

diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in Landlord's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible.

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

**10.3 Repairs Not Performed by Tenant.** If Tenant fails to make any repairs or replacements as required, Director may notify Tenant of said failure in writing, and if Tenant fails to cure said failure and make repairs or replacements within a reasonable time as established by Director, Landlord 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 Tenant as provided in Section 13.4.

**10.4 Damage or Destruction.** In the event of any damage to or destruction of the Improvements, Tenant shall give Landlord prompt written notice of such damage or destruction, and Landlord shall, except as otherwise expressly provided in this Section 10.4, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore the Improvements to their condition existing prior to the damage or destruction; provided, however, that (a) Landlord shall not be obligated to incur costs for such repair and/or restoration in excess of the insurance proceeds received by Landlord for such damage or destruction, and, unless Tenant elects to terminate the Lease as provided below, Tenant shall be responsible for paying to Landlord the portion of the costs not covered by insurance, with Landlord having the right to require Tenant to deposit with Landlord the reasonably expected amount of such excess costs prior to Landlord's commencement of the repair and/or restoration; and (b) Landlord shall not be responsible for the repair and/or

restoration of any Alterations made to the Premises by Tenant or for any of Tenant's furniture, fixtures, equipment or personal property. Notwithstanding the foregoing, (i) either Tenant or Landlord shall have the right to terminate this Lease by written notice to the other party within ninety (90) days after the date of the casualty if the cost to repair and/or restore the Improvements on the Premises is reasonably expected to exceed twenty-five percent (25%) of the replacement cost of such Improvements; (ii) Tenant shall have the right to terminate the Lease by written notice to Landlord within ninety (90) days after the date of the casualty if the insurance proceeds to be received by Landlord are not reasonably expected to be sufficient to pay for the repair and/or restoration of the Premises and Landlord does not agree to be responsible for the costs not reimbursed from insurance; and (iii) either party shall have the right to terminate the Lease by written notice to the other party within thirty (30) days after the date of the casualty in the event of material damage to the Improvements during the last year of the Term. In the case of damage or destruction of the Improvements, the Monthly Base Rent shall be abated on an equitable basis during the period and to the extent of the impairment of Tenant's use or occupancy of the Improvements until the substantial completion by Landlord of the repair and/or restoration thereof. The parties' rights in the case of damage or destruction shall be governed by the terms and provisions of this Lease and 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 or obligations.

11. **ASSIGNMENT AND SUBLEASE.** Tenant not be permitted to assign the Lease, 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 Landlord, which consent may be withheld by Landlord in its sole and absolute discretion. Notwithstanding the foregoing, Landlord agrees not to unreasonably withhold its consent to a merger of Tenant with one or more other Marina del Rey yacht clubs and the assignment of the Lease to a successor entity resulting from such a merger. Any assignment of the Lease shall be in such form as reasonably required by Landlord, including without limitation, the assumption by the assignee of all of Tenant's obligations under the Lease arising from and after the date of such assignment. No assignment of the Lease shall release the assignor from its liability as Tenant under this Lease.

12. **NO ENCUMBRANCES.** Tenant shall not directly or indirectly pledge, assign, transfer, mortgage, hypothecate or otherwise grant a security interest in all or any interest of Tenant in this Lease or its leasehold interest in the Premises (or in the 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 Tenant to pay the rents due, or make any other monetary payments required under this Lease, within ten (10) days after written notice that said payments are overdue. Tenant may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee, if any, within such ten (10) day period.

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

13.1.3 **Failure to Perform Other Obligations.** The failure of Tenant 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 (30) days after written notice of Tenant's failure to perform from Director; provided, however, that where Tenant's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty (30) day period and Tenant has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty (30) day period, Landlord will not exercise any remedy available to it hereunder for so long as Tenant 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.

13.2 **Remedies.** Upon the occurrence of an Event of Default, Landlord shall have the following remedies, in addition to any other remedies in law or equity:

13.2.1 **Terminate Lease.** Landlord may terminate this Lease by giving Tenant written notice of termination. On the giving of the notice, all Tenant's rights in the Premises shall terminate. Promptly after notice of termination, Tenant shall surrender and vacate the Premises, and Landlord may re-enter and take possession of the Premises 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 Section shall not relieve Tenant from the payment of any sum then due to Landlord or from any claim for damages against Tenant as set forth in Section 13.3.

13.2.2 **Keep Lease in Effect.** Without terminating this Lease, so long as Landlord does not deprive Tenant of legal possession of the Premises and allows Tenant to assign or sublet subject only to Landlord's rights set forth herein, Landlord may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Tenant's breach of other covenants and agreements herein. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant 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.

