



Caring for Your Coast

♦ ♦ ♦
Gary Jones
Acting Director

Kerry Silverstrom
Chief Deputy

John Kelly
Deputy Director

October 8, 2013

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

Dear Supervisors:

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

50 October 8, 2013

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

**APPROVAL OF AMENDMENT NO. 14 TO LEASE NO. 5691
THE BOATYARD (Parcel 53 at 13555 Fiji Way)
MARINA DEL REY
(FOURTH DISTRICT) (4 VOTES)**

SUBJECT

This Board letter requests approval of a Marina del Rey lease amendment for Parcel 53 (The Boatyard) that adjusts percentage rents, adjusts square foot rental provisions, increases the rental security deposit and updates insurance provisions.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed lease Amendment No. 14 is categorically exempt under the California Environmental Quality Act pursuant to class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines and Section 15301 of the State CEQA Guidelines.
2. Approve and authorize the Chairman to sign the attached Amendment No. 14 to Lease No. 5691, pertaining to the readjustment of rents and insurance for a ten-year term ending February 28, 2022.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Marina del Rey leases generally provide for the periodic review of leasehold rents and liability insurance coverage to ensure that the rental rates payable to the County are maintained at current fair market levels and that the amount of general liability insurance is adequate to protect the County's interests.

The Parcel 53 lease required adjustment of annual rents and insurance coverage on March 1, 2012 (2012 Rental Adjustment Date) and every tenth anniversary thereafter. The Department of Beaches and Harbors is proposing to revise the rent structure to replace participation in gross receipts of sub-tenants' business activities with the participation in the gross receipts of the master tenants. As such, Lessee has agreed to amend the County percentage rent based on the following percentages of gross receipts: 1) Boat Hauling, Launching at 4%; 2) Boat Repairs, Haul-Out, Pump-out at 4%; and 3) Fuel/ Petroleum Sales at 6%. All other percentage rental rates will be maintained at their current levels. The Lessee has also agreed to pay the County the following percentages of all gross revenues received inclusive of reimbursed operating expenses: 1) Office rentals or occupancies used for the display, sale, or rental of boats, yachts, trailers, trailer cabanas, recreational vehicles or other similar items at 16%.

The recommended adjustments have been made to prevent the loss of boat sales and repair businesses in Marina del Rey. In recent years, those companies have sought to locate outside of the boundaries of Marina del Rey to avoid participation in the County's gross receipts rent structure. The difficulty of confirming the nature and location of transactions relating to boat sales given the proliferation of internet-based sales across wide geographies outside of the Marina is widely cited as a negative influence on locating those businesses within the Marina. This difficulty in tracking transactions has made verifying the accuracy of Marina del Rey based sales difficult, if not impossible, and necessitates an adjustment of the rental structure.

A vibrant and convenient boat sales and repair environment is critical to the commercial success of the Marina and retention of the sub-tenants providing those services is in jeopardy absent the adjustments to the County rent structure as outlined above.

Amendment No. 14 also provides that, following Amendment No. 14 Effective Date, the minimum rent is adjusted on the fifth anniversary of March 1, 2013 and on March 1st of every fifth year to an amount equal to 75% of the average annual rent payable by the lessee to the County over the prior five years. All future annual minimum rent adjustments shall either increase the annual minimum rent or maintain it at the then-current amount.

As of the Effective Date, the Amendment also provides that the rental security deposit be maintained at an amount equal to three times monthly minimum rent and, as of the date the Amendment is executed, incorporates changes to the indemnity clause, insurance requirements, and miscellaneous insurance provisions to conform to the

Chief Executive Office Risk Management Branch's new and more stringent requirements.

Implementation of Strategic Plan Goals

The recommended action will keep County percentage rent categories at Parcel 53 comparable to other Marina del Rey leaseholds and incorporates the new insurance provisions, in fulfillment of Strategic Plan Goal No. 1, "Operational Effectiveness", Strategy 1, "Fiscal Sustainability".

