonable 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 earliest of (a) the date that the Condemnor has the right of occupancy pursuant to an order for possession issued by a court asserting jurisdiction over the Premises; (b) the date that the final order of Condemnation is issued in the event of a transfer by power of eminent domain; or (c) title is transferred to any Condemnor through voluntary sale or transfer, either under threat of Condemnation or while legal proceedings for Condemnation are pending.

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 Condemnation 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, Lessee's business on the Premises could not be operated at a commercially reasonable economic level taking into consideration the amount of funds, if any, in excess of the Award, necessary to continue such operation. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the Date of Taking. 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 Condemnation 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 Condemnation, taking into account, however, any necessary reduction in size or other change resulting from the Condemnation; provided, however, that in case of a Condemnation for temporary use, Lessee shall not be required to effect restoration until such Condemnation 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, as described in Subsection 4.3 above, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Rent paid by Lessee to County prior to the Date of 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 Partial Taking bears to the fair market value of the entire Premises immediately prior to the Partial 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 Condemnation, 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 Condemnation, other than a total Condemnation 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 monthly installments equal to the sum set forth in Lessee's written request for payment submitted to County together with supporting invoices and documentation demonstrating that the requested sums are for payments to contractors, consultants, architects, engineers, counsel, or materialmen engaged in the restoration of the Premises and any Improvements. Such requested sums shall be paid by County to Lessee or its designee(s) within thirty (30) days after County has received such request in writing reasonably supported by accompanying invoices and documentation. In the event that County disputes any sum requested by Lessee pursuant to the preceding sentence, County shall promptly pay the undisputed portion and provide Lessee with a written notice detailing the reasons for County's dispute. Thereafter, Director and Lessee shall promptly meet and negotiate in good faith to resolve any dispute; provided, however, that any dispute not resolved within thirty (30) days after Lessee has received notice from County of its dispute shall be submitted to arbitration pursuant to Article 16. 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. Any determinations of fair market value made pursuant to this Section 6.7 shall be predicated upon the Income Approach. In case of a Condemnation described in this Subsection 6.7.1, 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 Condemnation and Partial Taking with Termination. Net Awards and Payments received on account of a total Condemnation 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 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.

In the event of a total Condemnation or a Partial Taking that results in the termination of this Lease, County shall promptly pay or authorize the payment of, as applicable, to Lessee all sums held by County or third parties as the Capital Improvement Fund, the Subsequent Renovation Fund, the Security Deposit, and, upon completion by Lessee of its obligations under Section 2.3 of this Lease with respect to any portion of the Premises not taken in the Condemnation, the remaining Demolition Security.

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 the sum of three (3) times the Monthly Minimum Rent in effect from time to time during the Term (i.e., adjusted to reflect any change in the Monthly Minimum Rent during the Term of this Lease). At any time after the Completion Date that during the entire then-preceding three (3) year period Lessee has timely paid all monetary obligations under this Lease on or before the due date thereof, Lessee has not been assessed any maintenance deficiencies under Section 10.4 that were not cured within the cure period set forth in Section 10.4 (or that were disputed by Lessee, with such dispute resolved in Lessee's favor pursuant to Article 16), and Lessee has not otherwise committed an Event of Default under the Lease (collectively, the "**Reduction Requirement**"), Lessee shall have the right to reduce the Security Deposit to two (2) times the Monthly Minimum Rent in effect from time to time during the Term. If as of any date after a reduction in the Security Deposit under this paragraph the Reduction Requirement fails to continue to be satisfied, then within ten (10) days after written notice from County, Lessee shall be required to increase the Security Deposit to three (3) times the Monthly Minimum Rent in effect from time to time during the Term until such time as Lessee once again satisfies the Reduction Requirement, in which event the terms and provisions of the immediately preceding sentence shall once again apply (until such time (if any) as Lessee subsequently fails to satisfy to Reduction Requirement).

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 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 reinstate the letter of credit to its full face amount, so that at all times that this Lease is in effect (other than between the date of the application of funds by County and the expiration of said ten (10) day period), the full amount of the Security Deposit shall be available to County. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Subsection 13.1.3, shall constitute an Event of Default hereunder.

