



Caring for Our Coast

♦ ♦ ♦  
**Gary Jones**  
Director

**Kerry Silverstrom**  
Chief Deputy

**Amy M. Caves**  
Deputy Director

**Carol Baker**  
Deputy Director

**SMALL CRAFT HARBOR COMMISSION MEETING**  
**Wednesday, November 10, 2021**  
**10:00 A.M.**

[AUDIO LINK SCHC November 10, 2021 Meeting](#)

**NOTICE**

In accordance with Government Code § 54953 permitting the convening of public agency meetings in light of the COVID-19 pandemic, all regularly scheduled Small Craft Harbor Commission meetings will convene as virtual (online) meetings and by teleconference as determined by the Commission.

**OBSERVING THE MEETING**

To observe the meeting without public comment for the record, go to <http://beaches.lacounty.gov/watch-schc-meeting> (Webinar ID: 928 7881 2983) or dial **(408) 638-0968** or **(669) 900-6833**.

**PROVIDING PUBLIC COMMENT DURING THE MEETING**

To provide verbal public comment for the record during the meeting, go to <http://beaches.lacounty.gov/watch-schc-meeting> (Webinar ID: 928 7881 2983) and staff will assist you via the Zoom chat feature.

**PROVIDING PUBLIC COMMENT BEFORE THE MEETING**

To provide public comment for the record before the meeting, send an email to [DSCHCSecretary@bh.lacounty.gov](mailto:DSCHCSecretary@bh.lacounty.gov) or dial (424) 526-7733 and leave a message with your comment, the agenda item number, your first name and last name, email address, and phone number. Public comments submitted prior to 5 p.m. on Tuesday, October 12, 2021 will be transcribed and provided to the Small Craft Harbor Commission. Verbal public comments submitted after 5 p.m. on Tuesday, October 12, 2021 will not be provided to the Small Craft Harbor Commission, but will be transcribed and added to the public record.

1. **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**



2. **AUTHORITY TO HOLD THE MEETING BY TELECONFERENCE**

The Los Angeles County Board of Supervisors, at its regularly scheduled public meeting on November 2, 2021, has made the requisite findings under Government Code § 54953(e)(3) that (i) the Board has reconsidered the circumstances of the State of Emergency due to the COVID-19 pandemic and that the State of Emergency remains active; and (ii) that local officials continue to recommend measures to promote social distancing.

3. **APPROVAL OF MINUTES**

Small Craft Harbor Commission Meeting of October 13, 2021.

4. **COMMUNICATION FROM THE PUBLIC**

This is the opportunity for members of the public to address the Commission on items that are not on the posted agenda, provided that the subject matter is within the jurisdiction of the Commission. Speakers are reminded of the three-minute time limitation.

5. **COMMUNICATION WITH THE COMMISSIONERS**

This is the opportunity for members of the Commission to provide notification to the public regarding any communication received by the Commissioners from the public, lessees, or other interested parties regarding business of Marina del Rey.

6. **REGULAR REPORTS**

- |    |   |                  |
|----|---|------------------|
| a. | Marina Sheriff<br>- Crime Statistics<br>- Enforcement of Seaworthy & Liveaboard<br>Sections of the Harbor Ordinance with<br>Liveaboard Permit Percentages | (VERBAL REPORTS) |
| b. | Marina del Rey and Beach Special Events   | (VERBAL REPORT)  |
| c. | Marina Boating Section Report   | (VERBAL REPORT)  |
| d. | Marina del Rey Maintenance Report   | (VERBAL REPORT)  |

7. **OLD BUSINESS**

None

8. **NEW BUSINESS**

- |    |  |                |
|----|--|----------------|
| a. | Parcel 65 (UCLA) – An amended and restated lease to extend the term for an additional 39 years;  | (ENDORSEMENT)  |
| b. | Parcel 132 (California Yacht Club) – A lease amendment to extend the term for an additional five years;  | (ENDORSEMENT)  |
| c. | Parcel 131 (Café del Rey) – A lease amendment to extend the term for an additional five years;   | (ENDORSEMENT)  |
| d. | Parcel 55 (Charter Dock) – A staff presentation regarding the solicitation process of Dock 55 management contract for charter operations and related issues. | (PRESENTATION) |

9. **STAFF REPORTS**

Ongoing Activities

(VERBAL REPORTS)

- Board Actions on Items Relating to Marina del Rey
- Regional Planning Commission Calendar
- California Coastal Commission Calendar
- Redevelopment Project Status Report
- Design Control Board Minutes
- Marina del Rey Slip Report
- California Coastal Commission Slip Report
- Fisherman's Village Progress Report
- Illegal Boat Charter Enforcement

10. **ADJOURNMENT**

**PLEASE NOTE**

1. The Los Angeles County Board of Supervisors adopted Chapter 2.160 of the Los Angeles Code (Ord. 93-0031 ~ 2 (part), 1993, relating to lobbyists. Any person who seeks support or endorsement from the Small Craft Harbor Commission on any official action must certify that he/she is familiar with the requirements of this ordinance. A copy of the ordinance can be provided prior to the meeting and certification is to be made before or at the meeting.
2. The agenda will be posted on the internet and displayed at the following locations at least 72 Hours preceding the meeting date:

Department of Beaches and Harbors Website Address: <http://marinadelrey.lacounty.gov>

Department of Beaches and Harbors  
Administration Building  
13837 Fiji Way  
Marina del Rey, CA 90292

MdR Visitors & Information Center  
4701 Admiralty Way  
Marina del Rey, CA 90292

Burton Chace Park Community Room  
13650 Mindanao Way  
Marina del Rey, CA 90292

Lloyd Taber-Marina del Rey Library  
4533 Admiralty Way  
Marina del Rey, CA 90292

3. The entire agenda package and any meeting related writings or documents provided to a Majority of the Commissioners (Board members) after distribution of the agenda package, unless exempt from disclosure Pursuant to California Law, are available at the Department of Beaches and Harbors and at <http://marinadelrey.lacounty.gov>

Si necesita asistencia para interpretar esta informacion llame al (424) 526-7777.

**ADA ACCOMODATIONS:** If you require reasonable accommodations or auxiliary aids and services such as material in alternate format or a sign language interpreter, please contact the ADA (Americans with Disabilities Act) Coordinator at (424) 526-7752 (Voice) or (TTY/TDD) users, please call the California Relay Service at 711. The ADA Coordinator may be reached by email at [rstassi@bh.lacounty.gov](mailto:rstassi@bh.lacounty.gov).

**SMALL CRAFT HARBOR COMMISSION MINUTES  
VIRTUAL MEETING  
October 13, 2021**

**Commissioners:** David Lumian, Vice-Chair; Allyn Rifkin, Nathaniel Salazar, Bernard Kozacik III

**Department of Beaches and Harbors (DBH):** Gary Jones, Director; Amy Caves, Deputy Director; Carol Baker, Division Chief; Steve Penn, Division Chief; Susana Graether, Chief Property Manager; Amir Tadros, Senior Real Property Agent

**County:** Joseph Abdelkerim, Deputy County Counsel

**Item 1 - Call to Order and Pledge of Allegiance**

Vice-Chair Lumian called the virtual meeting to order at 10:00 a.m. and led the Pledge of Allegiance. Susana Graether read the virtual meeting procedures.

**Item 2 – Adopt Findings to Hold the Meeting by Teleconference**

Vice-Chair Lumian remarked that the meeting was being held remotely pursuant to subdivision (e) of Government Code Section 54953. In order to continue to meet remotely for the next 30 days, the Commissioners must find by a majority vote that (a) the Commissioners have reconsidered the circumstances of the state of emergency, and (b) a state of emergency continues to directly impact the ability of the members to meet safely in person, or State or local officials continue to impose or recommend measures to promote social distancing.

Motion to approve meeting remotely by Mr. Rifkin, seconded by Mr. Kozacik.

**Ayes: 4 – Vice Chair Lumian, Mr. Rifkin, Mr. Salazar, and Mr. Kozacik**

**Item 3 - Approval of Minutes**

Motion to approve September 8, 2021 Meeting Minutes by Mr. Salazar, seconded by Mr. Rifkin.

**Ayes: 4 – Vice Chair Lumian, Mr. Rifkin, Mr. Salazar, and Mr. Kozacik**

**Item 4 – Communication from the Public**

There was no communication from the public.

**Item 5 – Communication with the Commissioners**

Mr. Kozacik reported communicating with Greg Schem, BoatYard lessee, to follow up on his comments pertaining to the Marina and the homeless proposal for the launch ramp.

Mr. Salazar said Supervisor Solis held the annual Dragon Boat Festival in the First District on October 2, 2021. He commented that Supervisor Solis would like to see the same event to be held in Marina del Rey as well.

Vice-Chair Lumian reported his communication with Aaron Clark, Tim Riley, Janet Zaldua, Mike Lenamen, and Mark Hansen.



**Item 6a – Marina Sheriff**

Sergeant Brent Carlson presented the report.

Pam Gore thanked Sergeant Carlson for his report. She noted the difficulty gate attendant at Dock 55 has with radio communication and requested assistance in finding a solution.

Mr. Salazar thanked Sergeant Carlson and said he would like to attend a radio communication class if it is offered again. He asked if the area was affected by the oil spill which occurred in early October off the coast of Orange County and if boaters came to the Marina del Rey harbor as a result of the spill.

Sergeant Carlson said the local harbors were closed for a short period of time, and not many boaters came into the Marina del Rey harbor as a result of the spill. He also noted the oil spill flow headed south towards Mexico.

Vice-Chair Lumian asked where impounded boats are kept.

Sergeant Carlson replied when a boat is impounded it is brought to Marina del Rey Sheriff Station and kept there three to four months. If it is determined to be abandoned or not wanted, the vessel is then taken to H Basin across from the BoatYard. The Sheriff's Department takes possession of the vessel and has it destroyed at the BoatYard.

Captain Alex Balian commented that every Sunday afternoon a 55-foot yacht is located just outside the south jetty at Ballona Creek. The yacht always has over 50 guests, which is too many, and floats in the traffic lane. He noted how dangerous the situation was and asked if Sergeant Carlson was aware of the events and if the Sheriff has jurisdiction at the location.

Sergeant Carlson replied the area noted is in the Sheriff's jurisdiction and will notify Deputy Campbell, who works on Sundays, of the incidents. He also recommended that Captain Balian can hail Unit 271 Harbor Patrol on channel 16 or call 310-482-6000 and deputies will be sent to investigate right away.

**Item 6b – MdR and Beach Special Events**

Carol Baker reported the Community and Marketing Services Division is busy planning programming for the upcoming months. Beach Eats Food Truck will continue to November 18, 2021, and events like the popular Drum Circle are being considered again while continuing to adapt to safety measures due to the pandemic. The Boat Parade is happening this year along with some safe activities in Burton Chace Park before the parade. This year's Boat Parade theme is "Joy on the Water." Two fireworks shows are planned for New Year's Eve, but a large event in the park will not be happening due to safety measures.

Mr. Kozacik inquired about a gathering of a large number of boats on the water on October 2, 2021. Ms. Baker was unaware of any permitted event on the water at that time.

**Item 6c – Marina Boating Section Report**

Susana Espinosa reported that Anchorage 47 has three 42-feet, four 38-feet, four 34-feet, three 27-feet, five 24-feet, and three 22-feet vacant slips available. Parcel 77 powerboat storage is full, and Mast-Up storage has 34 spaces available.

**Item 6d – Marina del Rey Maintenance Report**

Seth Curtiss reported the bird-wire poles were removed at Mother's Beach, concrete repairs are in progress at Burton Chace Park, and scheduled repairs of lights at the Boat Launch Ramp will be started within the week.

Vice-Chair Lumian asked why the bird poles were removed. Vice Chair Lumian indicated that he is in favor of increasing water quality at the beach. He commented on the wood poles that were installed as they decay quickly and might have had chemicals in the wood. He asked that the Commission be notified in advance if the poles will be re-installed and be given a chance to comment before the plan is implemented. Seth Curtiss replied that he did not know why they were removed and would pass the request along to his supervisor.

**Item 7 – Old Business**

None

**Item 8a – Proposed Commission Letter to Board of Supervisors Regarding the City of Los Angeles' Potential Homeless Interventions in Marina del Rey**

Steve Penn commented that during the September 8, 2021 Commission meeting, the Commission moved to have staff draft a letter to send to the Board of Supervisors (BOS) regarding a feasibility study of the city's homeless shelters proposed in Marina del Rey. The letter was drafted and provided to the Commission for review, and feedback if any, or otherwise vote for approval for Vice Chair Lumian to sign and send to the BOS.

Janet Zaldua, of Marina del Rey's Convention and Visitors Bureau (CVB) spoke on behalf of the tourism and hospitality industry of Marina del Rey, and the approximately 3,000 hotel restaurant and recreational service employees that rely on the success of tourism in the marina to make a living. She noted their strong opposition to homeless housing units being placed at the boat launch ramp in Marina del Rey or any site designated for public recreation, coastal access, or within proximity to hotels and restaurants in the marina. Building homeless housing in those areas would be a negative impact on tourism. Placing homeless housing in a parking lot where boaters back up boats is a public safety hazard for the homeless and a liability risk for the County. An accident involving a vessel and a person living in the lot could result in serious injury or death. It is a risk that should have been considered in the feasibility report completed by the City of Los Angeles. Also, the feasibility study did not report that parking Lot 2 is in a tsunami zone, designated as a FAA approved emergency disaster and evacuation site, and used as a helicopter emergency landing zone. She requested that the County look for alternative housing locations that would better serve homeless individuals by placing them in closer proximity to social and medical services, transportation, and areas free from safety hazards such as those located at the boat launch ramp. She urged the County to seek solutions to address the challenge of homelessness without bringing undue burdens on businesses struggling to survive after experiencing severe losses during the pandemic. They support the motion to send a letter to the BOS requesting a community impact study and request the County

to advise the City of Los Angeles that the site is not feasible based on critical safety and zoning issues that were not addressed in the city's feasibility report. She noted the importance of the County to engage with the constituents, stakeholders and law enforcement on the issue and facilitate forums for public discussion. Ms. Zaldua said the Marina del Rey CVB welcomes the opportunity to collaborate with the County to explore solutions for homelessness that allows tourism in the community to survive and thrive.

Mark Hansen, Chairman of the Government Relations Committee for the Southern California Yachting Association noted his opposition to placing homeless shelters at the boat launch area. He said the California Boating Facilities Needs Assessment identifies a significant future need for boat ramp lanes and dry boat storage. He noted the boat launch ramp is the only one between San Pedro and the Channel Islands. Two of the three Inland District Councilmen for King Harbor, Redondo Beach recently agreed that the homeless shelter there should be placed inland, not coastal areas. He also said tourism and hotels would suffer a negative impact if homeless shelters are placed in the marina area. Also, the homeless individuals would not be comfortable living under the marine layer. He said he supports the Commission's letter to the BOS to have a more appropriate location chosen for the homeless shelters.

Tim Riley spoke on behalf of the Marina del Rey Lessee's Association. He suggested adding additional verbiage to the letter for the BOS to understand the wide range of issues that make Lot 2 totally infeasible and inappropriate, for example, the Air-Sea Disaster Plan which designates Lot 2 as a major evacuation site. He said all locations being considered would not be consistent with the Marina del Rey Land Use Plan or the Marina del Rey Specific Plan which are regulations in the County's zoning code. Housing is not permitted under Coastal Act Policy in any of the locations under consideration. The launch ramp is a low-cost, affordable option for people to go boating which is an important part of the Coastal Act. Moving equipment on the site would be dangerous to people who are not boaters and do not know the protocols of boating safety. Also, the site is in a tsunami zone. He requested that the BOS conduct a public hearing on the matter.

Captain Alex Balian spoke on behalf of FantaSea Yacht Charters, Hornblower Charters and the commercial sport fishing charters. He said FantaSea One charters are picked up adjacent to Dock 52, which is in direct site of Lot 2 launch ramp area. Guests for the charters can see homeless encampments. He said it is a bad view for the marina, and a completely unsatisfactory display of incompetence regarding allowing the homeless housing to be there. Also, for health reasons it is a disgrace and should not be allowed. It will have a huge impact on business and on the yacht charter industry at Dock 52. Captain Balian is against homeless shelters at the Lot 2 launch ramp.

Mr. Rifkin said he thinks the letter to the BOS should explain why the Commission is against the proposed homeless shelter at Lot 2 boat launch ramp area. He suggested adding a comment to the letter saying while it is important to explore solutions for helping the homeless in Los Angeles County, the proposal to use the launch ramp is in direct opposition to goals and objectives of this Commission to expand and improve local access to the marina for the public. He also recommended including the comments made by Ms. Zaldua and Mr. Riley regarding the same issue.



Mr. Kozacik said he agreed with Commissioner Rifkin's suggestion for the letter to the BOS. He asked that a line be added to indicate that not a single person had spoken in support of homeless shelters at the launch ramp.

Commissioner Salazar also agreed with Commissioner Rifkin's suggestion and recommended asking for a meeting with an official from the Board in charge of the area being proposed to use as a homeless shelter. A meeting would allow the Commission to hear their side as well.

Vice Chair Lumian suggested adding changes to the letter to the BOS to include the date of October 13, 2021 to go along with the date of September 8, 2021 to the second paragraph. In addition, Vice Chair Lumian proposed to add language at the end of the second paragraph to read: The members of the public who spoke overwhelmingly against the idea, citing a lack of nearby social services for the unhoused, the proposal's inconsistency with Marina del Rey's local coastal program and California Coastal Act policies, adverse impacts to recreational boaters who utilize the launch ramp and to local businesses, and incompatibility between the proposed use and the launch ramp secondary purpose as an FAA approved air/sea disaster evacuation site. He also requested to have a line included to request public hearings before any decisions are made.

Vice Chair Lumian asked for a motion to approve the letter to the BOS with the suggested changes.

Motion to approve the letter to the BOS with changes by Mr. Rifkin, seconded by Mr. Salazar.

**Ayes: 4, Unanimous – Vice Chair Lumian, Mr. Rifkin, Mr. Salazar, and Mr. Kozacik**

Steve Penn said changes would be made to the letter as requested, and the draft would be circulated to the Commission for review prior to final draft.