FISCAL IMPACT/FINANCING

Upon your Board's approval of Amendment No. 14, the Department of Beaches and Harbors anticipates no immediate financial impact. The Department does anticipate a long-term financial benefit through the retention of boat sales and repair sub-tenants driving an increase in occupancy levels for marine specific uses.

Operating Budget Impact

There will be no operating budget impact as a result of this action.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Commonly known as The Boatyard, Parcel 53 is improved with a boat repair yard, a free-standing 17,333 square foot building, 113 boat slips including 2 water docks, paved parking and a boat display area on 4.11 acre site plus 2.98 acres of water in Marina del Rey, California. The 60-year ground lease between the County and the lessee commenced March 1, 1962 and will expire on February 28, 2022.

This proposed Amendment has been approved as to form by County Counsel. At its meeting of September 11, 2013, the Small Craft Harbor Commission endorsed the recommendation of the Acting Director of the Department of Beaches and Harbors that your Board approve and execute the proposed Amendment No. 14.

ENVIRONMENTAL DOCUMENTATION

The proposed Amendment No. 14 is categorically exempt under the provisions of the California Environmental Quality Act pursuant to Class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines and Section 15301 of the State CEQA Guidelines (Existing Facilities).

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no impact on current services from your Board's approval of Amendment No. 14.

CONCLUSION

Please have the Chairman sign all three copies of Amendment No. 14 and have the Executive Officer of the Board return two executed copies, as well as a copy of the adopted Board letter, to the Department of Beaches and Harbors. Should you have any questions or comments, please contact Matthew Kot at (310) 305-1439 or mkot@bh.lacounty.gov.

Respectfully submitted,



Gary Jones
Acting Director

Attachment (1)

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

GJ:SP:MK:anr

AMENDMENT NO. 14 TO LEASE NO. 5691

PARCEL NO. 53—THE BOATYARD

READJUSTMENT OF RENT AND INSURANCE

THIS AMENDMENT TO LEASE is made and entered into this 8th day of October, 2013 (the "Effective Date").

BY AND BETWEEN

COUNTY OF LOS ANGELES,
hereinafter referred to as "County",

AND

HARBOR REAL ESTATE LIMITED
PARTNERSHIP, a Delaware limited
partnership, hereinafter referred to as
"Lessee"

RECITALS:

WHEREAS, County and Lessee's predecessor in interest entered into Lease No. 5691 under the terms of which County leased to Lessee's predecessor in interest that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 53, which leasehold premises (the "Premises") are more particularly and legally described in Exhibit "A" attached to and incorporated in said Lease, and amended (the Lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, the parties hereto have reached agreement with respect to the annual rent that is to apply as of March 1, 2012 (the "2012 Rental Adjustment Date"); and

WHEREAS, parties wish to amend the Lease as set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and restrictions contained herein, the parties, and each of them, agree as follows:

1. Security Deposit. Commencing as of the 2012 Rental Adjustment Date, Section 7 of the Lease is deleted in its entirety and the following substituted therefor:

"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 Monthly Minimum Rent during the Term of this Lease). The Security Deposit shall secure Lessee's obligations pursuant to this Lease, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Lessee within any applicable notice and cure period, and (b) any other Events of Default of

Lessee under this Lease. The Security Deposit shall be applied at the discretion of County. Lessee shall have the right to maintain the Security Deposit in form 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 actually earned on any unapplied portions of the Security Deposit delivered to County 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 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 thirty-five (35) days, 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."

2. Square Foot and Holding Rental. Commencing as of the 2012 Rental Adjustment Date, Section 12 of the Lease is deleted in its entirety and the following substituted therefor:

"12. 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 12.1 below, and (b) the Percentage Rent described in Section 13. For purposes of this Lease "Annual Rent" shall mean the aggregate of the Annual Minimum Rent and Percentage Rent.

12.1 Annual Minimum Rent and Monthly Minimum Rent. Lessee shall pay to County the minimum rent described in this Subsection 12.1 (subject to adjustment pursuant to Sections 12.2 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 period during which the Annual Minimum Rent is calculated is shorter or longer than a calendar year, then the Annual Minimum Rent for such period 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.