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

8. INDEMNITY.

Except to the extent caused by the gross negligence or willful misconduct of any such indemnitee, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County and its respective Boards, officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of County or any of its Board, officers, agents, employees or volunteers, to the extent that such arises from or is caused by (a) the operation, maintenance, use, or occupation of the Premises by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (b) the negligent acts or omissions of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, or (c) the failure of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or regulation. The obligation of Lessee to so relieve, indemnify, protect, and save harmless County and each of its respective Boards, officers, agents, consultants, counsel, employees and volunteers, shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease.

9. INSURANCE.

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

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

General Aggregate:	$20,000,000
Products/Completed Operations Aggregate:	$20,000,000
Personal and Advertising Injury:	$10,000,000
Each Occurrence:	$10,000,000

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 Five Million Dollars ($5,000,000) per occurrence, Five Million Dollars ($5,000,000) 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 Subsection 9.1.1.

9.1.2 Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than 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.

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, 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 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 on the Premises, including the Redevelopment Work, any other Alterations or restoration of the Improvements, 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). 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, against loss or damage until completion and acceptance by Lessee.

9.1.5.2 General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as reasonably required by the County for the Redevelopment Work or 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 its equivalent with a limit of liability as reasonably required by the County for the Redevelopment Work or 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) Three Million Dollars ($3,000,000) 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 Redevelopment Work or Alterations.

9.1.6 If the use of the Premises or Improvements involves any manufacture, distribution or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with a liability limit of not less than Five Million Dollars ($5,000,000) per occurrence and an annual aggregate of Ten Million Dollars ($10,000,000), 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 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.

9.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Subsections 9.1.4 and 9.1.5.1 shall name 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, except as expressly provided to the contrary in this Lease, Lessee shall be obligated to use the insurance proceeds received by Lessee 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 10 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 Subsection 9.1.5 shall be required to be delivered by Lessee prior to the commencement of any Redevelopment Work or 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 Subsections 9.1.1, 9.1.2, 9.1.3 and 9.1.7 shall be subject to adjustment as of each fifth (5th) anniversary of the Effective Date (each, an "**Insurance Renegotiation Date**"), consistent with the amounts of such liability insurance then being required by County under similar ground leases for comparable developments and uses in the Marina del Rey Small Craft Harbor, including any adjustments then being approved by County (if any), based on differences in size, scope, uses or risks between the Premises and such other developments. 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) 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.

10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Lessee's Maintenance and Repair Obligations. Lessee shall maintain the Premises, including paved or unpaved ground surfaces and Improvements thereon, in conformance with such reasonable rules and regulations regarding the use and occupancy of residential and anchorage projects in Marina del Rey (such as the Premises) as may be promulgated by County from time to time for general applicability on a non-discriminatory basis, as revised from time to time. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Premises and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Premises in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10 (except that during periods of construction of the Redevelopment Work or Alterations or reconstruction of damaged or destroyed Improvements, Lessee's obligations as to the areas of the Premises under construction shall be controlled by Article 5 of this Lease). Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, or as reasonably required in writing by Director to Lessee incident to the provisions of this Article 10. Lessee shall maintain all Improvements on the Premises in a safe, clean, wholesome and sanitary condition, to the reasonable satisfaction of Director and in compliance with all Applicable Laws. Lessee shall, at its own cost and expense, install, maintain and replace landscaping between the streets abutting the Premises and the building footprints on the Premises as is reasonably necessary to create a pleasing development to the reasonable satisfaction of Director. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Premises free and clear of rubbish and litter. County in its proprietary capacity shall have the right with reasonable notice to enter upon and inspect the Premises at any reasonable time for cleanliness, safety and compliance with this Section 10.1, as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the Premises. Lessee's obligation to maintain and restore is absolute, and is not in any way dependent upon the existence or availability of insurance proceeds, except as otherwise provided in this Lease. Restoration shall take place in accordance with the provisions of Article 5 and all other provisions of this Lease.