#### **Item 9 – Staff Reports**

Steve Penn presented the staff report.

Pam Gore said that an incomplete list of legal charter vessels was provided by Los Angeles County, and she is hoping for a complete list soon for the Sheriff and Coast Guard's use. She also requested an update on the Fisherman's Village/Dock 55 change in management which is supposed to occur in April 2022.

Captain Alex Balian asked for a more expeditious response from Amir Tadros regarding issues that happen with illegal charter vessels in Marina del Rey.

Vice Chair Lumian asked when in-person meetings might happen again. He also asked for an update on management changes for Fisherman's Village/Dock 55.

Steve Penn replied that the Department is aware of the Commission's desire to meet in person. He did not know when the meetings would be held in person but noted the Department's desire



to meet in person as well and will continue to work on the logistics of holding in person meetings while complying with safety mandates. Mr. Penn emphasized that hosting a virtual meeting consumes much more staff resources than preparing for an in-person meeting. He said the management contract for Dock 55 expires next year and the Department is considering having competitive bidding for the management contract but has not finalized the process yet. The Commission will be kept informed on the progress.

Vice Chair Lumian asked for a motion to adjourn the meeting. Motion to adjourn by Mr. Salazar, seconded by Mr Kozacik.

**Ayes: 4, - Vice Chair Lumian, Mr. Rifkin, Mr. Salazar, and Mr. Kozacik**

### **Adjournment**

Vice Chair Lumian adjourned the meeting at 11:04 a.m.



**LOS ANGELES COUNTY SHERIFF'S DEPARTMENT  
MARINA DEL REY STATION  
PART I CRIMES OCTOBER 2021**

	West Marina 2760	East Marina 2761	Lost R.D. 2762	Marina Water 2763	Upper Ladera 2764	County Area 2765	Lower Ladera 2766	Windsor Hills 2767	View Park 2768	Parks 2791	TOTALS
Homicide											0
Rape											0
Robbery: Weapon	1										1
Robbery: Strong-Arm											0
Aggravated Assault	1	1			1			1	1		5
Burglary: Residence	1						2				3
Burglary: Other Structure	1		1				10		1		13
Grand Theft	11	4		2	1		3	4			25
Grand Theft Auto	6				2		5	4	2		19
Arson											0
Boat Theft											0
Vehicle Burglary	5	1				1	1	1	2	2	13
Boat Burglary											0
Petty Theft	2	3					3	3	4	1	16
<b>REPORTING DISTRICTS TOTALS</b>	<b>28</b>	<b>9</b>	<b>1</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>24</b>	<b>13</b>	<b>10</b>	<b>3</b>	<b>95</b>

**Note-** The above numbers may change due to late reports and adjustments to previously reported crimes.

**Source-** LARCIS, **Date Prepared** November 2, 2021  
CRIME INFORMATION REPORT - OPTION 5A

# LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

## MARINA DEL REY STATION

### PART 2 CRIMES – OCTOBER 2021



Community Advisory Committee	Upper Ladera 2764	Lower Ladera 2766
Homicide		
Rape		
Robbery: Weapon		
Robbery: Strong-Arm		
Aggravated Assault	1	
Burglary: Residence		2
Burglary: Other Structure		10
Grand Theft	1	3
Grand Theft Auto	2	5
Arson		
Boat Theft		
Vehicle Burglary		1
Boat Burglary		
Petty Theft		3
Total	4	24

**Note-** The above numbers may change due to late reports and adjustments to previously reported crimes.

**Source-** LARCIS, **Date Prepared** November 2, 2021  
CRIME INFORMATION REPORT - OPTION 5A

# LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

## MARINA DEL REY STATION

### PART 3 CRIMES- OCTOBER 2021



	MARINA AREA (RD'S 2760- 2763)	EAST END (RD'S 2764- 2768)
<b>Part I Crimes</b>		
Homicide		
Rape		
Robbery: Weapon	1	
Robbery: Strong-Arm		
Aggravated Assault	2	3
Burglary: Residence	1	2
Burglary: Other Structure	2	11
Grand Theft	17	8
Grand Theft Auto	6	13
Arson		
Boat Theft		
Vehicle Burglary	6	7
Boat Burglary		
Petty Theft	5	11
<b>Total</b>	<b>40</b>	<b>55</b>

**Note-** The above numbers may change due to late reports and adjustments to previously reported crimes.

**Source-** LARCIS, **Date Prepared – November 2, 2021**  
CRIME INFORMATION REPORT - OPTION 5A





Caring for Our Coast


♦ ♦ ♦  
**Gary Jones**  
Director

**Kerry Silverstrom**  
Chief Deputy

**Amy M. Caves**  
Deputy Director

**Carol Baker**  
Deputy Director

November 10, 2021

TO: Small Craft Harbor Commission  
FROM:   
Gary Jones, Director  
SUBJECT: **ITEM 6B – MARINA DEL REY SPECIAL EVENTS**

**DRAWING & PAINTING CLASS**

In-person and online class via Zoom  
Mondays  
3:30 p.m. – 4:30 p.m.

The Los Angeles County Department of Beaches and Harbors (Department) is offering a FREE drawing and watercolor art class for beginners ages 14 years or older. In-person classes are limited to ten people and supplies are provided. Registration is required and is available on a first-come, first served basis. Pre-register for each class by emailing [chacepark@bh.lacounty.gov](mailto:chacepark@bh.lacounty.gov).

For more information: Call (424) 526-7910 or visit [beaches.lacounty.gov](http://beaches.lacounty.gov)

**BURTON CHACE PARK ZUMBA**

Burton Chace Park ♦ 13650 Mindanao Way ♦ Marina del Rey  
Tuesdays and Wednesdays  
4:30 p.m. – 5:30 p.m.

Ditch your boring workout and join the Department's FREE outdoor Zumba class at Burton Chace Park! Each class is limited to 10 people. Registration is required and is available on a first-come, first served basis. Pre-register for each class by emailing [chacepark@bh.lacounty.gov](mailto:chacepark@bh.lacounty.gov).

For more information: Call (310) 526-7910 or visit [beaches.lacounty.gov](http://beaches.lacounty.gov)



**BEACH EATS GOURMET FOOD TRUCK EVENT**

14101 Panay Way ♦ Marina del Rey  
Thursdays through November 18, 2021  
5:00 p.m. – 9:00 p.m.

The Department hosts a gourmet food truck event in Marina del Rey that offers a variety of delectable savory foods and desserts. Order online in advance at [bestfoodtrucks.com](http://bestfoodtrucks.com) or on-site at the truck window. The weekly assortment of food trucks will vary along with menu options, such as gourmet burgers, hot dogs, tacos, lobster rolls, and more. Paid parking is available for 25 cents for every 10 minutes.

For more information: Call the Marina del Rey Visitors Center at (424) 526-7900 or visit [beaches.lacounty.gov](http://beaches.lacounty.gov)

**FISHERMAN'S VILLAGE CONCERT SERIES**

13755 Fiji Way ♦ Marina del Rey  
Sponsored by Pacific Ocean Management, LLC  
Thursdays  
6:00 p.m. – 9:00 p.m.

Enjoy free, live entertainment at Fisherman's Village with local bands. Concerts are held on a weekly basis, depending on weather conditions.

For more information: Call Pacific Ocean Management at (310) 306-0400

**MARINA DEL REY FARMERS' MARKET**

Parking Lot #11 ♦ 14101 Panay Way ♦ Marina del Rey  
Saturdays  
9:00 a.m. – 2:00 p.m.

The Department, in collaboration with Southland Farmers' Markets Association, is offering the Marina del Rey Farmers' Market on Saturdays. The Marina del Rey Farmers' Market offers fresh, locally grown organic and conventionally grown fruits and veggies. Also available are prepackaged foods and much more! Paid parking is available for 25 cents for every 10 minutes.

\*The Market will be closed on November 27 and December 25, 2021, and January 1, 2022.

For more information: Call the Marina del Rey Visitors Center at (424) 526-7900 or visit [beaches.lacounty.gov](http://beaches.lacounty.gov)

**59<sup>TH</sup> ANNUAL MARINA DEL REY HOLIDAY BOAT PARADE**

Saturday, December 11, 2021

5:55 p.m. – 8:00 p.m.

Come and watch the Holiday Boat Parade in Marina del Rey! View the fireworks that will be shot off the south jetty at 5:55 p.m. to kick off the start of the parade. Beautifully lit and decorated boats will participate in the event, which is free to the public. The theme of this year's parade is "Joy on the Water." Boat owners will compete for numerous prize packages. Best spots for viewing the boat parade are Burton Chace Park, located at 13650 Mindanao Way, and Fisherman's Village, located at 13755 Fiji Way.

For more information: Visit [mdrboatparade.org](http://mdrboatparade.org)

**W.A.T.E.R. PROGRAM WINTER SAILING**

Burton Chace Park ♦ 13640 Mindanao Way ♦ Marina del Rey  
Beginning and Intermediate Sailing Dates: December 20 – 24;  
December 27 – 31; and January 3 – 7  
10:00 a.m. – 4:00 p.m.

Los Angeles County Lifeguards will instruct the Department's sailing courses that teaches students basic sailing knowledge and terms, boat maintenance and rigging, knot tying, tacking, docking and instruction to ocean sailing. Students will learn to sail on 14-foot Capri sailboats (with main sail and jib) and Laser sailboats. In the final days of the session, students may get experience on Catalina 275 Sport.

Financial aid is available for qualified families. Please call for details.

Ages: 11 - 17 years old

Class Size: 6 – 10 students with 3 Lifeguard instructors

Fee: \$355 for 5-day session

\*NOTE: Applicants must successfully complete a 100-yard swim test in 2 minutes and 20 seconds to be eligible for Beginning Sailing.

For more information: Call (424) 526-7888 or visit [marinadelrey.lacounty.gov](http://marinadelrey.lacounty.gov)

**2021 NEW YEAR'S EVE FIREWORKS**

December 31, 2021 – January 1, 2022

Celebrate the New Year with fireworks in Marina del Rey! Enjoy a ten-minute fireworks show, at 8:59:50 (New York) and 11:59:50 p.m. (Los Angeles), preceded by a 10-second countdown. The shows will be shot from the Marina's south jetty and can be viewed

from virtually anywhere in Marina del Rey, Venice Pier, Playa Vista and Dockweiler Beach.

For more information call: Call the Marina del Rey Visitors Center at (424) 526-7900 or visit [beaches.lacounty.gov](https://beaches.lacounty.gov)

**COVID-19 GUIDELINES**

Maintaining a safe physical distance from others outside your household and wearing a face mask is highly encouraged for the above listed events and activities.

GJ:CB:da





Caring for Our Coast

♦ ♦ ♦  
**Gary Jones**  
Director

**Kerry Silverstrom**  
Chief Deputy

**Amy M. Caves**  
Deputy Director

**Carol Baker**  
Deputy Director

November 10, 2021

TO: Small Craft Harbor Commission

FROM:  Gary Jones, Director

SUBJECT: **ITEM 8A – APPROVAL OF: AMENDED AND RESTATED LEASE NO. 6051 UCLA BOATHOUSE (PARCEL 65R AT 14001 FIJI WAY)**

Item 8A on your agenda relates to the proposed approval of Amended and Restated Lease Agreement No. 6051 for Parcel 65R in Marina del Rey which extends the lease term by 39 years.

The recommended action will allow the Lessee to continue using the property for its rowing and sailing teams, and provide youth boating programs, equipment rentals, and water-related classes, all of which promote Strategic Plan Goal No. II.22 (Expand Access to Recreational and Cultural Opportunities.)

The attached Board letter provides details relating to the Amended and Restated Lease. Your Commission's endorsement of the recommendation that the Board approve the Amended and Restated Lease is requested.

GJ:AC:SP:BY:kg

Attachment



**AMENDED AND RESTATED LEASE AGREEMENT  
PARCEL 65R - 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 the REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation (together with its permitted successors and assigns, “**Lessee**”), as lessee.

**RECITALS**

WHEREAS, County and Lessee entered into that certain Lease dated August 29, 1962 (as amended by that certain Amendment to Lease dated September 25, 1962, that certain Amendment to Lease dated May 15, 1964, that certain Amendment No. 3 to Lease dated January 3, 1967, that certain Amendment No. 4 to Lease dated May 23, 1967, that certain Amendment No. 5 to Lease dated October 18, 1977, that certain Amendment No. 6 to Lease dated November 4, 1977, that certain Amendment to Lease No. 7 dated November 3, 1987, that certain Amendment No. 8 to Lease dated February 1, 2000, and that certain amendment No. 9 to Lease dated May 20, 2008 (collectively, the “**Existing Lease**”) regarding the lease from County of certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 65R, as such leased premises has been modified from time to time under the Existing Lease, and more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the “**Premises**”);

WHEREAS, Lessee is the current holder of all right, title and interest as lessee under the Existing Lease;

WHEREAS, the term of the Existing Lease commenced on March 1, 1962 and was originally scheduled to expire on February 28, 2022 (the “**Existing Expiration Date**”); and

WHEREAS, effective as of the Effective Date, County and Lessee desire to amend and restate the Existing Lease in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, the extension of the term of the Existing Lease through February 28, 2061.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 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 “**ACCOUNTING YEAR**” shall have the meaning set forth in Section 14.7.

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

1.1.3 “ADA” shall have the meaning set forth in Section 1.2.1.

1.1.4 “ADDITIONAL DISPUTES” shall have the meaning set forth in Section 16(a).

1.1.5 “ALTERATIONS” shall have the meaning set forth in Section 5.1.

1.1.6 “ANTENNAE” shall have the meaning set forth in Subsection 3.2.2.5.

1.1.7 “ANNUAL MINIMUM RENT” shall have the meaning set forth in Subsection 4.2.1.

1.1.8 “ANNUAL RENT” shall have the meaning set forth in Section 4.2

1.1.9 “APPLICABLE LAWS” shall have the meaning set forth in Subsection 1.2.1.

1.1.10 “APPLICABLE RATE” shall mean an annually compounded rate of interest equal to the Prime Rate 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.

1.1.11 “APPROVED GOVERNMENTAL CHANGES” shall mean any changes to any Alterations 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 Alterations, except for any change that is a Material Modification.

1.1.12 “APPROVED STORAGE LICENSE” shall have the meaning set forth in Section 11.

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

1.1.14 "AWARD" shall have the meaning set forth in Subsection 6.1.3.

1.1.15 "BOARD" shall mean the Board of Supervisors for the County of Los Angeles.

1.1.16 "BUSINESS DAY" shall have the meaning set forth in Section 17.3.

1.1.17 "CITY" shall mean the City of Los Angeles, California.

1.1.18 "CONDEMNATION" shall have the meaning set forth in Subsection 6.1.1.

1.1.19 "CONDEMNOR" shall have the meaning set forth in Subsection 6.1.4.

1.1.20 "CONSUMER PRICE INDEX" shall mean the Consumer Price Index-- All Urban Consumers for Los Angeles-Riverside-Orange County, not seasonally adjusted 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.

1.1.21 "COUNTY" shall have the meaning set forth in the first paragraph of this Lease.

1.1.22 "COUNTY REMOVAL NOTICE" shall have the meaning set forth in Subsection 2.3.2.

1.1.23 "DATE OF TAKING" shall have the meaning set forth in Subsection 6.1.2.

1.1.24 "DEMOLITION AND REMOVAL REPORT" shall have the meaning set forth in Subsection 2.3.2.

1.1.25 "DEMOLITION SECURITY" shall have the meaning set forth in Subsection 2.3.2.

1.1.26 "DEPARTMENT" shall mean the Department of Beaches and Harbors of the County of Los Angeles.

1.1.27 "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.

1.1.28 "DISQUALIFICATION JUDGMENT" shall have the meaning set forth in Subsection 16.14.1.

1.1.29 "EFFECTIVE DATE" shall have the meaning set forth in the first paragraph of this Lease.



1.1.30 “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.

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

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

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

1.1.34 “EXCLUDED CONDITIONS” shall have the meaning set forth in Subsection 1.2.3.

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

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

1.1.37 “EXTENDED TIME” shall have the meaning set forth in Section 15.14.

1.1.38 “FINAL PLANS AND SPECIFICATIONS” shall have the meaning set forth in Subsection 5.2.3.

1.1.39 “FORCE MAJEURE” shall mean any inability of a party to perform any non-monetary obligation under this Lease due to fire or other casualty, earthquake, flood, tornado or other act of God, civil disturbance, war, organized labor dispute, freight embargo, governmental order (including, but not limited to public health orders and local ordinances) or other unforeseeable event beyond the reasonable control of the party required to perform the subject obligation.

1.1.40 “GROSS ERROR” shall have the meaning set forth in Subsection 16.14.3.

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

1.1.42 “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.

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

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

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

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

1.1.47 “LATE FEE” shall have the meaning set forth in Section 4.6.

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

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

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

1.1.51 “MAINTENANCE STANDARD” shall have the meaning set forth in Section 10.1.

1.1.52 “MATERIAL MODIFICATION” shall mean a modification to any Alterations, with respect to which any one of the following applies: (1) the total cost of the modifications exceeds one percent (1%) of the total estimated construction cost of the 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) reduces the number of parking spaces, except for a corresponding reduction in the number of parking spaces required for the Improvements (based on parking ratios required under Applicable Law, without variance) resulting from a reduction in the square footage of the Improvements, or (c) changes the size, configuration or number of anchorage slips.

1.1.53 “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 commercial projects in Marina del

Rey.

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

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

1.1.56 "NOTICE OF COMPLETION" shall have the meaning set forth in Subsection 5.4.7.

1.1.57 "OPERATING COVENANT EXCEPTIONS" shall have the meaning set forth in Section 3.3.

1.1.58 "PARTIAL TAKING" shall have the meaning set forth in Section 6.5

1.1.59 "PAYMENT BOND" shall have the meaning set forth in Subsection 5.3.3.2.

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

1.1.61 "PERFORMANCE BOND" shall have the meaning set forth in Subsection 5.3.3.1.