Annual Minimum Rent shall be equal to seventy-five percent (75%) of the average total rent that was payable by Lessee under the Existing Lease for each of the five (5) full Lease Years preceding the Effective Date, provided that in no event shall the Annual Minimum Rent for the period described in this paragraph be less than the annual square foot rental required to be paid under Section 12 of the Existing Lease as of the date immediately prior to the Effective Date.

As of March 1, 2018 and thereafter during the remainder of the Term, the Annual Minimum Rent shall be adjusted in accordance with the terms and provisions of Section 12.2 below.

12.2 Adjustments to Annual Minimum Rent. The Annual Minimum Rent shall be readjusted on the fifth anniversary of March 1, 2013 and on March 1 of every fifth year thereafter (the "Adjustment Date"). On the Adjustment Date, the Annual Minimum Rent shall be readjusted to an amount equal to seventy-five percent (75%) of the annual average of all rents payable by Lessee for the preceding five (5) year period prior to the Adjustment Date; provided, however, that in no event shall Annual Minimum Rent be reduced to less than the Annual Minimum Rent in effect immediately prior to the then-applicable Adjustment Date."

3. Percentage Rentals. Effective as of the 2012 Rental Adjustment Date, Section 13 (Percentage Rentals) of the Lease is deleted in its entirety and the following substituted therefor:

"13. 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 13. Gross Receipts or Gross Revenues (as applicable) from each transaction, sale or activity of

Lessee and/or any Sublessee shall be reported under the applicable Percentage Rent category set forth below in this subsection 13. It is understood that Section 3 of this Lease provides for the Permitted Uses of the Premises and that the percentage categories listed below may not all be applicable to this Lease and are in no way intended to expand or modify the Permitted Uses. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel, has interpreted and may further interpret the percentage categories as set forth in this subsection 13, with such determinations and interpretations to be a guideline in determining the appropriate categories. Within fifteen (15) days after the close of each and every calendar month of the Term hereof, Lessee shall file a report of Gross Receipts and Gross Revenues by category (as applicable) and pay to County a sum equal to the total of the amounts set forth in categories (a) through (v) below for the previous month. Lessee shall be entitled to offset against each such Percentage Rent payment the amount of the installment of Monthly Minimum Rent paid by Lessee for such previous month.

- (a) TWENTY-FIVE PERCENT (25%) of Gross Receipts or other fees for the rental or use of boat slips, anchorages, moorings, dockside gear lockers, dockside storage space and such other facilities and services ancillary thereto as are generally provided in common to tenants thereof, including receipts obtained from persons who live on their boats;
- (b) TEN PERCENT (10%) of Gross Receipts from the rental or other fees charged for the use of dry storage facilities, landside gear lockers, landside storage space (including storage containers located in the work yard), boats, motors, tackle, recreational equipment, tools, equipment, launch and retrieving of small boats and from the sale of live bait;
- (c) TWELVE AND ONE-HALF PERCENT (12.5%) of Gross Receipts from the rental of offices utilized for banking, insurance, financial services, clerical, administrative, real estate, legal, medical, marine engineering, R&D, maritime related business (non-sales), corporate offices, or other similar professional uses.
- (d) SIXTEEN PERCENT (16%) of Gross Revenues received by Lessee with respect to (i) Commercial repair shop space rentals or occupancies, or (ii) Boat broker and boat dealer office rentals or occupancies including the display, sale or rental of boats, yachts, trailers, trailer cabanas, recreational vehicles or other similar items;
- (e) INTENTIONALLY OMITTED;