10.2 Maintenance of Anchorage Improvements. Lessee shall at all times during the Term keep all Anchorage Improvements in good repair and condition in accordance with the requirements of the Minimum Standards (except that during periods of construction or Alterations of the Anchorage Improvements or reconstruction of damaged or destroyed Anchorage Improvements, Lessee's obligations as to the areas of the Premises under construction shall be

controlled by Article 5 of this Lease). During the Term Lessee shall also complete float repair and replacement on an as-needed basis. Any requirement for repair of the Anchorage Improvements due to a deficiency notice issued by the Department shall be accomplished with new materials and parts rather than patching or other like method. Such required replacement of deficiency-cited items with wholly new parts and materials shall, however, be limited to the specific item in disrepair and shall not connote a requirement, for maintenance purposes, that areas or items surrounding the deficient item be replaced with new materials and/or parts.

10.3 Water Quality Management Program. Lessee shall comply with all water quality management requirements imposed by the Coastal Commission in connection with the issuance of any Coastal Development Permit for the Redevelopment Work pertaining to the Anchorage Improvements; provided, however, that Lessee shall in all events comply at least with the water quality management requirements set forth in Exhibit F attached to this Lease. In addition, during the remaining Term of the Lease, Lessee shall remove floating debris from the water surrounding the Anchorage Improvements in accordance with a program and regular schedule reasonably acceptable to Director.

10.4 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 Sections 10.1 through 10.3 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 written deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.4), 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. Notwithstanding the foregoing, 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 County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.4 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 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 exercise her or his reasonable discretion in considering Lessee's contest. If Lessee's contest is made on a reasonable and good faith basis, then, in cases that do not include health, safety or any emergency condition, 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 Director accepts or denies Lessee's contest. If Director denies Lessee's contest, Lessee may request arbitration pursuant to Article 16. The One Hundred Dollars ($100) per diem amount set forth in this Section 10.4 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 10.4 within fifteen (15) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.5 Option to Terminate for Uninsured Casualty. In the event of any damage to or destruction of the Premises or any Improvements located thereon, Lessee shall, except as otherwise expressly provided in this Section 10.5, 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 10.5, 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 the damage or destruction to the Improvements renders the Improvements substantially unusable for their intended purpose and such damage or destruction resulted from a cause (a) not required to be insured against by this Lease or (b) for which coverage existed, but for which the insurer does not provide the insurance proceeds to Lessee due to the insurer's insolvency (the circumstances reference in clause (a) or (b), an "**Uninsured Loss**"), and where all of the following occur:

10.5.1 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 10.5.1. 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.

10.5.2 No more than sixty (60) days following the giving of the notice required by Subsection 10.5.1 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.

10.5.3 No more than sixty (60) days following the giving of the notice required under Subsection 10.5.1, 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.

10.5.4 Within fifteen (15) days following County's receipt of the notice referred to in Subsection 10.5.1, County has not received both (a) written notice from any 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.

10.6 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.

10.7 No County Obligation to Make Repairs. County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Premises, unless the need for such repair or maintenance is caused by County's gross negligence or willful misconduct.

10.8 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.

10.9 Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of water systems, sewer facilities, roads, or other County facilities on or about the Premises.

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

10.11 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 an Approved Apartment/Slip Lease (as defined below), or of any assignment or material amendment of such Sublease, Lessee shall submit a copy of such Sublease (or assignment or amendment thereof), to Director for approval, which approval shall not be unreasonably withheld or conditioned. To the extent practical, Director shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of Director. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Lease applicable to the portion of the Premises subject to the Sublease.

Notwithstanding any contrary provision of this Article 11, Lessee shall not be required to obtain County's approval of any Sublease of an individual apartment or boat slip unit in the ordinary course (but not the master lease of multiple units) to a person or persons who will physically occupy the subleased unit, as long as such Sublease is in the form of the standard residential apartment lease or boat slip lease, as the case may be, hereafter submitted to and approved by County and the term of such Sublease does not exceed twelve (12) months (each, an "**Approved Apartment/Slip Lease**"). The terms and provisions of Sections 11.2 and 11.3 of this Lease shall not be applicable to Approved Apartment/Slip Leases. Upon request by County, Lessee shall furnish County with a current rent roll respecting the Approved Apartment/Slip Leases and a copy of all of such Approved Apartment/Slip Leases.