13.2.3 **Termination Following Continuance.** Even though it may have kept this Lease in effect pursuant to Section 13.2.2, thereafter Landlord may elect to terminate this Lease and all of Tenant's rights in or to the Premises unless prior to such termination Tenant shall have cured the Event of Default.

13.3 **Damages.** If Landlord elects to terminate this Lease under the provisions of the foregoing Section 13.2, Landlord shall be entitled to recover from Tenant as damages, in

addition to its other remedies, all damages allowed by Section 1951.2 of the California Civil Code, and such other amounts as may be permitted from time to time under applicable California law, Tenant agreeing that, for purposes of determining damages under said Section 1951.2, 'rent' shall include without limitation the "worth at the time of the award" (as defined in Section 1951.2(b) of the California Civil Code) 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 for the same period that Tenant proves could be reasonably avoided.

13.4 **Landlord's Right to Cure Tenant's Default.** Landlord at any time after Tenant's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Tenant's cost and expense.

13.5 **Default by Landlord.** Landlord shall be in default in the performance of any obligation required to be performed by Landlord under this Lease if Landlord has failed to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, Landlord shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Tenant shall have no rights as a result of any default by Landlord until Tenant gives thirty (30) days notice to any person or entity having a recorded security interest in Landlord's fee title to the Premises whose identity and address have been disclosed in writing to Tenant. Such person or entity shall then have the right to cure such default, and Landlord shall not be deemed in default if such person or entity cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, Landlord's liability to Tenant for damages arising out of or in connection with Landlord's breach of any provision or provisions of this Lease shall not exceed the value of Landlord's equity interest in the Premises.

#### 14. **ACCOUNTING.**

14.1 **Maintenance of Records and Accounting Method.** In order to determine the amount of Percentage Rent payable under this Lease, Tenant shall at all times during the Term of this Lease, and for thirty six (36) months after the expiration of the Term, 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 all Lease Years during the Term. Such records shall show all transactions relative to the conduct of operations, and to be supported by data of original entry. Gross Receipts shall be calculated in accordance with the accrual method of accounting, except that Tenant shall have the right to report Gross Receipts monthly on a cash basis, provided that the calculation of Gross Receipts is reconciled to the accrual method on an annual basis.

14.2 **Cash Registers.** To the extent sales of food, beverages, goods or services are conducted on the Premises, 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, or, with respect to those items that are not reasonably susceptible to recordation by cash register, such other reasonable means as acceptable to County. 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. Tenant shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to the Director in advance of installation for his approval, which approval or disapproval shall not be unreasonably withheld or delayed.

14.3 **Availability of Records for Inspector's Audit.** Books of account and records for all Lease Years during the Term shall be kept or made available at the Premises. Upon at least one (1) business day advance notice, Landlord 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 Tenant is complying with the terms and conditions of this Article 14. Landlord and its authorized representatives or agents shall also have the right at any reasonable times and on reasonable prior notice to examine and audit Tenant's books and records, without restriction, for the purpose of determining the accuracy thereof and of the statements of Gross Receipts. This Section 14.3 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 **Cost of Audit.** In the event that, for any reason, Tenant does not make available the original records and books of account at the Premises, Tenant agrees to pay all expenses incurred by Landlord 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 Landlord's favor of greater than two percent (2%) of the Percentage Rent due Landlord for the period audited, then Tenant shall pay Landlord's audit costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.6.

14.5 **Annual Financial Statements.** Within six (6) months after the end of each Lease Year, Tenant shall furnish to Landlord the following prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to Landlord: (a) a set of compiled financial statements, setting forth Tenant's financial condition and the result of Tenant's operations for such Lease Year, and (b) an audited and certified statement (on an unqualified basis) of Tenant's Gross Receipts (including a breakdown by category). The foregoing statements prepared by or on behalf of Tenant shall be prepared in a manner that permits Landlord to determine the financial results of operations in connection with Tenant's activities at, from or relating to the Premises. Upon request from Landlord, Tenant shall also provide copies of its tax returns and other non-profit corporation reports filed with governmental agencies.

14.6 **Accounting Obligations of Other Parties.** If notwithstanding the terms of this Lease, any subtenant, licensee or concessionaire conducts business operations on the Premises, Tenant shall cause such person or entity to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records.