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

1.1.63 "PORTION SUBJECT TO DEMOLITION" shall have the meaning set forth in Subsection 2.3.2.

1.1.64 "POST TERM REMOVAL PERIOD" shall have the meaning set forth in Subsection 2.3.2.

1.1.65 "PREMISES" shall have the meaning set forth in the recitals to this Lease.

1.1.66 "PRIMARY COVERAGE" shall have the meaning set forth in Subsection 9.1.1.

1.1.67 "PRIME RATE" shall mean the prime or reference rate announced from time to time by Bank of America, N.A. or its 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.

1.1.68 "PUBLIC WORKS DIRECTOR" shall mean the Director of the Department of Public Works of the County of Los Angeles.

1.1.69 "REPLY" shall have the meaning set forth in Section 16.5(3).

1.1.70 "REQUEST FOR ARBITRATION" shall have the meaning set forth in Section 16(a).

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

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

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

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

1.1.75 “STATE” shall mean the State of California.

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

1.1.77 “SUBSTANTIAL COMPLETION” means the completion of the subject work of Improvement, including without limitation, the receipt of a certificate of occupancy (whether temporary or permanent) or other applicable governmental certificate or approval for legal use and occupancy of the subject Improvements (if applicable with respect to the particular work), subject only to minor punch-list items that do not interfere with the use and occupancy of the subject Improvements, provided that any such minor punch-list items are completed in a diligent manner as soon as reasonably possible thereafter.

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

1.1.79 “UMBRELLA COVERAGE” shall have the meaning set forth in Subsection 9.1.1.

1.1.80 “UNINSURED LOSS” shall have the meaning set forth in Section 10.5.

1.1.81 “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 has continuously occupied and/or managed and operated the Premises since March 1, 1962, and (3) the Improvements now existing on the Premises were constructed by Lessee with contractors selected by Lessee. Except as provided in Subsection 1.2.3, 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. Notwithstanding the foregoing, this Subsection 1.2.1 shall not alter the parties’ rights and obligations under the Existing Lease with respect to any environmental conditions existing on the Premises as of the Effective Date.

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 that Lessee may occupy the Premises pursuant to the terms and conditions of this Lease.

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

liability on the part of County with respect to such sewer, storm drain and other improvements.

1.2.4 No Relocation of Premises. County shall have no obligation to relocate Lessee to any other premises at any time, for any reason whatsoever.

## 2. TERM; OWNERSHIP OF IMPROVEMENTS.

2.1 Term. The term of the Existing Lease (“**Term**”) commenced on March 1, 1962. Unless terminated sooner in accordance with the provisions of this Lease, the Term shall expire at 11:59 p.m. on February 28, 2061. For purposes of this Lease, “**Lease Year**” shall mean each calendar year (or partial calendar year) 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 able to be 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 the following condition: (a) as to any portion of the Premises on which the Improvements are required to be demolished, such portion of the Premises shall be surrendered to County in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps; and (b) as to any portion of the Premises on which the Improvements are not required to be demolished, the Premises and such Improvements shall be surrendered to County in the condition in which the Premises and Improvements are required to be maintained and repaired under this Lease.

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 (“**County Removal Notice**”) by the later of (a) one (1) year following delivery by Lessee to County of the Demolition and Removal Report, or (b) 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 or to maintain and repair those Improvements required to be demolished) 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 multiplied by the number of months in the Post Term Removal Period. Such Monthly Minimum Rent amount for the entire Post Term Removal Period shall be paid by Lessee in advance prior to the commencement of the Post Term Removal Period.

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’s delivery of the County Removal Notice 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 a County Removal Notice, Lessee shall within ninety (90) days after receipt of the County Removal Notice, provide County with a written plan which sets forth Lessee's proposed method of securing the discharge of Lessee's removal and restoration obligations pursuant to this subsection. Such security plan shall detail (i) the form of security proposed by Lessee, which security shall be either a deposit of funds, or a letter of credit, bond or other form of security in form and amount, and from an issuer, satisfactory to County ("**Demolition Security**"), and (ii) a schedule satisfactory to County for the delivery by Lessee of the security described in clause (i) above, which schedule shall in all events provide for a full funding of the security not later than two (2) years prior to the expiration of the Term. 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. Any uncured failure by Lessee to deliver the Demolition Security described in this Subsection 2.3.2 shall constitute an Event of Default. 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 County 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 County's Right to Remove Improvements.** 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 therefore.

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 company or other third party provider. Notwithstanding the foregoing sentence, such utility lines, transformer vaults and all other utility facilities (other than any sewer, storm drain or other utility systems which have been dedicated to and accepted by County pursuant to a dedication separate from this Lease), shall be maintained, repaired, and replaced, if and as needed, by Lessee during the Term.

### 3. USE OF PREMISES.

3.1 Specific Primary Use. The Premises and Improvements shall be used by Lessee for (a) non-motorized boating sports instruction, training and ancillary activities including fitness training and conditioning; (b) storage of Lessee-owned boats and ancillary boating equipment; (c) licenses for storage of non-motorized boats and ancillary boating equipment; (d) rental and sales of non-motorized boats and ancillary boating equipment; (e) staff offices; (f) youth camps giving instruction and training for non-motorized boating sports; (g) locker, restroom and meeting room facilities; (h) weight training and conditioning facilities; (i) fundraising and debating activities, subject to the limitations set forth in Sections 3.2.2.7 and 3.2.2.8; (j) parking associated with the foregoing; and (k) such other related and incidental uses as are specifically approved by County (collectively, the foregoing shall be referred to herein as 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.

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.

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.

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 (i) as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease, and (ii) for such boring or drilling as necessary to perform water testing or monitoring, or any dewatering program to relieve soil water pressure.

3.2.2.7 Lessee shall not use the Premises to promote, endorse, or campaign for the nomination or election of any individual to any public office (whether

partisan or non-partisan); provided, that such prohibition shall not preclude Lessee's use of the Premises as a forum for open public debate.

3.2.2.8 Lessee may use the Premises for fundraising activities, provided that Lessee obtains County's advance written approval in each instance and provided, all funds raised shall be applied solely to the operation, maintenance and improvement of the Premises in accordance with this Lease.

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

This Subsection 3.2.2.9 shall not impose liability upon Lessee 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 respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees.

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 and Lessee, without discrimination in violation of Federal, State or County law, and for the generation and realization by County of revenue therefrom. Accordingly, Lessee agrees and covenants that it will operate the Premises and Improvements located thereon fully and continuously (except to the extent that Lessee is prevented from doing so due to Force Majeure, temporary interruption as necessary for maintenance and repair, or temporary interruption as necessary to accommodate renovation, alteration or other improvement work required or permitted to be performed by Lessee under this Lease (collectively, "**Operating Covenant Exceptions**")) in light of these objectives, consistent with the operation of comparable facilities, and that it will use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Lease. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives.

3.4 Days of Operation. The Improvements on the Premises shall be open every day of the year for at least the hours that such Improvements have historically been open, subject to the Operating Covenant Exceptions and except for such holidays, if any, during which similar businesses in Marina del Rey are customarily closed.

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 any applicable Coastal Development Permit, 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 retail, office, restaurant and public park 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 Effective 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 and the right of County or City existing as of the Effective Date or otherwise disclosed to or known to Lessee, as their interests may appear, to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of County or the City to convey such easements and transfer such rights to others.

#### 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 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 (as adjusted pursuant to Section 4.3 below), and (b) the Percentage Rent described in subsection 4.2.2 below (as adjusted pursuant to Section 4.4 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 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.

Commencing on the Effective Date, Lessee shall pay to Landlord Annual Minimum Rent in the amount of Eighteen Thousand One Hundred Sixty-Three and 20/100 Dollars (\$18,163.20), payable in monthly installments of One Thousand Five Hundred Thirteen and 60/100 Dollars (\$1,513.60).

4.2.2 Percentage Rent. For the purposes of this Lease, "**Percentage Rent**" for any given month or year shall be defined as the sum of the amounts set forth in this Subsection 4.2.2. Gross Receipts (as defined herein) from each transaction, sale or

activity of Lessee 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. Lessee shall be obligated to pay to County the following respective percentages of Gross Receipts from or with respect to the following activities on, or uses of, the Premises or Improvements (each a “**Percentage Rent category**”):

SIX PERCENT (6%) of Gross Receipts from all activities or uses on the Premises expressly permitted under this Lease (each a “**Permitted Percentage Rent category**”); and

ONE HUNDRED PERCENT (100%) of Gross Receipts from all activities or uses not expressly permitted under this Lease or otherwise approved in writing by Director (each an “**Unpermitted Percentage Rent category**”).

4.2.2.1 Other Activities. If Director or Lessee reasonably determine that a percentage of Gross Receipts is not suitable or applicable for a particular activity not described above, although permitted hereunder, Director and Lessee shall mutually establish a minimum monthly payment to County as payment for the privilege of engaging therein. Said minimum monthly amount shall be reasonable in accordance with the revenue generated by such activity and shall be included in Percentage Rent, as determined hereunder, in lieu of a percentage of Gross Receipts therefor.

4.2.2.2 Payment of Percentage Rent/Accounting Records and Procedures. 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. Lessee agrees to and shall 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 all money, cash receipts, or other things of value, including but not limited to gross charges, sales, rentals, common area maintenance payments, operating expense or real property tax

reimbursements, fees and commissions made or earned by Lessee, 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 or merchandise, calculated in accordance with the accounting method described in the last sentence of Section 14.1.

(1) Except as otherwise set forth herein, there shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent credit, collection costs, discounts from credit card operations (except as provided in subsection (4)(i) below), insurance and taxes.

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

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

(4) Gross Receipts shall not include any of the following items; provided, however, that the non-inclusion in Gross Receipts of the following items shall not be construed or interpreted to permit the reduction of, or any offset against, Gross Receipts by or for the amount of such 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 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; and
- i. fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card; provided, however, that the amounts excluded under this paragraph (i) in connection with a particular business operation shall not exceed the actual charges for such matters.

**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 any audits of Percentage Rent. Payments attributable to Unpermitted Percentage Rent categories shall not be used in calculating Excess Percentage Rent Payments.

**4.2.2.5 INTENTIONALLY OMITTED.**

**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 shall be reported in the same Percentage Rent 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. Effective on each anniversary of the Effective Date, Annual Minimum Rent shall be increased by the greater of (a) THREE PERCENT (3%), or (b) the percentage equal to the annual percentage change of the Consumer Price Index for the twelve (12) month period that commences on the month that is fifteen (15) months prior to each anniversary of the Effective Date

4.4 Adjustment to Percentage Rents. Effective on the tenth (10<sup>th</sup>) anniversary of the Effective Date, and on each subsequent tenth (10<sup>th</sup>) anniversary thereafter, all Permitted Percentage Rent categories shall be readjusted to the greater of (a) SIX PERCENT (6%) or (b) the then current prevailing rate of the Percentage Rent category that County determines Marina del Rey ground lease charter boat activity is reporting under, which determination by Director shall be conclusive and Lessee shall have no right to arbitrate such determination.

Notwithstanding any contrary provision of this Lease, in connection with the readjustment of Percentage Rent pursuant to this Section 4.4, in no event shall any individual Percentage Rent category (i.e., each of categories (a) and (b) in Subsection 4.2.2 above) ever be reduced below the percentage for such Percentage Rent category set forth in Subsection 4.2.2 above, 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 effect on the determination of the then prevailing rate for any other Percentage Rent category in which the then prevailing percentage might be greater than that set forth in Subsection 4.2.2.

4.5 Payment. Monthly Minimum Rent shall be paid by Lessee in advance. Payments of Minimum Monthly Rent shall be received by County on or before the first day of each calendar month of the Term. Percentage Rent shall be paid by Lessee in arrears. Percentage Rent due, if any, for a given month of the Term shall be received by County on or before the fifteenth (15<sup>th</sup>) day of the calendar month following each month of the Term, calculated as follows: Lessee shall calculate the total Percentage Rent owed to County for the relevant month of the Term; if the resulting amount is a positive number, Lessee shall pay that amount to County; if that amount is a negative number, no Percentage Rent shall be paid to County for that month but nevertheless the Monthly Minimum Rent shall be paid every month of the Term hereof. Percentage Rent payments shall be reconciled annually at the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in Subsection 4.2.2.4. Payment may be made by check or draft issued and payable to The County of Los Angeles, and mailed or otherwise delivered to the Department of Beaches and Harbors, Los Angeles County, Fiscal Unit, 13575 Mindanao, Marina del Rey, California 90292, or such other address as may be provided to Lessee by County.

4.6 Late Fees. 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 under this Lease 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) business 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 Applicable Rate, 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).

## 5. ALTERATIONS.

5.1 Generally. 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.

5.2 Plans and Specifications for Alterations. Lessee shall make no Alterations without notice to and the 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 5.2 pertaining to such Alterations. All Alterations must be consistent with the Permitted Uses set forth in Article 3 of this Lease. Improvements that cost less than Twenty-Five Thousand Dollars (\$25,000) will not require approval by the Department, unless such Improvements are part of a larger or phased project which in the aggregate exceeds Twenty-Five Thousand Dollars (\$25,000), in which event the entire larger or phased project (and not just the portion under Twenty-Five Thousand Dollars (\$25,000)), will require approval. All Improvements that cost Twenty-Five Thousand Dollars (\$25,000) or more require Department approval.

5.2.1 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 all affected boundaries of the Premises and all affected rights-of-way or other areas reserved to County or third parties which are located thereon. After receipt of such plans, Director shall have fifteen (15) calendar days within which to approve or disapprove such submission in writing. Failure of Director to approve such submission in writing within said fifteen (15) day period shall be deemed disapproval of said submission. Following any deemed disapproval of such submission by Director, Director shall, within fifteen (15) calendar 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) 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.

**5.2.2 Preliminary Plans and Specifications.** As soon as reasonably practicable after Director's approval of the materials submitted pursuant to Subsection 5.2.1, 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. The preliminary plans shall be of a detail and scope that is typically associated with design development drawings. 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 (other than Approved Governmental Changes), then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the preliminary plans, outline specifications and construction cost estimates, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold face type:

**“PURSUANT TO SUBSECTION 5.2.2 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU (OTHER THAN APPROVED GOVERNMENTAL CHANGES), 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.”**

5.2.3 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. Final Plans and Specifications. As soon as reasonably practicable after Director's approval of the preliminary plans, outline specifications and construction cost estimates, 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 (other than Approved Governmental Changes), then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the final plans, detailed specifications and construction cost estimate, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold face type:

**“PURSUANT TO SUBSECTION 5.2.3 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU (OTHER THAN APPROVED GOVERNMENTAL CHANGES), YOU HAVE TWENTY-ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM.”**

Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director's objections to the submission. Director's approval shall not be unreasonably withheld, 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.

5.3 Conditions Precedent to the Commencement of Construction. No Alterations shall be commenced until each and all of the following conditions have been satisfied:

5.3.1 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 Alterations.

5.3.2 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 Alterations.

5.3.3 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:

5.3.3.1 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, 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.

5.3.3.2 A corporate surety payment bond, issued by a surety company licensed to transact business as such in the State of California, with Lessee as principal, said company as surety and County as obligee, in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with the approved work, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of

said construction work or for labor done thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the “**Payment Bond**”). The Payment Bond shall be in form and content reasonably satisfactory to County.

In the event that construction is performed by a licensed general contractor on behalf of Lessee, provided that such contractor provides County with a bond or bonds compliant with this Subsection, and in all material respects reasonably satisfactory to County and otherwise complying with this Subsection, County will accept such contractor’s bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required by this Subsection 5.3.3.

#### 5.4 Manner of Construction.

5.4.1 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.

5.4.2 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.

5.4.3 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

5.4.4 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.

5.4.5 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 five (5) 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 5.4.5 shall be changed to “thirty (30) days.”

5.4.6 Rights of Access. Representatives of the Department shall, upon reasonable written notice and at reasonable times during normal business hours, have the right of reasonable access to the Premises and the Improvements thereon without charges or fees, but at no cost or expense to Lessee, for the purpose of ascertaining compliance with the terms and conditions of this Lease, including but not limited to the inspection of the construction work being performed. Such access shall be reasonably calculated to minimize interference with Lessee’s construction and/or operations, and County shall comply with industry safety standards in connection with any such access. Lessee shall have the right to have a representative present to accompany the representatives of the Department 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. County shall be liable for any damage to the Premises to the extent caused by the negligent acts or omissions of the County arising from its entry.

5.4.7 Notice of Completion; As-Built Drawings. Upon completion of any 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 (or such portions thereof as affected by the work and as to which plans would customarily be prepared (e.g., excluding those components of interior renovations as to which plans are not applicable)).

5.4.8 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 trademarks, trade names or logos of Lessee or any such architect, design professional or contractor.

5.5 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 where all of the following conditions are satisfied: (i) the total cost of the project (including all phases and elements thereof) is less than Twenty Five Thousand Dollars (\$25,000.00), 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 Twenty Five Thousand Dollars (\$25,000.00); (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.

5.6 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.

5.6.1 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.

5.6.2 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.



5.6.3 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 any one of the following, as determined by Lessee: (i) a bond which in accordance with the provisions of applicable law results in the removal of such lien from the Premises or (ii) a title insurance policy or endorsement insuring County against any loss or liability arising out of such lien, together with any other evidence requested by County to evidence that such claim will be paid, removed or discharged as a claim against the Premises and/or County.

## 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 Anniversary of the Effective Date, 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 (for such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4). Any determinations of fair market value made pursuant to this Section 6.7 shall be predicated upon the Income Approach. Notwithstanding the foregoing, if County is the condemning authority and the Condemnation pertains only to Lessee’s interest, then Lessee shall be entitled to the entire amount of the Net Awards and Payments.

In case of a 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 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. For such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4.

Third: The balance shall be paid to County.

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

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 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. On the Effective Date, 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 on such date. The Security Deposit shall be increased on the third (3<sup>rd</sup>) anniversary of the Effective Date, and every third (3<sup>rd</sup>) anniversary of the Effective Date thereafter, to an amount equal to three (3) times the Monthly Minimum Rent in effect on such date.