11.1.3 Major Sublease. Lessee shall enter into a Major Sublease only with a reputable owner or manager of comparable residential and anchorage facilities such as exist on the Premises. In light of the inherent detailed nature of a Major Sublease, Lessee shall deliver to County a copy of any proposed Major Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Premises, not less than forty-five (45) 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 provided above in this Article 11, Lessee shall not, without the prior written consent of County, which shall be based solely 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 (excluding an Approved Apartment/Slip Lease, but 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 is not an Excluded Transfer shall constitute an assignment of Lessee's interest under this Lease. In addition, for purposes of this provision, the following 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 which owns, or is a general partner or managing member of an entity which 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 based upon the Assignment Standards. These same limitations and approval requirements as to Lessee's interest under 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. In exercising its discretion to approve assignments as provided in this Section 11.2, County shall take into account only the Assignment Standards and, if County determines that such Assignment Standards are satisfied, County shall not unreasonably withhold, condition or delay its consent to any proposed assignment. If County withholds its consent to an assignment, 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 interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any process of law including proceedings under the Bankruptcy Act.

11.2.3 Procedure. Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

11.2.3.1 Prior to entering into any agreement requiring the approval of County pursuant to this Sections 11.1 or 11.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information reasonably 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 discuss an assignment with any

proposed assignee without providing Lessee the right to be present at any such discussion.

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

(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 non-confidential information which it reasonably requests of Lessee in connection with its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this Subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Premises, contracts in excess of $25,000 affecting the Premises, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Premises. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

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

11.2.3.7 Final Documents. Prior to granting its approval over any proposed assignment, County shall be provided with an executed Assignment and Acceptance of Assignment in form and content as reasonably approved or supplied by 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, proposes to enter into any Major Sublease affecting the Premises or proposes to transfer a Controlling Interest in Lessee (with any such proposed transaction herein referred to as a "**Proposed Transfer**"), it shall provide County with written notice of such desire, which notice shall include the sale price ("**Lessee Sale Price**") at which it is willing to consummate the Proposed Transfer. For purposes hereof, a "**Controlling Interest**" in Lessee shall mean seventy five percent (75%) or more of the direct or indirect beneficial ownership of the capital and profits interests in Lessee. 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 market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided in this Subsection 11.2.4. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, Lessee shall deliver to County an assignable option to purchase the interest subject to the Proposed Transfer ("**County Option**") at the Lessee Sale Price. Such County Option shall have a term of five (5) calendar months. During the term of the County Option, Lessee shall make the Premises and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. At Lessee's request, any third party granted access to the Premises or Lessee's books and records pursuant to this Subsection 11.2.4 shall be required to execute a right-of-entry and confidentiality agreement on commercially reasonable terms. In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, County shall pay to Lessee at the expiration of the County Option period (or, at County's election, credit to Lessee against the next applicable installment(s) of Annual Minimum Rent and Percentage Rent), a sum (the "**County Option Price**") which represents (i) three percent (3%) of the Lessee Sale Price, plus (ii) seven percent (7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County's election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (a) fails to elect to cause Lessee to issue the County Option within said thirty (30) day period, or (b) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then 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) (which twelve (12) month period shall be extended to the extent the closing is delayed due to a delay by County in approving the transaction within sixty (60)

days after County has received a notice from Lessee requesting County's approval of such transaction and all information required by County under this Lease to permit County to evaluate the transaction). In the event of a proposed Major Sublease, County's election shall pertain to such portion of the Premises subject to 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 (I) Financing Events, or (II) 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.

12. ENCUMBRANCES.

12.1 Financing Events. 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) (as defined below). Lessee shall submit to Director a complete set of all proposed transaction documents in connection with each proposed Financing Event. 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 further reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event, including without limitation the costs of in-house counsel, outside counsel and third party consultants. For the purposes of this Lease, including without limitation the provisions of Sections 4.6 through 4.8 hereof, a "**Financing Event**" shall mean any financing or refinancing consummated by Lessee, whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below).

12.1.1 Encumbrances. As used in this Lease, an "**Encumbrance**" shall be any direct or indirect grant, assignment, transfer, mortgage, hypothecation, grant of control over, or encumbrance of all or any portion of 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 Sublessees, and a pledge of partnership interests or other beneficial ownership interests in Lessee by the principals of Lessee, to a lender (upon County approval of the Encumbrance and consummation of the lending transaction, the "**Encumbrance Holder**") on the security of Lessee's interest in the Lease and the Premises, the shares or interests of beneficial ownership in Lessee, or otherwise secured

by Lessee's rights in and to the Premises. 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. These same limitations and approval requirements shall apply with respect to the financing and the Encumbrance Holder of any Major Sublessee's interest pursuant to a Major Sublease.