- (f) FIVE PERCENT (5%) of Gross Receipts received by Lessee or a Sublessee (or an affiliate of Lessee or a Sublessee) if Lessee or a Sublessee (or an affiliate of Lessee or a Sublessee) is the operator of an enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee or a Sublessee from an unaffiliated operator of an enterprise, with respect to any telecommunication (including, without limitation, wireless antennae or fiber optics), cable, internet, satellite, telephone, electricity co-generation or other similar services or facilities;
- (g) SIX PERCENT (6%) of Gross Receipts received by Lessee or a Sublessee (or an affiliate of Lessee or a Sublessee) if Lessee or a Sublessee (or an affiliate of Lessee or a Sublessee) is the operator of an enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee or a Sublessee from an unaffiliated operator of an enterprise, with respect to commercial boating activities, including, but not limited to, charter boat, bareboat charters and sport-fishing boats, as further defined in Policy Statement No. 21 issued by Director;
- (h) FIVE PERCENT (5%) of Gross Receipts received by Lessee or a Sublessee (or an affiliate of Lessee or a Sublessee) if Lessee or a Sublessee (or an affiliate of Lessee or a Sublessee) is the operator of an enterprise, or TWENTY-FIVE PERCENT (25%) of any commissions or fees collected by Lessee or a Sublessee from an unaffiliated operator of an enterprise, with respect to the installation and/or operation of coin-operated vending or service machines, including pay telephone;
- (i) TEN PERCENT (10%) of Gross Receipts from the operation of a bar, tavern, cocktail lounge, discotheque, night club or other facilities engaged primarily in the on-premises sale of alcoholic beverages, except as provided for in category;
- (j) THREE PERCENT (3%) of Gross Receipts from the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, except that Gross Receipts from facilities established and operated as a take-out food operation shall be reported under category (s); for purposes of the foregoing, a "take-out food operation" shall mean a restaurant or other food operation a majority of the Gross Receipts from which are derived from the sale of food or beverages to be consumed off-site;
- (k) SIX PERCENT (6%) of Gross Receipts from the sale of gasoline, diesel fuel, mixed fuel or other petroleum or fuel products;

- (l) INTENTIONALLY OMITTED;
- (m) FIFTEEN PERCENT (15%) of Gross Receipts from club dues, initiation fees and assessments, except that separate club assessments for capital improvements are exempted;
- (n) FIVE PERCENT (5%) of Gross Receipts or other fees charged from the operation of sightseeing boats, touring boats or water taxis;
- (o) TWO PERCENT (2%) of Gross Receipts from the operation of a cable television facility under a franchise granted by the County;
- (p) FOUR PERCENT (4%) of Gross Receipts or other fees charged by authorized boat repair yards, including repair, painting, tugboat, salvage and boat pump-out services and similar activities, except that the sale of boat parts that are separately invoiced or detailed separately on the same invoice shall be reported under category (v) below;
- (q) FIVE PERCENT (5%) of Gross Receipts for cover charges or other fees charged for admission to facilities featuring entertainment, excluding movie theaters, whose Gross Receipts shall be reported under category (s) below;
- (r) TWENTY PERCENT (20%) of Gross Receipts for parking fees or charges, except where such parking fees or charges arise in connection with an activity the Gross Receipts from which are required to be reported in a Percentage Rent category greater than TWENTY PERCENT (20%);
- (s) FIVE PERCENT (5%) of Gross Receipts from the sale of miscellaneous goods and services not specifically provided for in other Percentage Rent categories under this subsection 13 and as further defined in Policy Statement No. 21 issued by Director;
- (t) Not applicable;
- (u) FOUR PERCENT (4%) of Gross Receipts from hauling, launching and lay fees for boat owner do-it-yourself activities; and
- (v) TWO PERCENT (2%) of Gross Receipts from retail ship chandlery sales and ONE PERCENT (1%) of Gross Receipts from wholesale ship chandlery sales. Ship chandlery sales shall be considered wholesale only when the sale is to a holder of a

valid California resale license which is verified by inclusion of the valid resale license number for such sale on the corresponding invoice or other sales records retained by Lessee or Sublessee relating to such sale. All other ship chandlery sales shall be considered retail."