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 13.1.2, shall constitute an Event of Default hereunder.

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

## 8. INDEMNITY.

Except to the extent caused by the gross negligence or willful misconduct of any such indemnitee, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County and its respective Boards, officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County, to the extent arising from or caused by (a) the operation, maintenance, use, or occupation of the Premises or the Improvements by Lessee or its agents, officers, employees, licensees, concessionaires or permittees, including any occurrence in

or on the Premises or Improvements, (b) the acts, omissions, or negligence of Lessee, its agents, officers, employees, licensees, concessionaires or permittees, (c) the failure of Lessee, its agents, officers, employees, licensees, concessionaires or permittees to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or regulation, or (d) the performance of any Alterations. The obligation of Lessee to so relieve, indemnify, protect, and save harmless County and each of its respective Boards, officers, agents, consultants, counsel, employees and volunteers, shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires or permittees, 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 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 or comparable program of self-insurance.

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

Lessee may satisfy the above coverage limits with a combination of primary coverage ("**Primary Coverage**") and excess liability coverage ("**Umbrella Coverage**") (as long as (a) Lessee's Primary Coverage is at least Two Million Dollars (\$2,000,000) per occurrence, Two Million Dollars (\$2,000,000) 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

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

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 and flood, written for the full replacement value of the Improvements, with a deductible no greater than \$250,000 or 5% of the property value, whichever 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.

9.1.5 For construction projects on the Premises, including any 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) or equivalent. 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 any Alterations. The products/completed operations coverage shall continue to be maintained in the case of Alterations for 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 subject 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 One Million Dollars (\$1,000,000) with respect to each contractor, subcontractor, architect, engineer, surveyor or other licensed professional rendering services in connection with the design or construction of 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 subject Alterations.

9.1.5.6 If the use of the Premises or Improvements involves the operation of a marina, berthing, docking, and/or launching of boats and /or pleasure crafts, and/or use of floating docks, piers and/or ramps, 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 this 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. 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. 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. 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 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 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;

(b) 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;

(c) 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;

(d) 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;

(e) that losses, if any, shall be adjusted with and payable to Lessee and County;

(f) 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 or ten (10) business days in case of cancellation for failure to pay the premium;

(g) 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,

(h) 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 and 9.1.3 shall be subject to adjustment as of each fifth (5<sup>th</sup>) 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 (60<sup>th</sup>) day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with Article 16. In no event shall the amounts of liability insurance be decreased as a result of such renegotiation or arbitration. Following such renegotiation or arbitration, the parties shall execute an amendment to this Lease setting forth the renegotiated insurance provisions or the arbitration judgment, as appropriate.

9.7 Notification of Incidents, Claims or Suits. Lessee shall notify County of any accident or incident on or about the Premises which involves injury or property damage over Fifty Thousand Dollars (\$50,000.00) in the aggregate and pursuant to which a claim against Lessee and/or County is made or threatened. 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 (excluding the Excluded Conditions), in conformance with the Minimum Standards regarding the use and occupancy of commercial projects in Marina del Rey (such as the Premises) as revised from time to time by County in a manner consistent with commercially reasonable maintenance standards applicable to other comparable commercial projects in Marina del Rey (the "**Maintenance Standard**"). Any dispute as to whether revisions to the Maintenance Standard adopted by the County from time to time pursuant to the immediately preceding sentence is commercially reasonable shall be submitted to arbitration pursuant to Article 16 of this Lease. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Premises 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 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 (other than the Excluded Conditions) in a safe, clean, wholesome and sanitary condition, 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 reasonably satisfactory to 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. The exclusion of the Excluded Conditions from Lessee's maintenance obligations under this Section 10.1 shall not relieve Lessee from the obligation to repair and restore any damage to the Excluded Conditions caused by Lessee, its agents, employees, or contractors, or by Improvements constructed by or on behalf of Lessee, and Lessee hereby agrees to perform such repair or restoration work at Lessee's sole cost and expense.

10.2 Annual Plan and Budget. On or prior to the date four (4) months prior to the commencement of each Lease Year, Lessee shall submit to County a certified plan and budget for maintenance and improvements to the Premises and Improvements for the succeeding Lease Year. All such plans and budgets shall be prepared in a manner that permits County to

determine the adequacy of Lessee's plan and budget for meeting its maintenance and other obligations under this Lease, and shall be subject to County's reasonable approval.

10.3 Water Quality Management Program and Tree Trimming. During the Term of the Lease, Lessee shall comply with any reasonable water quality management requirements hereafter adopted by County and imposed on a non-discriminatory basis to other similar marina operations in Marina del Rey.

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

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. 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 Director's 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 (3<sup>rd</sup>) 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 (other than the Excluded Conditions, except to the extent damage thereto is caused by the Lessee, its agents, employees, or contractors, or by Improvements constructed by or on behalf of Lessee), 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 unless such event occurs during the last twelve (12) months of the Term. 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 all or substantially all of the Improvements on the Premises (other than the Excluded Conditions) are substantially damaged or destroyed and such damage or destruction resulted from a cause not required to be insured against by this Lease (an “**Uninsured Loss**”), and where all of the following occur:

10.5.1 No more than one hundred (100) days following the Uninsured Loss, Lessee shall notify County of its election 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.

**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.

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. Any entry by County onto the Premises pursuant to this Section 10.9, shall be made in accordance with the following requirements: (i) prior to entry onto the Premises County shall cause each of its contractors to provide to Lessee evidence that such contractor has procured commercial general liability insurance coverage pertaining to such contractor's activities on the Premises, which insurance coverage shall be consistent with County's insurance requirements generally applicable to County contractors, and shall name Lessee as an additional insured; (ii) County's contractors shall comply with industry standard safety requirements; and (iii) County shall repair, or cause its contractors to repair, any damage to the Premises caused by the activities of County and/or its contractors on the Premises pursuant to this Section 10.9 or Section 10.7.

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. Except as expressly permitted below, Lessee may not assign this Lease by operation of law or otherwise, sublease any portion of the Premises, or otherwise permit any other person or entity to occupy or use the Premises without the prior written consent of County, which consent may be conditioned or withheld by County in its sole and absolute discretion. No assignment of this Lease shall release Lessee from its obligations under this Lease. Notwithstanding any contrary provision of this Article 11, but subject to Section 3.1 of this Lease, Lessee shall not be required to obtain County's approval of any license of an individual dry stack storage space in the ordinary course (but not the master license of multiple units) to a person or persons, as long as such license agreement is in the form of the standard dry stack storage license hereafter submitted to and approved by County and the term of such license does not exceed twelve (12) months (each, an "**Approved Storage License**"). Upon request by County, Lessee shall furnish County with a current rent roll respecting the Approved Storage Licenses and a copy of all of such Approved Storage Licenses.

12. NO ENCUMBRANCES. Lessee shall not directly or indirectly pledge, assign, transfer, mortgage, hypothecate, or otherwise grant a security interest in all or any of its interest in this Lease or its leasehold interest in the Premises or any Improvements.



### 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 within ten (10) days after written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee, within such ten (10) day period.

13.1.2 Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 7 of this Lease if not cured within ten (10) days after written notice of such failure.

13.1.3 Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty five (35) days after written notice of Lessee’s failure to perform from Director; provided, however, that where Lessee’s performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty five (35) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty five (35) day period, County will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time.

13.1.4 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 after written notice by County, 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 13.1.3 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

13.2 Limitation on Events of Default. 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, 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, and shall permit such access to the Premises as is reasonably necessary to permit Lessee to comply with its removal obligations.

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

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

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

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

13.4.2 Post-Termination Rent. The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned under this Lease until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided until date Lessee surrenders possession of the Premises to County;

13.4.3 Post Award Rent. The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided;

13.4.4 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 and debris, attorney's fees, court costs, and unpaid Actual Costs; and

13.4.5 Interest Rate. The "worth at the time of award" of the amounts referred to in Subsections 13.4.1 and 13.4.2 is computed by allowing interest at the rate specified in this Lease, or if no such rate is specified, the lawful rate. The "worth at the time of award" of the amounts referred to in Subsection 13.4.3 is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

13.5 Others' Right to Cure Lessee's Default. County, 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).

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 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, and other sums due under this Lease, Lessee shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Accounting Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Premises separate and apart from those in connection with

Lessee's other business operations, if any. With respect to the calculation of Gross Receipts and the preparation of the reports and maintenance of records required herein, Lessee shall utilize either: (i) the accrual method of accounting, or (ii) a modified accrual method of accounting, modified in that (A) expenses are accrued on an approximate basis each month during the fiscal year with full accrual treatment for the full fiscal year financial statements, (B) Gross Receipts are reported monthly on a cash basis with full reconciliation to accrual treatment on the annual statement of Gross Receipts, and (C) depreciation is calculated on a tax basis rather than a GAAP basis.

14.2 Cash Registers. To the extent retail sales are conducted on the Premises, or other cash or credit sales of goods or services are conducted, all such sales shall be recorded by means of cash registers or computers which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

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

14.3 Statement; Payment. No later than the fifteenth (15<sup>th</sup>) 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 for the then current and five (5) prior Accounting Years as hereinabove required shall be kept or made available at the Premises or at another location within Los Angeles County, and County and other governmental authorities shall have the right at any reasonable times and on reasonable prior notice to examine and audit said books and records, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts 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 one (1) business day 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 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 4.6.

14.6 Additional Accounting Methods. Upon written notice from County, County may require the installation of any additional accounting methods or machines which are typically used by major commercial real estate management companies and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

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

14.8 Annual Financial Statements. Within six (6) months after the end of each Accounting Year, or at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall furnish to County a set of certified financial statements prepared by a qualified employee of Lessee with real estate accounting experience, setting forth Lessee's financial condition and the result of Lessee's operations for such Accounting Year and shall include a certification of and unqualified opinion concerning Gross Receipts. All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises.

14.9 Reserved.

14.10 Inadequacy of Records. In the event that Lessee fails to keep the records required by this Article 14 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts, 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 reasonably determined by Director and shall utilize such methodology as Director deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and 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 March 1, 1962. Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the execution of this Lease by Lessee and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".

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

15.4.1.3 Lessee hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County, its officers, agents, employees or volunteers which Lessee now has or may have or asserts in the future which are based upon any defects in the physical condition of the Premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument. The waiver and release set forth in this Subsection 15.4.1.3 (i) shall not apply to the Excluded Conditions, and (ii) shall not alter the parties' rights and obligations under the Existing Lease with respect to any environmental conditions existing on the Premises as of the Effective Date.

15.4.1.4 California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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.

*MB*

Lessee's Initials

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

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

therefrom, provided that County notifies Lessee that Lessee's failure to timely surrender the Premises will cause County to incur such lost profits,

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

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

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

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

15.9 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 15.9. 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, by electronic mail, 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, email, 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).

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  
 Email: \_\_\_\_\_

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  
 Email: \_\_\_\_\_

LESSEE: The Regents of the University of California  
c/o UCLA Real Estate  
10920 Wilshire Boulevard  
Suite 810  
Los Angeles, CA 90024

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: Real Estate Director

\_\_\_\_\_  
Email: realestate@re.ucla.edu

With a Copy to: TBD\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Either party shall have the right to change its notice address by written notice to the other party of such change in accordance with the provisions of this Section 15.9.

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

15.11 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.

15.12 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.

15.13 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.

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

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

15.16 Estoppel Certificates. Each party agrees to execute, within thirty (30) 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.

15.17 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.

15.18 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. 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, 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.

15.19 CASp Disclosure. Pursuant to Section 1938 of the California Civil Code, County hereby advises Lessee that the Premises have not undergone an inspection by a Certified Access Specialist (“CASp”). The following statement is hereby included in this Lease:

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

The parties hereby mutually agree that any inspection by a CASp shall be performed at Lessee’s sole cost and expense and at a time reasonably satisfactory to County so that County may, at its option, have a representative present during any such inspection. The parties hereby mutually agree that any and all repairs or alterations necessary to correct violations of construction-related accessibility standards within the Premises or the Improvements shall be performed by Lessee at Lessee’s sole cost and expense and in accordance with the requirements set forth elsewhere in this Lease. The parties acknowledge and agree that, notwithstanding any presumption set forth in California Civil Code Section 1938, Lessee shall be solely responsible and liable to make any and all repairs or alterations necessary to correct violations of construction-related accessibility standards in any CASp inspection report. Lessee hereby agrees that, to the fullest extent permitted by law, Lessee shall treat any inspection by a CASp and the CASp inspection report as strictly confidential and shall not disclose the content of any such inspection report, except as necessary for Lessee to complete repairs and corrections of violations of construction-related accessibility standards. Lessee acknowledges that Lessee’s obligations set forth in this section are in addition to (and not in lieu of) Lessee’s obligations regarding compliance with the ADA and construction related accessibility standards set forth elsewhere in this Lease, and nothing in this section shall be construed to limit or diminish Lessee’s obligations set forth elsewhere in this Lease.”

## 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 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 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. 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, if the award involves the adjustment of the rent, insurance levels or other matters under the Lease, then County will draft a proposed amendment to the Lease setting forth the relevant terms of such award and transmit such proposed amendment to Lessee for its review. Within ten (10) days after delivery of the proposed amendment to Lessee for its review, Lessee 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. If the parties 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 draftsman shall not apply to this Lease.

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

17.6 Reasonableness Standard. Except where a different standard or an express response 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; Electronic Signatures. This Lease and any other document necessary for the consummation of the transaction contemplated by this Lease may be executed in counterparts, including both counterparts that are executed on paper and counterparts that are in the form of electronic records and are executed electronically. An electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Lease and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called pdf format shall be legal and binding and shall have the same full force and effect as if a paper original of this Lease had been delivered had been signed using a handwritten signature. County and Lessee (i) agree that an electronic signature, whether digital or encrypted, of a party to this Lease is intended to authenticate this writing and to have the same force and effect as a manual signature, (ii) intended to be bound by the signatures (whether original, faxed or electronic) on any document sent or delivered by facsimile or, electronic mail, or other electronic means, (iii) are aware that the other party will rely on such signatures, and (iv) hereby waive any defenses to the enforcement of the terms of this Lease based on the foregoing forms of signature. If this Lease has been executed by electronic signature, all parties executing this document are expressly consenting under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 ("E-SIGN") and California Uniform Electronic Transactions Act ("UETA")(Cal. Civ. Code § 1633.1, et seq.), that a signature by fax, email or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

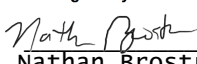
SIGNATURES ON FOLLOWING PAGE

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

THE COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
Chairman, Board of Supervisors

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA, a California corporation

DocuSigned by:  
By:  \_\_\_\_\_  
Name: Nathan Brostrom  
Title: CFO

ATTEST:

CELIA ZAVALA,  
Executive Officer – Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

RODRIGO A. CASTRO-SILVA,  
County Counsel

By: \_\_\_\_\_  
Deputy

**EXHIBIT A**

**LEGAL DESCRIPTION OF PREMISES**

[To be added]

**EXHIBIT B**

**TREE TRIMMING POLICY**

Policy No. 23 and Policy No. 34 of the Marina del Rey Land Use Plan dated February 8, 2012, as such policies are updated, modified or replaced from time to time by County.

**AMENDED AND RESTATED LEASE AGREEMENT**

by and between

COUNTY OF LOS ANGELES

and

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

---

(Parcel 65R -- Lease No. 6051)

Dated as of \_\_\_\_\_, ,, 2021



## TABLE OF CONTENTS

	<b>Page</b>
1. BACKGROUND AND GENERAL .....	1
1.1 Definitions.....	1
1.2 Lease.....	7
2. TERM; OWNERSHIP OF IMPROVEMENTS. ....	9
2.1 Term.....	9
2.2 Ownership of Improvements During Term.....	9
2.3 Reversion of Improvements.....	9
3. USE OF PREMISES.....	12
3.1 Specific Primary Use. ....	12
3.2 Prohibited Uses. Notwithstanding the foregoing:.....	12
3.3 Active Public Use. ....	14
3.4 Days of Operation.....	14
3.5 Signs and Awnings. ....	15
3.6 Compliance with Regulations.....	15
3.7 Rules and Regulations.....	15
3.8 Reservations.....	15
4. PAYMENTS TO COUNTY.....	15
4.1 Net Lease. ....	15
4.2 Rental Payments.....	16
4.3 Adjustments to Annual Minimum Rent.....	20
4.4 Adjustment to Percentage Rents. ....	20
4.5 Payment.....	20
4.6 Late Fees.....	20
5. ALTERATIONS.....	21
5.1 Generally.....	21
5.2 Plans and Specifications for Alterations.....	21
5.3 Conditions Precedent to the Commencement of Construction.....	24
5.4 Manner of Construction.....	25
5.5 Use of Plans.....	26
5.6 Where Director Approval Not Required.....	27
5.7 Protection of County.....	27
6. CONDEMNATION.....	28
6.1 Definitions.....	28
6.2 Parties' Rights and Obligations to be Governed by Lease. ....	28
6.3 Total Taking.....	28
6.4 Effect of Partial Taking.....	29
6.5 Effect of Partial Taking on Rent.....	29
6.6 Waiver of Code of Civil Procedure Section 1265-130.....	29
6.7 Payment of Award.....	30
7. SECURITY DEPOSIT.....	31
7.1 Amount and Use.....	31