12.1.2 Consent Not Required to Transfer Resulting from Foreclosure. The written consent of County shall not be required in the case of:

12.1.2.1 A transfer of this Lease or a Major Sublease at a foreclosure sale or at a judicial foreclosure or voluntary conveyance to the Encumbrance Holder or an affiliate in lieu thereof; or

12.1.2.2 A single subsequent transfer of the Lease or a Major Sublease by an Encumbrance Holder who was a purchaser at such foreclosure sale or transfer in lieu thereof, provided the transferee expressly agrees in writing to assume and to perform all of the obligations under this Lease and, if applicable, a Major Sublease.

12.1.3 Effect of Foreclosure. In the event of a transfer under Subsection 12.1.2, the Encumbrance Holder shall forthwith give notice to County in writing of any such transfer setting forth the name and address of the transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.1.3.1 Any transferee under the provisions of Subsection 12.1.2.1 which is a commercial bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust or other similar financial institution which ordinarily engages in the business of making loans secured by collateral similar to the Premises, or an affiliate thereof ("**Institutional Lender**"), shall be liable to perform the full obligations of Lessee under this Lease arising under the Lease from the date of transfer under Subsection 12.1.1.1 until a subsequent transfer of the Lease approved by County.

12.1.3.2 A transferee under Subsection 12.1.2.1 which is not an Institutional Lender and any subsequent transferee under the provisions of Subsection 12.1.2.2 shall be liable to perform the full obligations of Lessee under this Lease and as a condition to the completion of such transfer must cure, remedy, or correct any Event of Default existing at the time of such transfer or arising thereafter due to an event or occurrence before date of transfer.

12.1.3.3 Neither an Administrative Charge nor any Net Proceeds Share shall be payable in respect of or charged against any amount payable under the Encumbrance to or for the benefit of the Encumbrance Holder in connection with a transfer pursuant to Subsection 12.1.2.

12.2 Right to Notice and Cure Defaults. All Encumbrance Holders and Major Sublessees shall have the right, at any time during the term of its Encumbrance or Major Sublease, as applicable, but prior to the termination of this Lease, and as further provided in Section 12.4, 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.

12.3 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 Section 12.1, 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 any pre-existing Event of Default that (a) is an incurable non-monetary default, (b) is a non-monetary default that can only be cured by a prior lessee, (c) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (d) relates to any obligation of a prior lessee to pay any Net Proceeds Share (collectively, "**Excluded Defaults**").

12.4 Delay in Exercising Termination Remedy. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than pursuant to Section 13.5), unless it first shall have given written notice of such default to each and every Major Sublessee and Encumbrance Holder, where the Encumbrance Holder and/or Major Sublessee have 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 below. If such Event or Events of Default are so cured, this Lease shall remain in full force and effect.

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

(1) 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 mailing of the aforesaid notice of default to the Encumbrance Holder or the Major Sublessee. 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.

(2) 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:

(a) If an Encumbrance Holder or Major Sublessee cures, remedies and corrects the default within sixty (60) days after the end of Lessee's cure

period as provided in Section 13.1 hereof (except that 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 curing of such default reasonably requires activity over a longer period of time, such default may be cured if within said initial cure period, such Encumbrance Holder or Major Sublessee commences 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.

(b) 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, said sixty (60) day period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing foreclosure proceedings by any order, judgment or decree of any court or regulatory body with jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such 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-five (35) 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 paragraph (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.

12.5 New Lease.

12.5.1 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 12.5 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.5 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 12.5, 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 12.1.2.2 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.

12.5.2 Priority of New Lease. The new lease made pursuant to this Section 12.5 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.

12.6 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 Subsequent Renovation Fund and 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.

12.7 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.

12.8 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.

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

13. DEFAULT.

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

13.1.1 Monetary Defaults. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease (including, without limitation, deposits to the Subsequent Renovation Fund and/or Capital Improvement Fund), within five (5) days after receipt of written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee, within such five (5) day period.