4. Property Insurance. Commencing as of the 2012 Rental Adjustment Date, Section 25 (PROPERTY INSURANCE) of said Lease is deemed deleted in its entirety.
5. Indemnification and Insurance Requirements. Commencing as of the 2012 Rental Adjustment Date, Section 26 (INDEMNITY CLAUSE AND CASUALTY INSURANCE) of said Lease is deemed deleted in its entirety and the following substituted therefor:

"26. INDEMNIFICATION AND INSURANCE REQUIREMENTS. During the term of this Lease, the following indemnification and insurance requirements shall be in effect.

26.1. Indemnification. The Lessee shall indemnify, defend and hold harmless the Lessor, from and against any and all liability, loss, injury or damage including (but not limited to) demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with the Lessee's repair, maintenance and other acts and omissions arising from and/or relating to the Lessee's use of the Premises.

The Lessor shall indemnify, defend and hold harmless the Lessee from and against any and all liability, loss, injury or damage including (but not limited to) demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with the Lessor's repair, maintenance and other acts and omissions arising from and/or relating to the Lessor's ownership of the Premises.

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

A. Evidence of Coverage and Notice to Lessor

- Certificate(s) of insurance coverage (Certificate) satisfactory to Lessor, and a copy of an Additional Insured endorsement confirming Lessor and its Agents

(defined below) has been given Insured status under the Lessee's General Liability policy, shall be delivered to Lessor at the address shown below and provided prior to the start day of this Lease.

- Renewal Certificates shall be provided to Lessor not less than 10 days prior to Lessee's policy expiration dates. The Lessor reserves the right to obtain complete, certified copies of any required Lessee insurance policies at any time.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Lease by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Lessee identified in this Lease. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding twenty five thousand (\$25,000.00) dollars, and list any Lessor required endorsement forms.
- Neither the Lessor's failure to obtain, nor the Lessor's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Lessee, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.
- Certificates and copies of any required endorsements, and notices of cancellation shall be delivered to:

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

Lessee also shall promptly notify Lessor of any third party claim or suit filed against Lessee which arises from or relates to this Lease, and could result in the filing of a claim or lawsuit against Lessee and/or Lessor.

B. Additional Insured Status and Scope of Coverage

The Lessor, which is the County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively Lessor and its Agents), shall be provided additional insured status under Lessee's General Liability policy with respect to liability arising from or connected with the Lessee's acts, errors, and omissions arising from and/or relating to the Lessee's operations on and/or its use of the premises. Lessor's additional insured status shall apply with respect to liability and defense of suits arising out of the Lessee's acts or omissions, whether such liability is attributable to the Lessee or to the Lessor. The full policy limits and scope of protection also

shall apply to the Lessor as an additional insured, even if they exceed the Lessor's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

C. Cancellation of or Changes in Insurance

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

D. Failure to Maintain Insurance

Lessee's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Lease, upon which County immediately may suspend or terminate this Lease. County, at its sole discretion, may obtain damages from Contractor resulting from said Lease.

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

F. Lessee's Insurance Shall Be Primary

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

G. Waiver of Subrogation

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

F. Deductibles and Self-Insured Retentions (SIRs)

Lessee's policies shall not obligate the Lessor to pay any portion of any Lessee deductible or SIR. The Lessor retains the right to require Lessee to reduce or eliminate policy deductibles and SIRs as respects the Lessor, or to provide a bond guaranteeing Lessee's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

H. Claims Made Coverage

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

I. Application of Excess Liability Coverage

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

J. Separation of Insureds

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

K. Lessor Review and Approval of Insurance Requirements

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

26.3. Insurance Coverage Types and Limits.

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

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

- B. Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each

single accident. Insurance shall cover liability arising out of Lessee's use of autos pursuant to this Lease, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

C. Workers Compensation and Employers' Liability Insurance or qualified self-insurance satisfying statutory requirements. Such coverage shall provide Employers' Liability coverage with limits of not less than \$1 million per accident. Such policy shall be endorsed to waive subrogation against the Lessor for injury to the Lessee's or Lessee's contractor employees. If the Lessee's or Lessee's contractor employees will be engaged in maritime employment, the coverage shall provide the benefits required by the *U.S. Longshore and Harbor Workers Compensation Act, Jones Act* or any other federal law to which the Lessee is subject. If Lessee or Lessee's contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the Lessor as the Alternate Employer, and the endorsement form shall be modified to provide that Lessor will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision.