## TABLE OF CONTENTS

### (continued)

	Page
7.2 Replacement.....	32
7.3 Renewal.....	32
8. INDEMNITY.....	32
9. INSURANCE.....	33
9.1 Lessee's Insurance. ....	33
9.2 Provisions Pertaining to Property Insurance.....	35
9.3 General Insurance Requirements. ....	36
9.4 Additional Required Provisions.....	36
9.5 Failure to Procure Insurance. ....	37
9.6 Adjustment to Amount of Liability Coverage. ....	37
9.7 Notification of Incidents, Claims or Suits.....	38
10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION. ....	38
10.1 Lessee's Maintenance and Repair Obligations. ....	38
10.2 Annual Plan and Budget. ....	38
10.3 Water Quality Management Program and Tree Trimming.....	39
10.4 Maintenance Deficiencies.....	39
10.5 Option to Terminate for Uninsured Casualty.....	40
10.6 No Option to Terminate for Insured Casualty. ....	40
10.7 No County Obligation to Make Repairs. ....	40
10.8 Repairs Not Performed by Lessee.....	41
10.9 Other Repairs. ....	41
10.10 Notice of Damage. ....	41
10.11 Waiver of Civil Code Sections. ....	41
11. <u>ASSIGNMENT AND SUBLEASE</u> .....	41
12. <u>NO ENCUMBRANCES</u> .....	41
13. DEFAULT. ....	42
13.1 Events of Default. ....	42
13.2 Limitation on Events of Default. ....	42
13.3 Remedies.....	42
13.4 Damages.....	43
13.5 Others' Right to Cure Lessee's Default. ....	44
13.6 Default by County.....	44
14. ACCOUNTING. ....	44
14.1 Maintenance of Records and Accounting Method.....	44
14.2 Cash Registers.....	45
14.3 Statement; Payment. ....	45
14.4 Availability of Records for Inspector's Audit. ....	45
14.5 Cost of Audit.....	45
14.6 Additional Accounting Methods.....	46
14.7 Accounting Year. ....	46
14.8 Annual Financial Statements. ....	46

## TABLE OF CONTENTS

### (continued)

	Page
14.9 Reserved.....	46
14.10 Inadequacy of Records.....	46
15. MISCELLANEOUS.....	47
15.1 Quiet Enjoyment.....	47
15.2 Time is of the Essence.....	47
15.3 County Costs.....	47
15.4 County Disclosure and Lessee's Waiver.....	47
15.5 Holding Over.....	48
15.6 Waiver of Conditions or Covenants.....	49
15.7 Remedies Cumulative.....	49
15.8 Authorized Right of Entry.....	49
15.9 Place of Payment and Filing.....	49
15.10 Service of Written Notice or Process.....	49
15.11 Interest.....	51
15.12 Captions.....	51
15.13 Attorneys' Fees.....	51
15.14 Amendments.....	51
15.15 Time For Director Approvals.....	52
15.16 Time For County Action.....	52
15.17 Estoppel Certificates.....	52
15.18 Indemnity Obligations.....	52
15.19 Controlled Prices.....	52
15.20 CASp Disclosure.....	53
16. ARBITRATION.....	53
16.1 Selection of Arbitrator.....	54
16.2 Arbitrator.....	54
16.3 Scope of Arbitration.....	54
16.4 Immunity.....	54
16.5 Section 1282.....	55
16.6 Statements of Position.....	56
16.7 Written Appraisal Evidence.....	56
16.8 Evidence.....	56
16.9 Discovery.....	57
16.10 Awards of Arbitrators.....	57
16.11 Powers of Arbitrator.....	58
16.12 Costs of Arbitration.....	58
16.13 Amendment to Implement Judgment.....	58
16.14 Impact of Gross Error Allegations.....	58
17. DEFINITION OF TERMS; INTERPRETATION.....	59
17.1 Meanings of Words Not Specifically Defined.....	59
17.2 Tense; Gender; Number; Person.....	59
17.3 Business Days.....	59

**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
17.4 Parties Represented by Consultants, Counsel.....	59
17.5 Governing Law. ....	60
17.6 Reasonableness Standard. ....	60
17.7 Compliance with Code.....	60
17.8 Memorandum of Lease. ....	60
17.9 Counterparts; Electronic Signatures. ....	60
 EXHIBIT A - LEGAL DESCRIPTION OF PREMISES .....	 A-1
EXHIBIT B - TREE TRIMMING POLICY .....	B-1



December 07, 2021

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

Caring for Our Coast

♦ ♦ ♦  
**Gary Jones**  
Director

**Kerry Silverstrom**  
Chief Deputy

**Amy M. Caves**  
Deputy Director

**Carol Baker**  
Deputy Director

Dear Supervisors:

**APPROVAL OF AMENDED AND RESTATED LEASE NO. 6051  
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (PARCEL 65R)  
MARINA DEL REY  
(FOURTH DISTRICT) (4 VOTES)**

**SUBJECT**

Request for approval of an amended and restated lease agreement to Marina del Rey Lease No. 6051 for Parcel 65R to extend the lease term by thirty-nine (39) years, and revise other provisions of the existing lease.

**IT IS RECOMMENDED THAT THE BOARD:**

1. Find that the proposed Amended and Restated Lease No. 6051 is categorically exempt under the California Environmental Quality Act (CEQA) pursuant to Class 1(r) of the Environmental Document Reporting Procedures and Guidelines adopted by your Board, per Section 15301 of the State of California Environmental Quality Act Guidelines County's Environmental Document Reporting Procedures and Guidelines (Existing Facilities).
2. Approve and authorize the Chair of the Board to sign the attached Amended and Restated Lease No. 6051.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The Regents of the University of California, a California nonprofit corporation, (Lessee) requested that the term of Amended and Restated Lease No. 6051 be extended for thirty-nine (39) years, which would bring the term to 99 years, the full amount allowed under California law. The current 60-year Lease term began on March 1, 1962 and is set to



expire on February 28, 2022. The proposed Amended and Restated Lease would extend the term by thirty-nine (39) years to February 28, 2061.

Lessee, through its Marina Aquatic Center (MAC), provides boating safety and education, instructional sailing and windsurfing programs, recreational rowing, kayaking, surfing, youth boating, and stand-up paddling to the general public, including youths, in Los Angeles County and in the greater Southern California region. MAC houses its Junior Rowing Team, youth boating programs, the UCLA Men's and Women's Rowing Teams, and the UCLA Sailing Team. It also offers equipment rentals and inclusive boating and safety programs in watersports to the surrounding community, promoting boater and water safety, education, health, and environmental stewardship. The lease extension would ensure the continued availability of these programs benefiting the general public and youth of Los Angeles County, and the University of California community.

The following chart summarizes the proposed terms of the 39-year lease extension for Parcel 65, as they relate to your Board's existing lease extension policy:

<b>1. PREMISES</b>	Marina del Rey Parcel 65R ( <b>Premises</b> ), which is improved with a boat house and ancillary facilities. The Premises is located at 14001 Fiji Way, immediately adjacent to Ballona Creek, in Marina del Rey.
<b>2. COSTS</b>	UCLA shall pay all costs associated with the negotiation, analysis, review, and document drafting of the Restated Lease, including without limitation costs and fees for County's appraisers, attorneys and expert consultants.
<b>3. ALLOWED USES</b>	Allowed uses of the Premises shall be limited to:  (a) Non-motorized boating sports instruction, training and ancillary activities to include fitness training and conditioning;  (b) Storage of UCLA-owned boats and ancillary boating equipment;  (c) Rental of storage of non-motorized boats and ancillary boating equipment;  (d) Rental and sales of non-motorized boats and ancillary boating equipment;

	<p>(e) UCLA staff offices;</p> <p>(f) Youth camps for instruction and training in non-motorized boating sports;</p> <p>(g) Locker, Restroom and Meeting Room facilities; and</p> <p>(h) Weight Training and Conditioning facilities.</p>
<b>4. TERM</b>	The term of the Restated Lease will continue through February 28, 2061, (i.e., a 39-year extension of the existing ground lease).
<b>5. MINIMUM RENT</b>	<p>\$1,513.60 per month (representing the County's recovery of current lease-management costs)</p> <p>Annual increase by the greater of (a) three percent (3%), or (b) CPI</p>
<b>6. PERCENTAGE RENT</b>	UCLA shall pay SIX PERCENT (6%) of all revenue derived from its use and occupancy of the Premises, and 100% of all revenue derived from use of the Premises that is not expressly authorized by the Restated Lease, or otherwise approved in writing by the Director.
<b>7. SECURITY DEPOSIT</b>	UCLA shall deposit on the Effective Date a security deposit in the amount of three (3) times the Monthly Minimum Rent, as amended.
<b>8. TAXES, UTILITIES</b>	<p>UCLA shall pay any and all possessory interest taxes assessed relative to their Restated Leasehold under the Restated Lease.</p> <p>UCLA shall pay for all costs for utilities to the Premises.</p> <p>UCLA shall pay for all costs for trash removal from the Premises.</p>



<b>9. ARBITRATION</b>	Arbitration in accordance with current standard County provisions.
<b>10. ASSIGNMENT OR SUBLEASE</b>	UCLA may not assign the Restated Lease or sublease any portion of the Premises without County's prior written consent.
<b>11. MAINTENANCE</b>	<p>UCLA shall diligently maintain, at its sole expense, the Premises and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy, and sanitary condition reasonably satisfactory to the County.</p> <p>County shall have no obligation to maintain, repair, or replace any Improvements whatsoever.</p>
<b>12. IMPROVEMENTS</b>	<p>UCLA shall make regular improvements to the Premises to maintain and enhance the Premises as a first-class non-motorized boating facility throughout the term of the Restated Lease.</p> <p>UCLA shall prepare, submit and update annually a certified plan and budget for improvements to the Premises.</p> <p>UCLA may not make any structural or exterior alterations to the Premises and Improvements thereon for a cost of \$25,000 or greater without County's written consent and approval.</p>
<b>13. INSURANCE</b>	UCLA shall obtain and maintain insurance on the Premises and its use and occupancy thereof in accordance with the Restated Lease and County's risk-management assessment at any time and from time to time. UCLA may opt for self-insurance that meets County's coverage requirements.
<b>14. OTHER PROVISIONS</b>	Other than as specified, current standard County provisions are incorporated.



	<p>UCLA shall be and remain in good standing under the laws of its home state and be qualified to do business in California, and shall be fully qualified and in good standing under the laws, rules and regulations of all taxing authorities of competent jurisdiction, including without limitation the United States Department of the Treasury, Internal Revenue Service.</p> <p>UCLA shall deliver to County annually a statement of revenues and expenses as generated by its internal staff and applied to operations on the Premises, and information detailing the operations on the Premises, all fundraising activities on the Premises and how such funds were or shall be applied.</p> <p>UCLA fundraising on the Premises may be allowed, subject to County's prior approval in each instance, and provided all funds raised shall be applied only to operations, maintenance and improvements on and to the Premises.</p> <p>UCLA shall not use the Premises to promote, endorse, or campaign for the nomination or election of any individual to any public office, be it partisan or nonpartisan; however, UCLA may use the Premises as a forum for open public debate.</p> <p>UCLA shall be solely responsible for the cost of compliance with all applicable laws, rules, and regulations applicable to the Premises and Common Areas and UCLA's use and occupancy thereof.</p> <p>County shall not be obligated to relocate or find alternative facilities for UCLA for any reason whatsoever.</p>
--	---

Because the UCLA Boathouse serves a recreational need and public serving purpose for the Marina, a fair market value analysis is not required, and no appraisal was conducted for this lease extension.

### **Implementation of Strategic Plan Goals**

The recommended actions will allow the Lessee to continue using the property to provide youth boating programs, equipment rentals, and water-related classes, as well as housing UCLA's rowing and sailing teams, all of which promote Strategic Plan Goal No. II.2.2 (Expand Access to Recreational and Cultural Opportunities.)

### **FISCAL IMPACT/FINANCING**

Upon your Board's approval of the proposed Amended and Restated Lease No. 6051, the Department does not anticipate any significant impact on the operating budget.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Parcel 65R, commonly known as UCLA Boathouse, is a premiere water-front aquatic center located at 14001 Fiji Way in Marina del Rey. The lease between County and Lessee dated March 1, 1962 (Lease) provided for a 60-year term. The leased premises comprises an area of approximately 0.61 acres of land and 0.21 acres of water, currently improved with an approximately 5,000 square foot, single story, open warehouse building used as a boat storage and maintenance area by the UCLA men's and women's crew racing teams. There are also two twelve-foot wide modular buildings, approximately 1,390 total square feet, used for offices, classrooms, aquatic gear rental, and workshops. The property is used to provide youth boating programs, equipment rentals, and classes in kayaking, rowing, sailing, surfing, stand up paddleboarding, and windsurfing to the general public, as well as operating as the base for the UCLA Men's and Women's Rowing Teams, the UCLA Sailing Team, and the MAC Junior Rowing Team.

The proposed Amended and Restated Lease has been approved as to form by County Counsel. At its meeting of November 10, 2021, the Small Craft Harbor Commission \_\_\_\_\_ the Director's recommendation that your Board approve and execute the proposed Amended and Restated Lease.

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

### **ENVIRONMENTAL DOCUMENTATION**

The proposed Amended and Restated Lease is categorically exempt under the provisions of the California Environmental Quality Act (CEQA) and 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), as the proposed actions involve negligible or no expansion of existing or former use and will not have a significant effect on the environment.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Approval of the proposed Amended and Restated Lease No. 6051 will not significantly impact County services or projects.

**CONCLUSION**

Please instruct the Chair to sign all three originals of the Amended and Restated Lease No. 6051 and have the Executive Officer of the Board send two executed copies of each, as well as a copy of the adopted Board letter, to the Department of Beaches and Harbors. Should you have any questions, please contact Kristal Ghil at (424) 526-7735 or [kghil@bh.lacounty.gov](mailto:kghil@bh.lacounty.gov).

Respectfully submitted,

GARY JONES  
Director

GJ:AC:SP:BY:kg

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



Caring for Our Coast

♦ ♦ ♦  
**Gary Jones**  
Director

**Kerry Silverstrom**  
Chief Deputy

**Amy M. Caves**  
Deputy Director

**Carol Baker**  
Deputy Director

November 10, 2021

TO: Small Craft Harbor Commission

FROM:   
Gary Jones, Director

SUBJECT: **ITEM 8B – APPROVAL OF: AMENDMENT NO. 13 TO LEASE NO. 10200  
CALIFORNIA YACHT CLUB (PARCEL 132S AT 4469 ADMIRALTY WAY)**

Item 8B on your agenda relates to the proposed approval of Amendment No. 13 to Lease Agreement No. 10200 for Parcel 132S in Marina del Rey which extends the lease term by five (5) years.

The recommended action will allow the Lessee to continue using the property as a premiere yacht club and anchorage and extend the Lease term by five years while allowing the Lessee time to develop a long-term proposal for the parcel, all of which promote Strategic Plan Goal No. III.3.2 (Manage and Maximize County Assets).

The attached Board letter provides details relating to Amendment No. 13 to Lease No. 10200. Your Commission's endorsement of the recommendation that the Board approve the amendment is requested.

GJ:AC:SP:BY:kg

Attachment







December 7, 2021

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

Caring for Our Coast

♦ ♦ ♦  
**Gary Jones**  
Director

**Kerry Silverstrom**  
Chief Deputy

**Amy M. Caves**  
Deputy Director

**Carol Baker**  
Deputy Director

Dear Supervisors:

**APPROVAL OF AMENDMENT NO. 13 TO LEASE AGREEMENT NO. 10200  
LAACO, LTD (PARCEL 132S) – MARINA DEL REY  
(FOURTH DISTRICT) (4 VOTES)**

**SUBJECT**

This Board letter requests approval of proposed Amendment No. 13 to Marina del Rey Lease Agreement No. 10200 for Parcel 132S to extend the Lease term for five years.

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Find that the proposed Lease Amendment No. 13 to Lease No. 10200 is categorically exempt from the California Environmental Quality Act pursuant to class 1(r) of the Environmental Documenting Reporting Procedures and Guidelines adopted by your Board per Section 15301 of the State of California Environmental Quality Act Guidelines (Existing Facilities).
2. Approve and authorize the Chair of the Board to sign the attached Amendment No.13 to Lease No. 10200 pertaining to the extension of the term of Lease Agreement No. 10200 an additional five years, ending July 31, 2027.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

LAACO, LTD., a California limited partnership, (Lessee) requested an interim lease term extension for Lease Agreement No. 10200 (Lease), which is set to expire on July 31, 2022. The proposed Amendment No. 13 would extend the Lease term by five years to July 31, 2027. This will allow the Lessee time to explore options for a long-term proposal for the parcel.



### **Implementation of Strategic Plan Goals**

The recommended action will ensure the County maximizes use of County assets, guides strategic investments, and supports economic development, in ways that are fiscally responsible and align with the County's highest priority needs, all of which promote Strategic Plan Goal No. III.3.2 (Manage and Maximize County Assets).

### **FISCAL IMPACT/FINANCING**

The proposed action will have no direct fiscal impact on the County, as the proposed interim extension does not trigger any contractual obligation for the Lessee to pay a fee to County. The County will continue to receive the annual minimum rent as well as percentage rent during the extension period. As of November 1, 2018, the annual minimum rent was calculated at \$1,003,444.95, and is scheduled for another adjustment on November 1, 2021. All annual minimum rent adjustments shall either increase the annual minimum rent or maintain it at the then-current amount.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Commonly known as the California Yacht Club, Parcel 132S contains 253 boat slips and a 20,000 square foot two-story clubhouse and ancillary buildings and occupies 5.69 acres of land and 9.95 acres of water in Marina del Rey (Premises). The 56-year and nine-month ground lease between the County and Lessee was executed in 1965 and is set to expire on July 31, 2022. The proposed Amendment No. 13 would extend the Lease term by five years to July 31, 2027 and allow the Lessee time to develop a long-term proposal for the parcel. The long-term proposal is anticipated to include, among other things, the construction of a public promenade on the Premises and the redevelopment of the Premises to enhance its existing use as a yacht club with boater-serving facilities. In addition, the proposed Amendment No. 13 contemplates a parcel reconfiguration to further enhance the redevelopment of the Premises.

Amendment No. 13 to Lease No. 10200 has been approved as to form by County Counsel. At its meeting on November 10, 2021, the Small Craft Harbor Commission \_\_\_\_\_ the Director's recommendation that your Board approve and execute the proposed lease amendment.

Leasing of County-owned property in Marina del Rey is authorized by Government Codes 25536 and 25907.

**ENVIRONMENTAL DOCUMENTATION**

The proposed Amendment No. 13 to Lease No. 10200 is categorically exempt under the provisions of the California Environmental Quality Act (CEQA) pursuant to class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines and Section 15301 of the State CEQA Guidelines (Existing Facilities), as the proposed action involve negligible or no expansion of existing or former use and will not have a significant effect on the environment.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There will be no impact on current services or projects from your Board's approval of Amendment No. 13 to Lease Agreement No. 10200.