13.1.2 Failure to Comply with Construction Obligations. The failure of Lessee to comply with the obligations and timeframes set forth in Article 5 of this Lease (as such timeframes are extended pursuant to such Article 5, if at all) if not cured within thirty (30) days after written notice of such failure; provided, however, if a breach by Lessee of its obligations under Article 5, other than its obligation to complete the Redevelopment Work or a Subsequent Renovation by the applicable date set forth in Article 5, is curable but such cure is not reasonably susceptible of completion within the foregoing thirty (30) day period, then as long as Lessee in good faith commences the cure of such breach within such thirty (30) day period and continues to diligently pursue such cure to completion within a reasonable time, such breach shall not constitute an Event of Default.

13.1.3 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 ten (10) days after written notice of such failure.

13.1.4 Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty five (35) days after written notice of Lessee's failure to perform from Director; provided, however, that where Lessee's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty five (35) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty five (35) day period, County will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time.

13.1.5 Non-Use of Premises. The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of thirty five (35) days, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease.

Any notice required to be given by County pursuant to Subsections 13.1.1 through and including 13.1.4 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

13.2 Limitation on Events of Default. Except with respect to breaches or defaults with respect to the payment of money, Lessee shall not be considered in default as to any provision of this Lease (and no late fees or interest will be incurred) to the extent such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body with jurisdiction, or any other circumstances which are physically or legally 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 12.4 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 of 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. The terms and provisions of this Subsection 13.3.1 are subject to Article 12 of this Lease.

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

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

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

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

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

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

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

13.6 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such

obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days notice to any person having a recorded interest pertaining to County's interest in this Lease or the Premises. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease shall not exceed the value of County's equity interest in the Premises and its right to insurance proceeds in connection with the policies required under Article 9 hereof.

14. ACCOUNTING.

14.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, Lessee and all Sublessees shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Lease Years (or with respect to NF Marina LP as Lessee, for the period of NF Marina LP's ownership of the leasehold in the Premises (whether pursuant to the Existing Lease or this Lease) plus any remaining period up to the foregoing aggregate five (5) Lease Year requirement to the extent NF Marina LP has in its possession copies of the predecessor lessee's records and books of account), 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 a Sublessee's, as applicable) other business operations, if any. Lessee shall utilize the accrual method of accounting with respect to the preparation of the reports, statements and maintenance of records required under this Lease (including without limitation, with respect to the calculation of Gross Receipts).

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 Director in advance of installation for his approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Lessee's obligations set forth in this Section 14.2 include Lessee's obligation to insure that Lessee's Sublessees (including 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, and to verify the amount and use of the Permitted Capital Expenditures.

14.3 Statement; Payment. No later than the fifteenth (15th) day of each calendar month, Lessee shall render to County a detailed statement showing Gross Receipts during the preceding calendar month, together with its calculation of the amount payable to County under Sections 4.2 through 4.8 inclusive, and shall accompany same with remittance of amount so shown to be due.

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

14.4.1 Entry by County. Upon at least two (2) business days' 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) 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 Annual Financial Statements. Within six (6) months after the end of each Lease Year, Lessee shall deliver to County a statement of Gross Receipts for such year (including a breakdown by Percentage Rent category) and the amount of any Permitted Capital Expenditures in such year, certified by a Certified Public Accountant who is a member of the American Institute of Certified Public Accounts and is 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. In the event that it is determined that Lessee has overpaid County, Lessee may deduct the amount from subsequent rent payments until the full amount of such overpayment has been repaid, or if the Term expires prior to Lessee having been fully repaid,

County shall refund the remaining balance to Lessee within thirty (30) days after the end of the Term and the completion of all audits.

14.7 Accounting Obligations of Sublessees. Lessee shall cause all Sublessees (including licensees, concessionaires and others conducting business operations on or from the Premises, but excluding Sublessees under Approved Apartment/Slip Subleases that occupy their premises primarily for residential purposes and not for the operation of business) to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records.

14.8 Inadequacy of Records. In the event that Lessee or its Sublessees (including licensees or concessionaires) fail to keep the records required by this Article 14 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Premises, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in Marina del Rey with comparable business operations, or any other method as determined by Director and shall utilize such methodology as Director deems reasonable. Within fifteen (15) days after receipt of County's reasonable determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

15. MISCELLANEOUS.

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

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

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

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 1961. Lessee accepts the

Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the execution of this Lease by Lessee and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".