D. Commercial Property Insurance. Such coverage shall:

- Provide coverage for Lessee's property, and any improvements and betterments; This coverage shall be at least as broad as that provided by the Causes-of-Loss Special Form (ISO form CP 10 30), including earthquake (if Lessee deems it reasonable), and Business Interruption equal to one (1) year of annual rent;
- Be written for the full replacement cost of the property, with a deductible no greater than \$250,000 or 5% of the property value whichever is less. Insurance proceeds shall be payable to the Lessee and Lessor as their interests may appear and be utilized for repair and restoration of the Premises. Failure to use such insurance proceeds to timely repair and restore the Premises shall constitute a material breach of the Lease.

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

- **Builder's Risk Course of Construction Insurance.** Such coverage shall insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30). This insurance shall be endorsed to include coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, testing, preservation of

property, excavation costs, landscaping, shrubs and plants, and full collapse coverage during construction, without restricting collapse coverage to specified perils. Such insurance shall be extended to include boiler & machinery coverage for air conditioning, heating and other equipment during testing. This insurance shall be written on a completed-value basis and cover the entire value of the construction project, including Lessor furnished materials and equipment, against loss or damage until completion and acceptance by the Lessee and the Lessor if required.

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

General Aggregate:

Products/Completed Operations Aggregate:

Personal and Advertising Injury:

Each Occurrence:

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

- **Automobile Liability.** Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with limits of not less than \$(determined on a project by project basis) for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Such insurance shall cover liability arising out of Lessee's or Lessee's contractor use of autos pursuant to this Lease, including owned, leased, hired, and/or non-owned autos, as each may be applicable.
- **Professional Liability.** Such insurance shall cover liability arising from any error, omission, negligent, or wrongful act of the Lessee's contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.) with limits of not less than \$(determined on a project by project basis) per claim and \$(double the per claim limit) aggregate. The coverage shall also provide an extended two-year reporting period commencing upon expiration, termination or cancellation of the construction project.
- **Workers Compensation and Employers' Liability Insurance** or qualified self-insurance satisfying statutory requirements. Such coverage shall provide Employers' Liability coverage with limits of not less than \$1 million per accident. Such policy shall be endorsed to waive subrogation against the Lessor for injury to the Lessee's or

Lessee's contractor employees. If the Lessee's or Lessee's contractor employees will be engaged in maritime employment, the coverage shall provide the benefits required by the *U.S. Longshore and Harbor Workers Compensation Act*, *Jones Act* or any other federal law to which the Lessee is subject. If Lessee or Lessee's contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the Lessor as the Alternate Employer, and the endorsement form shall be modified to provide that Lessor will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision.

- **Asbestos Liability or Contractors Pollution Liability Insurance** is needed if construction requires remediation of asbestos or pollutants. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal, or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring, and treatment of asbestos in compliance with governmental mandate or requests. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the Lessee's or Lessee's contractor Automobile Liability Insurance. Lessee or Lessee's contractor shall maintain limits of not less than \$(determined on a project by project basis) for this project.
- **Performance Security Requirements.** Prior to the beginning of construction Lessee shall require its contractor to file surety bonds with the Lessee and the Lessor if required in the amounts and for the purposes noted below. All bonds shall be duly executed by a solvent surety company that is authorized by the State of California, is listed in the United States Department of the Treasury's Listing of Approved Sureties Treasury (Circular 570) and is satisfactory to the County, and it shall pay all premiums and costs thereof and incidental thereto (see www.fms.treas.gov/c570/).

Each bond shall be signed by the Lessee's Contractor (as Principal) and the Surety.