**CONCLUSION**

Please instruct the Chair of the Board to sign all three originals of the Amendment No. 13 to Lease Agreement No. 10200 and have the Executive Officer of the Board send 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 please contact Kristal Ghil at (424) 526-7735 or [kghil@bh.lacounty.gov](mailto:kghil@bh.lacounty.gov) .

Respectfully submitted,

GARY JONES  
Director

GJ:AC:SP:BY:kg

Enclosures (3)

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

**AMENDMENT NO. 13 TO LEASE NO. 10200  
PARCEL NO. 132S – MARINA DEL REY  
(LEASE NO. 25740)**

THIS AMENDMENT TO LEASE ("Amendment No. 13" or "Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date").

**BY AND BETWEEN**

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

**AND**

**LAACO, LTD, a California limited  
partnership, hereinafter referred to as  
"Lessee."**

**RECITALS:**

WHEREAS, County and Lessee entered into Lease No. 10200, dated November 2, 1965, as amended, under the terms of which County leased to Lessee 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 132SR, which leasehold premises (the "**Premises**") are more particularly described in **Exhibit "A"** attached to and incorporated in said lease, as amended (the lease and all amendments are collectively referred to as the "**Lease**").

WHEREAS, County and Lessee desire to enter into this Amendment No. 13 to further amend the Lease, as set forth herein below, pursuant to the terms and conditions hereof.

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

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

2. **Extension of Term.** Pursuant to Section 2 of the Lease, the Term is set to expire on July 31, 2022. County and Lessee hereby agree to extend the Term by an additional five (5) years (the "**Interim Extension**"), so that the Term will now expire on July 31, 2027. For the avoidance of doubt, said extension will not result in an extension of the Term beyond the ninety-nine (99) year limit imposed by California Government Code Section 37396(a). County and Lessee further agree that should the parties agree to an additional extension of the Lease, it shall begin on the earlier of July 31, 2027 or the date both parties agree to commence the remainder of the Term, and shall terminate no later than July 31, 2061 ("**Long-term Extension**"), County may assess reasonable administrative costs and an extension fee based upon the granting of the Interim Extension and any Long-term Extension, which shall be paid by Lessee. Notwithstanding



the foregoing, nothing in this Section 2 or in this Amendment shall be construed to obligate the County to further extend the Lease.

3. **Long Term Extension Conditions.** During the term of the Interim Extension, County and Lessee shall enter into negotiations for an exchange of parcels and the construction of a promenade as described hereafter. Upon the satisfaction of the conditions and events described in Sections 3.1 and 3.2 herein below (which conditions and events shall be approved by County in County's sole and absolute discretion) ("**Extension Conditions**"), County agrees to grant the Long-term Extension whereby the Term shall be extended to and expire no later than July 31, 2061:

3.1 **Parcel Exchange.** The Premises are adjacent to a site commonly referred to as Parcel 131S ("**Parcel 131**") that the County currently leases to Commodore Club Inc., a California corporation ("**Commodore**") (the "**Parcel 131 Lease**"). On or about \_\_\_\_\_, Commodore entered into an Option Agreement whereby Commodore granted to [Caruso entity] an option to assume the Parcel 131 Lease. [Caruso entity] has until \_\_\_\_\_ to exercise its option to assume the Parcel 131 Lease. If [Caruso entity] exercises such option, it shall become the Parcel 131 lessee, but if [Caruso entity] does not exercise such option, then Commodore will remain the Parcel 131 lessee until the expiration of the current Parcel 131 Lease Term expiring [insert date]. Commodore or [Caruso entity], whichever is the Parcel 131 lessee, shall be hereinafter referred to as the "**Parcel 131 Lessee.**" The County, Lessee and the Parcel 131 Lessee, to the extent that the Parcel 131 Lease has not expired, are interested in entering into an agreement to exchange Parcel 131 for a like portion of Parcel 132, which shall include unimpeded ingress and egress from Admiralty Way to Parcel 132 appropriate to support the land use designations set forth in the Marina del Rey Local Coastal Plan and Specific Plan (the "**Parcel Exchange**"), however the County and Lessee reserve their respective rights to approve (in their sole and absolute discretion) the terms of the Parcel Exchange, which is subject to applicable government approvals. Accordingly, during the term of the Interim Extension, Lessee agrees to use commercially reasonable efforts to negotiate and enter into a Parcel Exchange agreement with the County and the Parcel 131 Lessee, to the extent that there is a Parcel 131 Lessee at the time the negotiations take place. In the event that Lessee and the County agree upon the description, terms and conditions of the Parcel Exchange, then they shall reasonably cooperate with any and all efforts to effectuate the Parcel Exchange, including but not limited to, executing any documents required to effectuate such Parcel Exchange and procuring any necessary entitlements and timely providing any requested documentation related to such entitlement applications. It is expressly understood and agreed that the County's approval and granting the Long-term Extension is subject to and contingent upon, among other things, the completion and recordation of the Parcel Exchange pursuant to the terms and conditions of this Amendment and as otherwise acceptable to the County (in the County's sole and absolute discretion). Notwithstanding the foregoing, Lessee shall not be obligated to enter into the Parcel Exchange unless and until the parties agree to the Long-term Extension; and

3.2 **Promenade.** During the term of the Interim Extension, County and Lessee shall enter into a mutually acceptable agreement which will include among other things the construction of a promenade (the "**Promenade**") on the Premises and the redevelopment of the Premises (the "**Promenade Agreement**"). Lessee hereby agrees to use commercially reasonable efforts to develop a proposal for the Promenade and the remainder of the Premises that comprehensively outlines the proposed improvements which would be made during the Long-term Extension. Lessee will provide to County not less than quarterly status updates describing the status of such efforts. Upon receipt of each of Lessee's quarterly status updates, Lessee agrees to meet and confer with the County so that the County will have an opportunity to provide input and recommendations. Furthermore, as reasonably necessary to evaluate the feasibility of Lessee's proposal, County shall also have the right to retain its own consultants. Lessee agrees to reimburse County for the reasonable out-of-pocket costs incurred by County for such consultants. Notwithstanding the provisions of this Section 3.2, by no later than the second (2<sup>nd</sup>) anniversary of the Effective Date, Lessee agrees to submit to County a proposed development concept, including all uses, preliminary drawings, names of retained consultants, and proforma construction budget, etc. It is expressly understood and agreed that the County's approval and granting the Long-term Extension is subject to and contingent upon, among other things, the parties entering into the Promenade Agreement pursuant to the terms and conditions acceptable to the County (in the County's sole and absolute discretion).

4. **No Other Claims.** The Lease is in full force and effect. To Lessee's knowledge, County has met and fulfilled all of its obligations under the Lease and is not in default under the Lease. To Lessee's knowledge, there is no current defense, offset, claim or counterclaim by or in favor of Lessee against the County under the Lease. Furthermore, Lessee has no right to any concession (rental or otherwise) or similar compensation in connection with the Lease and Lessee's renting of the Premises, except as expressly provided in the Lease. There has not been filed by or against Lessee a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or any state thereof, or any other action brought pursuant to such bankruptcy laws with respect to Lessee.

5. **Miscellaneous.**

5.1 **No Modification.** Except as referenced herein, the Lease has not been modified, amended or supplemented, and the Lease is and remains in full force and effect.

5.2 **Time of the Essence.** Time is of the essence with respect to this Amendment.



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

5.4 No Waiver. Except as expressly provided herein, neither Party shall be deemed by reason of its execution of this Amendment to have waived any terms or provisions of the Lease, including, without limitation, any default or Event of Default or any rights and remedies that County may have under the Lease, at law or in equity.

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

5.6 Integration and Merger. This Amendment, the Exhibits attached hereto, and all documents referenced in the Amendment to be executed by Parent or Principal in connection herewith, contain the entire agreement of County and Lessee regarding the modification of the Lease and supersede all prior agreements, term sheets and understandings between County and Lessee, whether written or oral, with respect to the modification of the Lease.

5.7 Survival. All representations and warranties contained in this Amendment shall be deemed to be material and shall survive the effectiveness of the modifications to the Lease contemplated by this Amendment.

5.8 Further Assurances. At either party's request, the other party shall promptly execute any other document or instrument and/or seek any consent or agreement from any third party that is reasonably necessary to evidence or carryout the intent of the parties, as set forth in this Amendment.

5.9 Captions; Use of Certain Terms. The Section titles and captions in this Amendment are for convenience only and shall not be deemed to be part of this Amendment. All pronouns and any variation or pronouns shall be deemed to refer to the masculine, feminine or neuter, as the identity of the parties may require. Whenever the terms referred to herein are singular, the same shall be deemed to mean the plural, as the context indicates, and vice versa.

5.10 Incorporation of Exhibits. All of the Exhibits referred to in and attached to this Amendment are incorporated herein by this reference.


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

[SIGNATURES ON FOLLOWING PAGE]

//

IN WITNESS WHEREOF, County and Lessee have entered into this Amendment No. 13 as of the date first set forth above.

LAACO, LTD, A CALIFORNIA LIMITED  
PARTNERSHIP

By:   
Name: Karen L. Hathaway  
Title: President

THE COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
HILDA L. SOLIS,  
Chair, Board of Supervisors

ATTEST:

CELIA ZAVALA,  
Executive Officer-Clerk of the  
Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

RODRIGO CASTRO-SILVA  
County Counsel

By: \_\_\_\_\_  
Deputy

## Exhibit A



Caring for Our Coast

♦ ♦ ♦  
**Gary Jones**  
Director

**Kerry Silverstrom**  
Chief Deputy

**Amy M. Caves**  
Deputy Director

**Carol Baker**  
Deputy Director

November 10, 2021

TO: Small Craft Harbor Commission

FROM:  for  
Gary Jones, Director

SUBJECT: **ITEM 8C – APPROVAL OF: AMENDMENT NO. 6 TO LEASE NO. 17567  
CAFE DEL REY (PARCEL 131S AT 4451 ADMIRALTY WAY)**

Item 8C on your agenda relates to the proposed approval of Amendment No. 6 of Lease Agreement No. 17567 for Parcel 131S in Marina del Rey which extends the lease term by five years.

The recommended action will allow the Lessee to explore options for a long-term proposal and development for the property and in the interim, revitalize the vacant parcel with a high quality restaurant operator. This will ensure the County maximizes use of County assets, guides strategic investments, and supports economic development, in ways that are fiscally responsible and align with the County's highest priority needs, all of which promote Strategic Plan Goal No. III.3.2 (Manage and Maximize County Assets.)

The attached Board letter provides details relating to Amendment No. 6 to Lease No. 17567. Your Commission's endorsement of the recommendation that the Board consent to the amendment is requested.

GJ:AC:SP:BY:kg

Attachment



**AMENDMENT NO. 6 TO LEASE AGREEMENT  
PARCEL 131S – MARINA DEL REY  
(LEASE NO. 17567)**

THIS AMENDMENT TO LEASE ("**Amendment No. 6**" or "**Amendment**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**BY AND BETWEEN**

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

**AND**

**CAH MARINA I, LLC, a California limited  
liability company, hereinafter referred to as  
"Lessee."**

**RECITALS:**

WHEREAS, County and Lessee's predecessor-in-interest, Commodore Club, Inc., a California corporation ("**Commodore Club**") entered into Lease No. 17567, dated December 8, 1970, as amended, under the terms of which County leased to Commodore Club 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 131S, which leasehold premises (the "**Premises**") are more particularly described in Exhibit "A" attached to and incorporated in said lease, as amended (the lease and all amendments are collectively referred to as the "**Lease**").

WHEREAS, County and Lessee desire to enter into this Amendment No. 6 to further amend the Lease, as set forth herein below, pursuant to the terms and conditions hereof.

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

1. **Definitions.** All initially-capitalized terms used but not defined in this Amendment have the meanings given to such terms in the Lease.
2. **Amendment Conditions.** This Amendment shall be conditioned upon the consummation of the assignment by Commodore Club of its leasehold interest to Lessee (the "**Assignment**") and upon the County's written consent to the Assignment, in the form of Exhibit "B" attached hereto (the "**Consent**") and incorporated herein by this reference. This Amendment shall be effective on the date (the "**Effective Date**") on which said Consent is executed and released to Lessee by the County.



3. **Extension of Term.** Pursuant to Section 2 of the Lease, the Term is set to expire on July 31, 2022 (the period from the Effective Date until July 31, 2022, the "**Remaining Initial Term**"). County and Lessee hereby agree to extend the Term by an additional five (5) years (the "**Interim Extension**"), so that the Term will now expire on July 31, 2027. For the avoidance of doubt, said extension will not result in an extension of the Term beyond the ninety-nine (99) year limit imposed by California Government Code Section 37396(a). County and Lessee further agree that should the parties subsequently agree to an additional extension of the Lease, to begin after July 31, 2027 ("**Long-term Extension**"), County may assess an extension fee based upon the granting of the Interim Extension and any Long-term Extension. Notwithstanding the foregoing, nothing in this Section 3 and/or this Amendment shall be construed to obligate the County to further extend the Lease.

4. **Long Term Proposal.** During the term of the Remaining Initial Term and the Interim Extension, Lessee shall explore options for a long term proposal for the Premises. Accordingly, Lessee agrees to use commercially reasonable efforts to conduct an outreach process to engage and collect input from the community, boating community, civic leaders, and other stakeholders to assist Lessee in the formulation of, and determination of feasibility for, a long term proposal for the Premises. Lessee hereby also agrees to use commercially reasonable efforts to develop a proposal that comprehensively outlines improvement of and investment in the Premises, which efforts shall include without limitation, demonstration that a good faith effort has been made to pursue a long term proposal that is mutually acceptable to Lessee and County. Lessee will provide to County quarterly status updates describing the status of such efforts, commencing on April 1, 2022. Upon receipt of each of Lessee's quarterly status updates, Lessee agrees to meet and confer with the County so that the County will have an opportunity to provide input and recommendations. Furthermore, as reasonably necessary to evaluate the feasibility of Lessee's proposal, County shall also have the right to retain its own consultants. Lessee agrees to reimburse County for its reasonable out-of-pocket costs incurred by County for such consultants in accordance with a budget reasonably pre-approved by Lessee and County. Notwithstanding the provisions of this Section 4, by no later than the earlier of (i) the fourth (4<sup>th</sup>) anniversary of the Effective Date, or (ii) the last date to submit a proposal pursuant to an RFP issued by the County for the development of Parcel 131S. Lessee agrees to submit to County a proposed development concept, including all uses, preliminary drawings, names of retained consultants, and proforma construction budget, etc.

5. **Audit.** Lessee's liability under any County reconciliation or audit for the period covering January 1, 2018 through December 31, 2020 shall not exceed Ten Thousand Dollars (\$10,000.00).



6. **Past Due Rent.** The County hereby waives (i) Fifteen Thousand Dollars (\$15,000.00) of past due rent for the period from April 2020 through March 2021, and (ii) Sixteen Thousand Five Hundred Eighty Eight (\$16,588.00) of past due rent for the period including April and May 2021 pursuant to the County's approved Covid relief measures, however it is understood and acknowledged that although the County Board of Supervisors has authorized such relief, said amount and approval thereof is subject to the Commodore Club's compliance with County Policies and documentation requirements. The County shall look solely to Lessee's predecessor in interest, Commodore Club, for any rent owed prior to the Effective Date, provided however, County's execution and release to Lessee of the Consent shall be subject to the receipt by the County of the past due rent owed by the Commodore Club, and upon such receipt, Lessee and the Commodore Club shall be deemed to have satisfied all past due rent obligations as of such date other than with respect to potential audit reconciliation amounts which may become due and owing in accordance with the terms of the Lease, as amended herein.

7. **Square Foot Rental.** The following section is substituted for Section 12 (SQUARE FOOT RENTAL) of the Lease:

"The annual rental for the Premises shall be Sixty Thousand Dollars (\$60,000), provided that (i) no annual rental shall be due during the Remaining Initial Term, and (ii) during the Interim Extension, Lessee's rental and percentage rental payments to the County shall be calculated according to the following schedule:

August 1, 2022 – July 31, 2023	Total rental and percentage rental owed to the County shall be the greater of (a) \$750 per month or (b) the total percentage rentals otherwise due.
August 1, 2023 – July 31, 2024	Total rental and percentage rental owed to the County shall be the greater of (a) \$1,250 per month or (b) the total percentage rentals due.
August 1, 2024 – July 31, 2025	Total rental and percentage rental owed to the County shall be the greater of (a) \$1,650 per month or (b) the total percentage rentals due.
August 1, 2025 – July 31, 2026	Total rental and percentage rental owed to the County shall be the greater of (a) \$3,300 per month or (b) the total percentage rentals due.
August 1, 2026 – July 31, 2027	Total rental and percentage rental owed to the County shall be the greater of (a) \$5,000 per month or (b) the total percentage rentals due.

All rental payments shall be paid within fifteen (15) days after the close of each calendar month. The rent payment schedule set forth in this Section 12 will toll (on a day for day basis, and no rental amounts shall be due for such periods) in the event of any mandatory governmental shutdowns, capacity restrictions or other prohibitive measures arising from the COVID-19 or other pandemic;" Notwithstanding the foregoing, in the event that the governmental restriction permits the Restaurants to partially operate and be open, the Restaurants shall operate and pay the designated percentage rent as described above.

8. **Percentage Rental.** The following subsection is substituted for the corresponding subsection in Section 13 (PERCENTAGE RENTALS) of the Lease:

"(j) THREE AND ONE-HALF percent (3.5%) of gross receipts from the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities (collectively, "Restaurants"), except that (i) gross receipts from facilities established as a take-out food operation shall be reported under Subsection (s), and (ii) if Lessee enters into a sublease with a term of three (3) or more years after the Effective Date of Amendment No. 6, then the applicable percentage rental for Restaurants shall be FIVE percent (5%) of gross receipts from the operation of Restaurants during the term of such sublease."