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

15.4.1.3 Lessee hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County, its officers, agents, employees or volunteers which Lessee now has or may have or asserts in the future which are based upon any defects in the physical condition of the Premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument.

15.4.1.4 California Civil Code Section 1542 provides as follows:

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

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

_____
Lessee's Initials

15.4.2 Right of Offset. Except as otherwise expressly provided in this Lease, 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, except as expressly provided in Subsection 2.3.2 with respect to any Post Term Removal Period.

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 ground lessee (or subtenant) arising from such failure to surrender, and any lost profits to County resulting therefrom.

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

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

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

Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Premises and the removal of persons and property and storage of such property by County and its agents.

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

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

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

Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with Director, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested (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 date of delivery or attempted delivery in the case of registered or certified mail, as evidenced by the mail receipt (but in any case not later than the date of actual receipt).

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

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

COUNTY:	Director Department of Beaches and Harbors Los Angeles County 13837 Fiji Way Marina del Rey, California 90292 Phone: 310/305-9522 Fax: 310/821-6345
With a Copy to:	Office of County Counsel Los Angeles County 500 West Temple Street Los Angeles, California 90012 Attn: County Counsel Phone: 213/974-1801 Fax: 213/617-7182
LESSEE:	NF Marina LP 6222 Wilshire Boulevard, Suite 400 Los Angeles, California 90048 Attn: Mr. David J. Nagel Phone: 323/556-6600 Fax: 323/556-6621
With a Copy to:	NF Marina LP 6222 Wilshire Boulevard, Suite 400 Los Angeles, California 90048 Attn: General Counsel Phone: 323/556-6600 Fax: 323/556-6607
With an Additional Copy to:	Manatt, Phelps & Phillips, LLP 11355 W. Olympic Boulevard Los Angeles, California 90064 Attn: Keith Allen-Niesen, Esq. Phone: 310/312-4105

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 as set forth in this Lease, 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. Subject to Section 16.13, no amendment 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 (with reasonable specificity) 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 in good faith 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 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 Encumbrance Holders 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 Waterfront Promenade. The Redevelopment Work includes the development by Lessee of a continuous pedestrian walkway with landscaping, lighting, seating, fencing and other improvements (the "**Promenade**") as described in the Renovation Plan and in accordance with the Final Plans and Specifications for such work described in Article 5. Lessee shall complete the Promenade by the Required Anchorage Improvements Completion Date, subject to extension for Force Majeure pursuant to Section 5.6. County hereby reserves a public easement for access over and use of the Promenade for fire lane uses, pedestrian purposes and such other related uses (including, if approved by County, bicycling, rollerblading and similar activities) as may be established by County from time to time, all in accordance with such rules and regulations as are promulgated from time to time by 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 for the Promenade established by County from time to time on a nondiscriminatory basis. 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 Subsection 5.7.7 of this Lease. At the request of either party, such legal description shall be recorded in the Official Records of Los Angeles County as a supplement to this Lease.

15.21 Management of Anchorage Improvements/Dockmaster. During the Term of the Lease, Lessee shall maintain a dockmaster program, and engage an experienced, professional marina management firm, reasonably acceptable to Director for the day to day full-time management and operation of the Anchorage Improvements. After Director's approval of such management firm, Lessee shall not have the right to change the management firm without first obtaining the prior approval of Director, which approval shall not be unreasonably withheld, conditioned or delayed. If during the Term in the reasonable judgment of Director the then current management firm is performing in an unsatisfactory manner, then at the request of Director Lessee shall replace such management firm with a new management firm reasonably acceptable to Director. If during the Term the then current management firm terminates its

contract, then Lessee shall have the right to replace such management firm with another management firm approved by Director, which approval shall not be unreasonably withheld, conditioned or delayed.

15.22 Seaworthy Vessels. On or before January 1, April 1, July 1 and October 1 of each year during the Term, Lessee shall deliver to Director a report which contains the following information with respect to every vessel (including floating homes as defined in Title 19 of the Los Angeles County Code) moored within the Premises: (a) the name, address and telephone number of the registered owner (and slip tenant, if other than the registered owner) for each vessel; (b) the state registration or federal document number, and name (if any), of the vessel; (c) whether the vessel is a power vessel, sailing vessel or floating home; and (d) 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 after such slip rental. Thereafter, 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 Director's sole discretion, shall be ineligible for continued slip tenancy on the 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 Pump-Out Station. Following Lessee's completion of the Anchorage Improvements, Lessee shall operate in-dock pump-out facilities on the Premises for use of boat pump-out services at a nominal fee.