The Lessee's contractor shall give two surety bonds with good and sufficient sureties: the first in the sum of not less than 100% of the Project price to assure the payment of claims of material men supplying materials to Lessee's contractor, subcontractors, mechanics, and laborers employed by the Lessee's contractor on the Project, and the second in the sum of not less than 100% of the

Project price to assure the faithful performance of the Project Contract.

1. The "Materials and Labor Bond" (or "Payment Bond") shall be so conditioned as to inure to the benefit of persons furnishing materials for, or performing labor upon the Work. This bond shall be maintained by the Lessee's contractor in full force and effect until the Work is completed and accepted by the Lessee and the Lessor if required, and until all claims for materials, labor, and subcontracts are paid.
2. The "Bond for Faithful Performance" shall be so conditioned as to assure the faithful performance by the Lessee's contractor of all Work under said Project contract within the time limits prescribed, including any maintenance and warranty provisions, in a manner that is satisfactory and acceptable to the Lessee and the Lessor if required; that all materials and workmanship supplied by Lessee's contractor will be free from original or developed defects, and that should original or developed defects, or failures appear within a period of one year from the date of Acceptance of the Work by the Lessee and the Lessor if required, the Contractor shall, at Contractor's own expense, make good such defects and failures, and make all replacements and adjustments required, within a reasonable time after being notified by the Lessee to do so, and to the approval of the Lessor if required. This bond shall be maintained by the Lessee's contractor in full force and effect during the performance of the Project and for a period of one year after acceptance of the Work by the Lessee and the Lessor if required.

Should any surety or sureties upon said bonds or any of them become insufficient, or be deemed unsatisfactory by the Lessee or the Lessor, said Contractor shall replace said bond or bonds with good and sufficient sureties within ten (10) days after receiving notice from the Lessee or the Lessor that the surety or sureties are insufficient or unsatisfactory.

No further payment shall be deemed due, or will be made under this Contract until the new sureties shall qualify and be accepted by the Lessee and the Lessor.

- F. Marina Operator's Liability** insurance shall be provided and maintained by the Lessee if operating a marina, berthing, docking, and/or launching of boats and/or pleasure crafts, and/or use of floating docks, piers and/or ramps, with limits of not less than \$5 million per occurrence and \$10 million aggregate. If written on a "claims made" form, the coverage shall also provide an extended two (2) year reporting period commencing upon the expiration or earlier termination of this Lease, or replacement coverage shall be maintained until such time."

6. Workmen's Compensation Insurance. Commencing as of the 2012 Rental Adjustment Date, Section 27 (WORKMEN'S COMPENSATION INSUARANCE) of said Lease is deemed deleted in its entirety.
7. Failure to Procure Insurance. Commencing as of the 2012 Rental Adjustment Date, Section 28 (FAILURE TO PROCURE INSURANCE) of said Lease is deemed deleted in its entirety.
8. Miscellaneous. Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and re-acknowledges its respective obligations under the Lease as amended hereby.
9. In the event of any conflict between the terms of this Amendment No. 14 and the terms of the Lease (or any previous amendment thereto), the terms of this Amendment No. 14 shall control.

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment No. 14 to Lease No. 5691 to be subscribed by the Chairman of said Board and attested by the Executive Officer thereof, and the Lessee or its duly authorized representative, has executed the same.

COUNTY OF LOS ANGELES

By: Mark Ridley-Thomas

Mark Ridley-Thomas

Chairman, Board of Supervisors

ATTEST:

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

By: Sachelle Smitherman
Deputy

LESSEE:

HARBOR REAL ESTATE LIMITED,
PARTNERSHIP, a Delaware limited
partnership

By Vaparetto Corp., an Illinois corp.,
Its General Partner

By: [Signature]
Its: MANAGING MEMBER

APPROVED AS TO FORM:

JOHN F. KRATTLI
County Counsel

By: [Signature]
Senior 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: Sachelle Smitherman
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

80 OCT 8 2013

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

5691 Supplement No. 13