9. **General Rent Adjustment and Arbitration.** The following section is substituted for Section 15 (GENERAL RENT ADJUSTMENT AND ARBITRATION) of the Lease:

"15. The rates for square foot rental and all categories of percentage rentals, and liability insurance requirements (hereafter collectively referred to as the Adjusted Rentals") shall not be readjusted by Lessee or the County during the Remaining Initial Term or the Interim Extension."

10. **No Other Claims.** The Lease is in full force and effect. To Lessee's knowledge, County has met and fulfilled all of its obligations under the Lease and is not in default under the Lease. To Lessee's knowledge, there is no current defense, offset, claim or counterclaim by or in favor of Lessee against the County under the Lease. Furthermore, Lessee has no right to any concession (rental or otherwise) or similar compensation in connection with the Lease and Lessee's renting of the Premises, except as expressly provided in the Lease or this Amendment. There has not been filed by or against Lessee a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or any state thereof, or any other action brought pursuant to such bankruptcy laws with respect to Lessee.

11. **Miscellaneous.**

11.1 **No Modification.** Except as referenced herein, the Lease has not been modified, amended or supplemented, and the Lease is and remains in full force and effect.

11.2 Time of the Essence. Time is of the essence with respect to this Amendment.

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

11.4 No Waiver. Except as expressly provided herein, County shall not be deemed by reason of its execution of this Amendment to have waived any terms or provisions of the Lease, including, without limitation, any default or Event of Default or any rights and remedies that County may have under the Lease, at law or in equity.

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

11.6 Integration and Merger. This Amendment, the Exhibits attached hereto, and all documents referenced in the Amendment to be executed by Parent or Principal in connection herewith, contain the entire agreement of County and Lessee regarding the modification of the Lease and supersede all prior agreements, term sheets and understandings between County and Lessee, whether written or oral, with respect to the modification of the Lease.

11.7 Survival. All representations and warranties contained in this Amendment shall be deemed to be material and shall survive the effectiveness of the modifications to the Lease contemplated by this Amendment.

11.8 Further Assurances. At either party's request, the other party shall promptly execute any other document or instrument and/or seek any consent or agreement from any third party that is reasonably necessary to evidence or carryout the intent of the parties, as set forth in this Amendment.

11.9 Captions; Use of Certain Terms. The Section titles and captions in this Amendment are for convenience only and shall not be deemed to be part of this Amendment. All pronouns and any variation or pronouns shall be deemed to refer to the masculine, feminine or neuter, as the identity of the parties may require. Whenever the terms referred to herein are singular, the same shall be deemed to mean the plural, as the context indicates, and vice versa.

11.10 Incorporation of Exhibits. All of the Exhibits referred to in and attached to this Amendment are incorporated herein by this reference.

11.11 Counterparts; Electronic Signatures. This Lease and any other document necessary for the consummation of the transaction contemplated by this Lease may be executed in counterparts, including both counterparts that are executed on paper and counterparts that are in the form of electronic records and are executed electronically. An electronic signature means any electronic sound,

symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Lease and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called pdf format shall be legal and binding and shall have the same full force and effect as if a paper original of this Lease had been delivered had been signed using a handwritten signature. County and Lessee (i) agree that an electronic signature, whether digital or encrypted, of a party to this Lease is intended to authenticate this writing and to have the same force and effect as a manual signature, (ii) intended to be bound by the signatures (whether original, faxed or electronic) on any document sent or delivered by facsimile or, electronic mail, or other electronic means, (iii) are aware that the other party will rely on such signatures, and (iv) hereby waive any defenses to the enforcement of the terms of this Lease based on the foregoing forms of signature. If this Lease has been executed by electronic signature, all parties executing this document are expressly consenting under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 ("E-SIGN") and California Uniform Electronic Transactions Act ("UETA")(Cal. Civ. Code § 1633.1, et seq.), that a signature by fax, email or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

[SIGNATURES ON FOLLOWING PAGE]

//

//

//



IN WITNESS WHEREOF, County and Lessee have entered into this Amendment No. 6 as of the date first set forth above.

CAH MARINA I, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE COUNTY OF LOS ANGELES

By: \_\_\_\_\_  
HILDA L. SOLIS,  
Chair, Board of Supervisors

ATTEST:

CELIA ZAVALA,  
Executive Officer-Clerk of the  
Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

RODRIGO CASTRO-SILVA  
County Counsel

By: \_\_\_\_\_  
Deputy

**EXHIBIT A  
LEASEHOLD PREMISES**

**The land referred to herein is situated in the State of California, County of Los Angeles Unincorporated and described as follows:**

(Lease Parcel No. 131S)

Those portions of Parcels 663 to 666 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, filed in Book 1 Pages 53 to 70 inclusive, of Assessors Maps, in the office of the Recorder of said County, within the following described boundaries:

Beginning at the intersection of the Westerly line of the Easterly 55.13 feet of said Parcel 663 with the Northerly line of said last mentioned parcel; thence Westerly along the Northerly lines of said Parcels 663 to 666 inclusive 302.57 feet to the Easterly line of the Westerly 42.3 feet of said Parcel 666; thence Southerly along said Easterly line 136.00 feet to a line parallel with and 59 feet Northerly, measured at right angles, from the Southerly line of said last mentioned parcel; thence Easterly along said parallel line 154.57 feet; thence Northerly at right angles from said parallel line 18.00 feet to a line parallel with and 77 feet Northerly, measured at right angles, from the Southerly line of said Parcel 664; thence Easterly along said last mentioned parallel line 148.00 feet to said Westerly line; thence Northerly along said Westerly line 118.00 feet to the point of beginning.

APN: 4224-007-903

**EXHIBIT B  
FORM OF CONSENT**

**[SEE ATTACHED]**

## CONSENT TO ASSIGNMENT AND ESTOPPEL CERTIFICATE

### PARCEL 131

December \_\_, 2021

PROPERTY NAME: Cafe Del Rey (Parcel 131)

PROPERTY ADDRESS: 4451 Admiralty Way, Marina Del Rey area of incorporated Los Angeles County, California, more particularly described on Exhibit A attached hereto and incorporated herein (the “**Property**”)

LEASE DATE: December 8, 1970

GROUND LESSOR: County of Los Angeles,  
State of California

GROUND LESSEE: The Commodore Club, Inc., a California corporation

This Consent to Assignment and Estoppel Certificate (“**Consent and Estoppel**”) is made as of December \_\_, 2021 (the “**Effective Date**”) by the County of Los Angeles (“**County**” or “**Lessor**”), as the lessor under that certain Lease dated December 8, 1970, as amended (the “**Lease**”). The Lessor does hereby affirm:

1. Lessor is the owner of the fee simple estate in the Property and is Lessor under the Lease.
2. The County acknowledges that the County has previously consented to the assignment of the Lease to CAH Acquisition Co., LLC, a California limited liability company (“**CAH Acquisition Co.**”) pursuant to that certain Consent to: Assignment of Lease No. 12450 The Warehouse Restaurant (Parcel 133S at 4499 Admiralty Way); Assignment of Lease No. 25740 – Commodore Club (Parcel 134R at 4519 Admiralty Way); Option to Assign and Future Assignment of Lease No. 17567 – Café Del Rey (Parcel 131S at 4451 Admiralty Way) Marina Del Rey (Fourth District) (4 Votes), dated as of August 1, 2017 and adopted by the Board of Supervisors County of Los Angeles as of August 1, 2017. Lessor does hereby consent to the assignment of Lessee’s interest in said Lease to CAH Acquisition Co.’s affiliate and designee, CAH Marina I, LLC, a California limited liability company (the “**Assignee**”).
3. The term of the Lease commenced on the date set forth in the Lease and expires on July 31, 2022, subject to extension pursuant to Amendment No. 6 to Lease Agreement to be entered into by the County on or about the date hereof (the “**Sixth Amendment**”).



4. A true and complete list of the documents comprising the Lease, including all amendments, supplements and other modifications thereto is attached hereto as Exhibit B. The documents listed on Exhibit B hereto represent the entire agreement between Lessor and Lessee as to the Lease and the premises leased thereunder and the Lease has not otherwise been modified, supplemented or amended in any way.
5. Rents and other charges have been fully paid under the Lease through December 31, 2017, as verified by a formal audit (the "**Prior Audit**") for the period ending such date (the "**Effective Audit Date**"), and the total delinquent amount of \$9,334 revealed by the September 29, 2020 Final Audit Letter sent to Lessee has been paid to Lessor as of the date hereof. Subject to County audit rights for periods after the Effective Audit Date that might affect the calculation of the annual square foot rental amounts required to be paid under the Lease, the current monthly minimum rental payable under the Lease as of the date hereof is \$8,294.00. Subject to the foregoing: (a) annual minimum rental as required by the Lease has been timely and fully made since the Effective Audit Date for all months up through and including the Effective Date, and (b) monthly percentage rent payments have been made through the month of February 2020 (for gross receipts reported for the month of February). From the period of April 2020 through November 31, 2021, the accrued amount of previously unpaid minimum rent was \$157,586.00; provided, however, the County agreed to waive Fifteen Thousand Dollars (\$15,000) of unpaid rent in accordance with the Sixth Amendment and an additional Sixteen Thousand Five Hundred Eighty Eight Dollars (\$16,588) of past due rent pursuant to the County's approved Covid relief measures. All such payments (in both clauses (a) and (b)) are subject to audit for periods from and after the Effective Audit Date; provided, however, the County has acknowledged and agreed pursuant to the Sixth Amendment that, notwithstanding anything to the contrary set forth herein or in the Lease, Lessee's liability under any County reconciliation or audit for the period from and after the Effective Audit Date up through and including December 31, 2020 shall not exceed Ten Thousand Dollars (\$10,000). In the event any such audit reveals a rental deficiency, Lessee and Assignee shall be liable jointly and severally for payment of all unpaid deficiencies accruing on and after the Effective Audit Date subject to the foregoing limitation. Annual square foot rental and percentage rental rates under the Lease are subject to adjustment in accordance with the terms and provisions of the Lease. The amount of the security deposit required under the Lease is \$8,294.00. The amount of \$10,403.52 has been paid to Lessor. No portion of such security deposit has been applied by Lessor. No representation is made herein by Lessor as to the current status of Lessee's payments of possessory interest taxes or any other taxes, assessments or similar service charges which may be due by the lessee to the County or other governmental or regulatory body in connection with the Property.
6. The County agrees that pursuant to the Sixth Amendment, the annual minimum rent shall not be further adjusted during the "Remaining Initial Term" (as such term is defined in the Sixth Amendment), and during the "Interim Extension" (as such term

is defined in the Sixth Amendment) the annual minimum rent shall be adjusted solely to the extent set forth in the Sixth Amendment.

7. Lessor acknowledges that Caruso Management Company, Ltd., a California limited partnership has been approved as the property management company for the Property and all improvements located thereon upon the consummation of the assignments to Assignee.
8. The Lease is in full force and effect.
9. Subject to any matters that may be disclosed by the audit described in Section 5 above, to the current actual knowledge of Lessor, there is no existing uncured default under the Lease with respect to any monetary or non-monetary provision of the Lease, and to the current actual knowledge of Lessor, no event has occurred which, with the passage of time or giving of notice, or both, would constitute a default with respect to any non-monetary provision of the Lease. Notwithstanding any contrary provision of this Section 9, County does not waive Lessee's obligations under the Lease to cure any Property defects that are Lessee's obligation to cure under the Lease, whether occurring prior to or during the extension period, that pose a health and safety risk, in accordance with the terms of the Lease. County has made no inspection of the Premises or investigation or inquiry as to Lessee's performance of any non-monetary obligation under the Lease, except for a sewer lateral inspection that occurred in 2019 and revealed defects present, requiring a cleanout of the sewer laterals, and there may be additional maintenance issues not set forth in said report.
10. Lessor has not assigned, conveyed, transferred, sold, encumbered or mortgaged its interest in the Lease or the Property and there are no mortgages, deeds of trust or other security interests encumbering Lessor's fee interest in the Property.
11. The undersigned individual is duly authorized to execute this certificate on behalf of Lessor.
12. The legal description for the Property that is set forth in the Lease describes both the boundaries of the leasehold estate and easements that have been reserved by the Lessor in the leasehold. Until the expiration of the Term or sooner termination of the Lease, Lessee is the owner of the Improvements, except for certain Improvements owned by the Lessor, including without limitation, utility lines, transformer vaults and all other utility facilities to the extent that they are not owned by a utility. Lessee shall have the use of all Improvements on the Premises whether owned by Lessor or Lessee.
13. This Consent to Assignment and Estoppel Certificate may be executed in counterparts, and when all counterpart documents are executed, counterparts shall constitute a single integrated document.

The truth and accuracy of the certifications contained herein may be relied upon by Lessee and Assignee and their respective successors, assigns and transferees, and lenders and said certifications shall be binding upon Lessor and its successors and assigns, and inure to the benefit of Lessee and Assignee and their respective successors, assigns and transferees and lenders. This Consent to Assignment and Estoppel Certificate shall not be deemed to alter or modify any of the terms and conditions of the Lease.

For the avoidance of doubt, in no event shall the certifications contained in this estoppel certificate modify the Lease, with the sole effect of said certifications being to estop Lessor from taking a position against any recipient which is inconsistent with the certifications contained in this estoppel certificate, to the extent such recipient (a) did not have actual knowledge of facts contrary to those contained herein, and (b) reasonably relied to its detriment upon the certifications contained herein.

This Consent to Assignment and Estoppel Certificate may be executed in counterparts, including both counterparts that are executed on paper and counterparts that are in the form of electronic records and are executed electronically. An electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Consent to Assignment and Estoppel Certificate and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called pdf format shall be legal and binding and shall have the same full force and effect as if a paper original of this Consent to Assignment and Estoppel Certificate had been delivered had been signed using a handwritten signature. County (i) agrees that an electronic signature, whether digital or encrypted, of County is intended to authenticate this writing and to have the same force and effect as a manual signature, (ii) intends to be bound by the signatures (whether original, faxed or electronic) on any document sent or delivered by facsimile or, electronic mail, or other electronic means, (iii) is aware that the the parties authorized to rely on this Consent to Assignment and Estoppel Certificate will rely on such signatures, and (iv) hereby waives any defenses to the enforcement of the terms of this Consent to Assignment and Estoppel Certificate based on the foregoing forms of signature. If this Consent to Assignment and Estoppel Certificate has been executed by electronic signature, all parties executing this document are expressly consenting under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 ("E-SIGN") and California Uniform Electronic Transactions Act ("UETA")(Cal. Civ. Code § 1633.1, et seq.), that a signature by fax, email or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

[SIGNATURES ON FOLLOWING PAGE]

**LESSOR:**

COUNTY OF LOS ANGELES

By: \_\_\_\_\_

Gary Jones, Director of Department of  
Beaches and Harbors

**APPROVED AS TO FORM:**

RODRIGO CASTRO-SILVA  
County Counsel

By: \_\_\_\_\_

Deputy

**APPROVED AS TO FORM:**

GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**The land referred to herein is situated in the State of California, County of Los Angeles Unincorporated and described as follows:**

(Lease Parcel No. 131S)

Those portions of Parcels 663 to 666 inclusive, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, filed in Book 1 Pages 53 to 70 inclusive, of Assessors Maps, in the office of the Recorder of said County, within the following described boundaries:

Beginning at the intersection of the Westerly line of the Easterly 55.13 feet of said Parcel 663 with the Northerly line of said last mentioned parcel; thence Westerly along the Northerly lines of said Parcels 663 to 666 inclusive 302.57 feet to the Easterly line of the Westerly 42.3 feet of said Parcel 666; thence Southerly along said Easterly line 136.00 feet to a line parallel with and 59 feet Northerly, measured at right angles, from the Southerly line of said last mentioned parcel; thence Easterly along said parallel line 154.57 feet; thence Northerly at right angles from said parallel line 18.00 feet to a line parallel with and 77 feet Northerly, measured at right angles, from the Southerly line of said Parcel 664; thence Easterly along said last mentioned parallel line 148.00 feet to said Westerly line; thence Northerly along said Westerly line 118.00 feet to the point of beginning.

APN: 4224-007-903

## **EXHIBIT B**

### **GROUND LEASE AND ALL AMENDMENTS**

1. Lease Agreement, Parcel No. 131S, entered into December 8, 1970
2. Amendment No. 1 to Lease for Parcel(s) 131S, entered into November 22, 1974
3. Amendment No. 2 to Lease for No. 17567 Parcel No. 131S, entered into November 22, 1974
4. Amendment No. 3 to Lease No. 17567 Parcel No. 131S, entered into August 8, 1989
5. Amendment No. 4 to Lease No. 17567 Parcel No. 131S, entered into July 20, 1999
6. Amendment No. 5 to Lease No. 17567 Parcel No. 131S, entered into June 15, 2010





December 7, 2021

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

Dear Supervisors:

**APPROVAL OF AMENDMENT NO. 6 TO LEASE AGREEMENT NO. 17567  
LESSEE (PARCEL 131S) – MARINA DEL REY  
(FOURTH DISTRICT) (4 VOTES)**

**SUBJECT**

This Board letter requests approval of proposed Amendment No. 6 to Marina del Rey Lease Agreement No. 17567 for Parcel 131S to extend the Lease term for five years.

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Find that the proposed Lease Amendment No. 6 to Lease No. 17567 is categorically exempt from the California Environmental Quality Act pursuant to class 1(r) of the Environmental Documenting Reporting Procedures and Guidelines adopted by your Board per Section 15301 of the State of California Environmental Quality Act Guidelines (Existing Facilities).
2. Approve and authorize the Chair of the Board to sign the attached Amendment No.6 to Lease No. 17567 pertaining to the extension of the term of Lease Agreement No. 17567 an additional five years, ending July 31, 2027.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

On August 1, 2017, your Board consented to the option to assign and the future assignment of Parcel 131S, Lease Agreement No. 17567, from The Commodore Club, Inc., a California corporation (Lessee or Assignor) to CAH Acquisition Co., LLC, a California limited liability company (Assignee) and its permitted successors, and authorized the Director of Beaches and Harbors to execute and deliver documentation to evidence the future assignment of the leasehold to the Assignee (if consummated), and other ancillary documentation (including, without limitation, an estoppel certificate

Caring for Our Coast

♦ ♦ ♦

**Gary Jones**  
Director

**Kerry Silverstrom**  
Chief Deputy

**Amy M. Caves**  
Deputy Director

**Carol Baker**  
Deputy Director



and consent to lease assignment) as required to facilitate the assignment of Parcel 131S.