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 Section 4.4.1. 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 4.4 and the amount of liability insurance coverage to be renegotiated pursuant to Section 9.6, 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 ten (10) days after the issuance of any award by the arbitrator becomes final, County will draft a proposed amendment to the Lease setting forth the relevant terms of such award and transmit such proposed amendment to Lessee and any Encumbrance Holder(s) as to which County has been provided written notice, for their review. Within ten (10) days after delivery of the proposed amendment to Lessee and such Encumbrance Holder(s) for their review, Lessee or any such Encumbrance Holder(s) shall have the right to notify County in writing of any deficiencies or errors in the proposed amendment. If County does not receive notice of a deficiency or error within such ten (10) day period, then Lessee shall execute the amendment within seven (7) days after the end of such ten (10) day period and such amendment shall be binding on Lessee and all Encumbrance Holders. If the parties (including an Encumbrance Holder) shall, in good faith, disagree upon the form of any such amendment, such disagreement shall be submitted to the arbitrator for resolution. Upon execution by Lessee, any amendment described in this Section 16.13 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 draftsperson shall not apply to this Lease.

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

17.6 Reasonableness Standard. Except where a different standard or a time period is specifically provided herein, whenever the consent of County or Lessee is required under this Lease, such consent shall not be unreasonably withheld, conditioned or delayed, 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 Sections 25536 and 25907 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 extension, in recordable form and otherwise satisfactory to the parties hereto, for recording as soon as is practicable on or following the Effective Date.

17.9 Counterparts. This Lease may be executed in counterparts, each of which shall constitute an original and all of which shall collectively constitute one fully-executed document.

SIGNATURES ON FOLLOWING PAGE

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

THE COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
ACTING COUNTY COUNSEL

By: _____
Deputy

ATTEST:

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

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

NF MARINA LP, a California limited partnership

By: NFM LLC, a California limited liability company, its General Partner

By: _____
Jack Nagel, Managing Member

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

[To be added]

EXHIBIT B

RENOVATION PLAN

[To be added]

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 from 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 Encumbrance Holder, 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.

1. The proposed transferee must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County 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 (as set forth in the preceding sentence) or similar security satisfactory to 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 assignee 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 provide evidence of contractual arrangements for these services with providers of such services satisfactory to County. Changes in the providers of such services and changes to the contractual arrangements must be approved by the County. All such approvals of County will not be unreasonably withheld, conditioned or delayed.

3. The individual or individuals who will acquire Lessee's interest in this Lease or the Premises, or who own the entity which will so acquire Lessee's interest, irrespective of the tier at which such 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 County.

4. The price to be paid for the acquired interest shall not result in a financing obligation of the proposed transferee which jeopardizes the Lessee's ability to meet its rental obligations to County. 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) County will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the Lease; 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 or any portion thereof.

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

CONDITIONS TO COASTAL DEVELOPMENT PERMIT

[To be added]

EXHIBIT E

EXAMPLES OF PERMITTED CAPITAL EXPENDITURES

Subject to the terms and provisions of Section 5.13 of the Lease, set forth below is a list of examples of elements, systems or categories of Improvements for which Permitted Capital Expenditures may be made. The Capital Improvement Fund shall not be used for the repair or replacement of an individual or a selected group of individual items, unless such repair or replacement is part of a larger plan (which may be a phased plan) of repair or replacement of all, or substantially all, similar items.

Painting of the building exterior*

Walkway and Driveway replacement* (if asphalt, a minimum of resurfacing, not slurry seal)

Windows replacement*

Roof replacement* (may be on a building by building basis)

Elevators (replacement or addition)

HVAC replacement

Light fixtures replacement* (interior and exterior)

Irrigation system* (replacement or major addition)

Dock replacement

* To qualify, these expenditures need to incorporate replacement or renovating of at least seventy percent (70%) of the items or facilities in question.

EXHIBIT F

WATER QUALITY MANAGEMENT PROGRAM

[To be added]