Assignee exercised its option and the leasehold assignment is scheduled to be complete by December 31, 2021. As part of the assignment, County will be paid Lessee's deferred rent balance, inclusive of eligible economic relief rent waivers, in the amount of \$84,528.00. Lessee had accrued the deferred rent balance due to the COVID-19 Pandemic, which caused its restaurant operator to cease operations and vacate the premises. Lessee has been unable to generate revenue nor attract a new restaurant operator.

The current Lease term is set to expire on July 31, 2022. The proposed Amendment No. 6 would extend the term by five years to July 31, 2027 and is conditioned upon the consummation of the assignment of the Lease. This will allow the proposed Assignee time to explore options for a long-term proposal and development for the property. The proposed Amendment No. 6 would also revise the rent structure in consideration of the current operating challenges and allow the proposed Assignee to revitalize the vacant parcel with creative eateries and secure a longer term, first class restaurant operator in the interim. The Assignee and its property management company, CARUSO MANAGEMENT COMPANY, Ltd., a California limited partnership, is well-positioned to attract high quality tenants with its requisite experience from managing and operating well-known Los Angeles area upscale properties, such as The Americana at Brand, The Grove, and Waterside in Marina del Rey.

### **Implementation of Strategic Plan Goals**

The recommended action will ensure the County maximizes use of County assets, guides strategic investments, and supports economic development, in ways that are fiscally responsible and align with the County's highest priority needs, all of which promote Strategic Plan Goal No. III.3.2 (Manage and Maximize County Assets).

### **FISCAL IMPACT/FINANCING**

The proposed action will have no direct fiscal impact on the County, as the proposed Lease term extension does not trigger any contractual obligation for the Lessee to pay a fee to County. Additionally, the Department anticipates there will be no impact to its operating budget from the revised rent structure herein and as further detailed in the attached Amendment No. 6.



### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Commonly known as restaurant Café del Rey, Parcel 131S is improved with a 191-seat restaurant on approximately 0.88 acres of land in Marina del Rey. The 55-year ground lease between the County and Lessee was executed in 1967 and is set to expire on July 31, 2022. The proposed Amendment No. 6 would extend the term by five years to July 31, 2027.

Leasing of County-owned property in Marina del Rey is authorized by Government Codes 25536 and 25907.

At its meeting on November 10, 2021, the Small Craft Harbor Commission \_\_\_\_\_ the Director's recommendation that your Board approve and execute the proposed lease amendment. Amendment No. 6 to Lease No. 17567 has been approved as to form by County Counsel.

### **ENVIRONMENTAL DOCUMENTATION**

The proposed Amendment No. 6 to Lease No. 17567 is categorically exempt under the provisions of the California Environmental Quality Act (CEQA) pursuant to class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines and Section 15301 of the State CEQA Guidelines (Existing Facilities), as the proposed action involve negligible or no expansion of existing or former use and will not have a significant effect on the environment.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There will be no impact on current services or projects from your Board's approval of Amendment No. 6 to Lease Agreement No. 17567.

### **CONCLUSION**

Please instruct the Chair of the Board to sign all three originals of the Amendment No. 6 to Lease Agreement No. 17567 and have the Executive Officer of the Board send 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 please contact Kristal Ghil at (424) 526-7735 or [kghil@bh.lacounty.gov](mailto:kghil@bh.lacounty.gov).

Board of Supervisors  
December 7, 2021  
Page 4

Respectfully submitted,

GARY JONES  
Director

GJ:AC:SP:BY:kg

Enclosures (3)

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



Caring for Our Coast

♦ ♦ ♦  
**Gary Jones**  
Director


**Kerry Silverstrom**  
Chief Deputy

**Amy M. Caves**  
Deputy Director

**Carol Baker**  
Deputy Director

November 10, 2021

TO: Small Craft Harbor Commission

FROM:  for  
Gary Jones, Director

SUBJECT: **ITEM 8D – PARCEL 55 (CHARTER DOCK) MANAGEMENT  
CONTRACT SOLICITATION PROCESS REPORT**

Item 8D on your agenda is an interim report by the Department of Beaches and Harbors (DBH) regarding the management contract solicitation process for the Marina del Rey Parcel 55 charter dock (Dock 55).

The current Dock 55 management contract expires on March 31, 2022. DBH staff has been working on the logistics to maintain the continuity of the charter operations at Dock 55 while developing a solicitation plan that would improve the totality of the operation in line with the Strategic Plan Goals of the Department in areas such as quality service, environmental stewardship, public safety, social services, etc.

SP:at





Caring for Our Coast

♦ ♦ ♦  
**Gary Jones**  
Director

**Kerry Silverstrom**  
Chief Deputy

**Amy M. Caves**  
Deputy Director

**Carol Baker**  
Deputy Director

November 10, 2021

TO: Small Craft Harbor Commission

FROM: Gary Jones, Director

SUBJECT: ITEM 9 – ONGOING ACTIVITIES REPORT

**BOARD ACTIONS ON ITEMS RELATING TO MARINA DEL REY**

On October 19, 2021 The Board of Supervisors conducted a public hearing on adoption of resolutions, acting as the Governing Body of the Los Angeles County Waterworks District No. 29, Malibu, the Marina del Rey Water System (3 and 4), and the Los Angeles County Waterworks District No. 40, Antelope Valley (5), approving the 2020 Urban Water Management Plan for the Los Angeles County Waterworks District No. 29, Malibu and the Marina del Rey Water System, the 2020 Urban Water Management Plan for the Los Angeles County Waterworks District No. 40, Antelope Valley, and the 2020 Water Shortage Contingency Plan for the Los Angeles County Waterworks District No. 29, Malibu, the Marina del Rey Water System and the Los Angeles County Waterworks District No. 40, Antelope Valley.

**REGIONAL PLANNING COMMISSION'S CALENDAR**

No items relating to Marina del Rey were on October 2021 Regional Planning Commission agenda.

**CALIFORNIA COASTAL COMMISSION CALENDAR**

No items relating to Maria del Rey were on the October 2021 California Coastal Commission agenda.

**REDEVELOPMENT PROJECT STATUS REPORT**

The updated "Marina del Rey Redevelopment Projects Report" is attached.

**DESIGN CONTROL BOARD MINUTES**

The September 2021 meeting minutes are pending.





**MARINA DEL REY SLIP REPORT**

In August 2021, the overall vacancy rate across all anchorages in Marina del Rey stood at 12.3%. Adjusted to remove out-of-service slips and 50% of available double slips, the vacancy rate within Marina del Rey stood at 10.9%. The vacancy data by anchorage and slip length are provided in the document attached.

**CALIFORNIA COASTAL COMMISSION SLIP REPORT**

Pursuant to certain conditions of the Coastal Development Permit (5-11-131) issued by the California Coastal Commission, the County is required to maintain certain minimum thresholds of slip sizes as a percentage of the entire Marina. A report of the percentage of each size category as a percentage of all available slips in the Marina is attached.

**FISHERMAN'S VILLAGE PROGRESS REPORT**

No further updates for this item.

**ILLEGAL BOAT CHARTER ENFORCEMENT**

DBH Code Enforcement Unit continues to monitor and deter illegal charter boat activities at the public launch ramp and Chace Park docks. The County Sheriff's Marina del Rey station and the US Coast Guard have an enforcement program for charter boat activities in Marina del Rey. Members of the public are encouraged to report illegal boat charters to the Harbor Master at (310) 482-6000 and USCG at (310) 521-3770 or [SECLALB@uscg.mil](mailto:SECLALB@uscg.mil), or to DBH at [info@bh.lacounty.gov](mailto:info@bh.lacounty.gov).

GJ:AC:SP:da

Attachments (4)

**Marina del Rey Redevelopment Projects Report  
As of October 28, 2021**

<b>Parcel No. Project Name</b>	<b>Representative</b>	<b>Redevelopment Proposed</b>	<b>Massing and Parking</b>	<b>Status</b>
<b>9</b> -- Proposed Hotel on northern portion of Parcel 9U, wetland park on southern portion.	Sam Hardage	<p>* Proposed dual building hotel, 6-story, 72'-high Marriott Residence Inn, and, 5-story, 61'-high Courtyard Marriott.</p> <p>*New promenade improvements, restaurants and amenities.</p> <p>* Wetland public park project (1.46 acres).</p>	<p><b>Massing</b> -- One six-story, 72' high hotel and one five-story 61' high hotel.</p> <p><b>Parking</b> -- 231 parking spaces serving the hotel and wetland park.</p>	<p><b>Proprietary</b> -- Option was approved by BOS on 10/6/15. Lease was executed on July 31, 2017</p> <p><b>Regulatory</b> -- January 6, 2016, the BOS' approval of the hotel project was appealed to the CCC. On May 13, 2016, the CCC granted a time extension, until December 12, 2016, for the wetland park CDP. On July 11, 2016, work began on the wetland park. On April 26, 2017, the DCB approved the final design of the hotel project. Construction of the hotel began on August 11, 2017, and Certificate of Occupancy was issued on August 2, 2021</p>
<b>10/14 (FF)</b> -- Neptune Marina/ Legacy Partners	Tim O'Brien	<p>* Demolish existing facilities and build 526 apartments.</p> <p>* 161-slip marina + 7 end-ties.</p> <p>* 28 foot-wide waterfront promenade.</p>	<p><b>Massing</b> -- Four 55' tall clustered 4-story residential buildings over Parking with view corridor.</p> <p><b>Parking</b> -- 1,012 project required parking spaces to be provided (103 public Parking spaces to be replaced off site)</p> <p>* Replacement of public parking both on and off site.</p>	<p><b>Proprietary</b> -- December 1, 2015, the BOS agreed to extend the term of the option for up to one year. Lessee submitted Lease Assignments and Assignments of Options to extend existing lease for Parcel 10 and the lease for Parcel 14. The SCHC endorsed the assignments on September 21, 2016 and the BOS approved on October 4, 2016. Parcel 10 and 14 Lease as executed on 12/9/16.</p> <p><b>Regulatory</b> -- On January 21, 2015, the final project design was approved by the Design Control Board. On December 12, 2016, work began on the project.</p> <p>10/25/2021: Lessee indicated that all required improvements were completed, including on 9U. Lessee is waiting for DPW Traffic Engineer to sign off on its work on Via Marina, then Lessee will contact Building and Safety for the Certificate of Occupancy.</p>

**Marina del Rey Redevelopment Projects Report  
As of October 28, 2021**

Parcel No. Project Name	Representative	Redevelopment Proposed	Massing and Parking	Status
44 - Pier 44/Pacific Marina Venture	Michael Pashaie/ David Taban	<p>* Build 5 new visitor serving commercial and dry storage buildings</p> <p>* 82,652 s.f. visitor serving commercial space</p> <p>* 141 slips + 5 end ties and 57 dry storage spaces</p>	<p><b>Massing</b> -- Four new visitor-serving commercial buildings, maximum 36' tall and one dry stack storage building, 65' tall. 771.5 lineal feet view corridor proposed.</p> <p><b>Parking</b> -- 381 at grade Parking spaces will be provided with shared Parking agreement (402 Parking spaces are required).</p>	<p><b>Proprietary</b> -- The lessee initialed a revised Term Sheet on July 9, 2015. On January 13, 2016, SCHC endorsed DBH's recommendation to grant lessee an option to extend the lease term for 39 years. The Grant of Option was approved by the BOS in October 2016. Amended and restated lease was executed on August 24, 2017. Construction began on September 11, 2017. Trader Joe's opened on 4/18/19. The center is beginning to open. KazuNori Sushi, Hiho Burger, and Uovo Pasta are now open to the public.</p> <p><b>Regulatory</b> -- February 9, 2016, the BOS approved the project, which was appealed to the CCC. CCC denied the appeal on June 9, 2016.</p> <p><b>Regulatory Matter:</b> Shared Parking Agreement.</p> <p>10/28/2021: Lessee received its TI permits to build out several sublessees' offices. Lessee anticipates the buildout to be complete by early 2022. However, a 40,000 sq.ft. building is currently vacant. Additionally, DPW will not issue the final C of O until all buildings have been occupied. The lessee is in negotiation with several prospective tenants for the vacant space.</p>



**Marina del Rey Redevelopment Projects Report  
As of October 28, 2021**

<b>Parcel No. Project Name</b>	<b>Representative</b>	<b>Redevelopment Proposed</b>	<b>Massing and Parking</b>	<b>Status</b>
<b>113 --</b> Mariner's Village	Michael Sondermann	<ul style="list-style-type: none"> <li>* Renovation of 981 apartments</li> <li>* Improvements to promenade</li> <li>*</li> </ul>	<p><b>Massing</b> – Existing buildings to remain.</p> <p><b>Parking</b> – Existing parking to remain.</p>	<p><b>Proprietary</b> – Item opened on 9/23/2013. On October 30, 2018, the Los Angeles County Board of Supervisors approved an option for an amended at restated lease. The revised project will include 20% affordable units.</p> <p><b>Regulatory</b> – The Regional Planning Commission approved an after-the-fact Coastal Development Permit (CDP) for the previous removal of waterbird nests. The appeal of that CDP was approved by the Coastal Commission in September 8, 2021.</p> <p>10/28/2021: Lessee is scheduled to present at the Marina del Rey Design Control Board meeting scheduled for November 17, 2021.</p>

Marina del Rey Slip Vacancy Report

Sep-21	17-25			26-30			31-35			36-40			41-45			46-50			51+			TOTAL VACANT	TOTAL AVAILABLE	%VAC	TTL OFF-LINE	TTL including OFF-LINE
Marina	VAC	AVAIL	%VAC	VAC	AVAIL	%VAC	VAC	AVAIL	%VAC	VAC	AVAIL	%VAC	VAC	AVAIL	%VAC	VAC	AVAIL	%VAC	VAC	AVAIL	%VAC					
P1																			1	5	20.0%	1	5	20.0%		
P7	1	8	12.5%	9	80	11.3%	7	44	15.9%	1	42	2.4%		12	0.0%		7	0.0%		21	0.0%	18	214	8.4%		
P8	1	15	6.7%		48	0.0%	6	82	7.3%		38	0.0%		16	0.0%	1	7	14.3%		1	0.0%	8	207	3.9%		
P10	1	9	11%	41	85	48%	10	44	23%	4	22	18%										56	160	35.0%		
P12							9	30	30.0%	8	53	15.1%	7	58	12.1%	8	44	18.2%	2	31	6.5%	34	216	15.7%		
P13					3	0.0%	3	33	9.1%		70	0.0%	4	36	11.1%	3	36	8.3%		8	0.0%	10	186	5.4%		
P15	20	113	17.7%	3	40	7.5%	8	59	13.6%		11	0.0%										31	223	13.9%		
P18	10	198	5.1%	3	68	4.4%		41	0.0%		39	0.0%		26	0.0%		18	0.0%		34	0.0%	13	424	3.1%		
P20	11	42	26.2%		59	0.0%	2	21	9.5%		9	0.0%		8	0.0%							13	139	9.4%		
P21	30	121	24.8%	3	51	5.9%					10	0.0%										33	182	18.1%		
P28	3	9	33.3%	45	121	37.2%		54	0.0%		22	0.0%	21	68	30.9%	7	24			1	0.0%	76	299	25.4%		
P30	1	8	12.5%	9	70	12.9%	10	51	19.6%		33	0.0%	1	26	3.8%		52	0.0%		55	0.0%	21	295	7.1%		
P41	17	90	18.9%	1	24	4.2%	7	34	20.6%													25	148	16.9%		
P43					5	0.0%	3	63	4.8%	7	48	14.6%	22	69	31.9%	5	37	13.5%		36	0.0%	37	258	14.3%		
P44	4	14	28.6%	24	66	36.4%	23	39	59.0%				7	10	70.0%		7	0.0%	1	4	25.0%	59	140	42.1%		
A47	10	96	10.4%	3	77	3.9%	5	28	17.9%	5	28	17.9%	2	10	20.0%		1	0.0%		3		25	243	10.3%		
P53	2	23	8.7%		28	0.0%	6	35	17.1%	1	21	4.8%										9	107	8.4%		
P54					2	0.0%				2	26	7.7%	1	6	16.7%		7	0.0%		14	0.0%	3	55	5.5%		
P111		20	0.0%	1	27	3.7%		2	0.0%		15	0.0%					8	0.0%	1	39	2.6%	2	111	1.8%		
P112	6	100	6.0%					11	0.0%		24	0.0%								40	0.0%	6	175	3.4%		
P125I	1	24	4.2%	7	48	14.6%	4	93	4.3%	5	50	10.0%	2	27	7.4%	3	17	17.6%	2	18	11.1%	24	277	8.7%		
P132	4	29	13.8%		3	0.0%	9	68	13.2%	9	58	15.5%	2	45	4.4%	1	39	2.6%	1	20	5.0%	26	262	9.9%		
Total	122	919	13.3%	149	905	16.5%	112	832	13.5%	42	619	6.8%	69	417	16.5%	28	304	9.2%	8	330	2.4%	530	4326	12.3%	0	4326

Summation

Vacancy in 17'-25'	13.3%
Vacancy in 26'-30'	16.5%
Vacancy in 31'-35'	13.5%
Vacancy in 36'-40'	6.8%
Vacancy in 41'-45'	16.5%
Vacancy in 46' to 50'	9.2%
Vacancy in 51' and over	2.4%

Overall Vacancy	12.3%
Vacancy w/o DOUBLES, OUT OF SERVICE slips	10.9%

Sep-21

	Under Construction	Net Available	TOTAL Mdr	% of TOTAL	CDP MIN THRESHOLD
25' & Less					
Number of Slips	0	919	4326	21%	16%
26'-30'					
Number of Slips	0	905	4326	21%	19%
30'-35'					
Number of Slips	0	1564	4326	36%	18%