14.7 **Inadequacy of Records.** In the event that Tenant fails to keep or cause to be kept the records required by this Article 14 such that a Certified Public Accountant is able to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Lease by Tenant. In addition to the other remedies available to Landlord at law or equity as a result of such breach, Landlord may prepare a calculation of the Percentage Rent payable by Tenant 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 Landlord's determination of Percentage Rent due, if any, Tenant 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 Landlord's costs 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.** Tenant, 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 **No Right of Offset.** Tenant acknowledges that the rent provided for in this Lease has been agreed upon in light of Tenant's obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by applicable law, Tenant hereby waives any and all rights, if any, to make repairs at the expense of Landlord and to deduct or offset the cost thereof from the rent due Landlord hereunder.

15.3 **Holding Over.** If Tenant holds over after the expiration of the Term for any cause, with or without the express or implied consent of Landlord, 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 Monthly Base 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 Tenant to remove machines, appliances and other equipment during the time periods herein provided for such removal.

Nothing contained herein shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of

this Lease. The provisions of this Section 15.3 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided at law or in equity. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding tenant arising from such failure to surrender, and any lost profits to Landlord resulting therefrom.

15.4 **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 Landlord and Tenant. No delay, failure, or omission of Landlord 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 Tenant shall be required to restore or revive "time of the essence" after the waiver by Landlord 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.

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

15.6 **Authorized Right of Entry.** In any and all cases in which provision is made herein for termination of this Lease, or for exercise by Landlord 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 Tenant, Tenant hereby irrevocably authorizes Landlord 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 Landlord, in storage for the account of and at the expense of Tenant.

Except to the extent arising out of or caused by the gross negligence or willful misconduct of Landlord, Tenant agrees to indemnify, defend and save harmless Landlord 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 Landlord and its agents.

15.7 **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 15.7. Written notice addressed to

Tenant at the addresses below-described, or to such other address that Tenant 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 Landlord of Los Angeles, California, or by other nationally recognized courier service. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the expiration of the third (3rd) business day after such notice is sent from within Los Angeles County in the case of such registered or certified mail as authorized in this Section.

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

LANDLORD: Director  
Department of Beaches and Harbors  
Los Angeles Landlord  
13837 Fiji Way  
Marina del Rey, California 90292  
Phone: 310/305-9522  
Fax: 310/821-6345

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

TENANT: Santa Monica Windjammers Yacht Club  
13589 Mindanao Way  
Marina del Rey, California 90292  
Attn: Commodore and Attn.: Treasurer  
Phone: 310/827-7692  
Fax: 310/827-9144

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 15.7.

15.8 **Interest.** In any situation where Landlord has advanced sums on behalf of Tenant pursuant to this Lease, such sums shall be due and payable within five (5) days after Tenant'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 Tenant repays sums advanced by Landlord on Tenant's behalf with interest in excess of the maximum rate permitted by Applicable Law, Landlord shall either refund such excess payment or credit it against subsequent payments of rent due hereunder.

15.9 **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.

15.10 **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 Landlord is represented by County Counsel and is the prevailing party, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

15.11 **Amendments.** This Lease may only be amended in writing executed by duly authorized officials of Tenant and Landlord. 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.

15.12 **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 Tenant, Director either (a) approves such request in writing, or (b) notifies Tenant 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 Tenant in writing of the reason or reasons for such disapproval.

15.13 **Time For Landlord Action.** Notwithstanding anything to the contrary contained in this Lease, wherever Director determines that a Landlord action required hereunder necessitates approval from or a vote of one or more of Landlord's boards or commissions or Landlord's Board of Supervisors, the time period for Landlord performance of such action shall be extended as is reasonably necessary in order to secure such approval or vote, and Landlord 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.

15.14 **Estoppel Certificates.** Each party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other party, a certificate stating: (i) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (ii) that, to the best knowledge of such party, the other party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); and (iii) if requested, the amount of

the Security Deposit, Monthly Base Rent, Percentage Rent and other material economic terms and conditions of this Lease. Prospective purchasers and lenders may rely on such statements.

15.15 **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.

15.16 **Controlled Prices.** Tenant 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 Tenant is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Tenant that any of said prices are not fair and reasonable, Tenant 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 Tenant, as directed. Tenant 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 Tenant.

## 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.** Landlord and Tenant 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. Landlord and Tenant 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 **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 or documents (other than impeachment testimony) unless such information was previously delivered to the other party in accordance with this Article 16, or such evidence consists of a transcript of a deposition of an expert witness conducted pursuant to this Article 16. 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 this Article 16, provided such evidence is otherwise permissible hereunder.

16.7 **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 this Article 16; 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 this Article 16.

#### 16.8 **Awards of Arbitrators.**

16.8.1 **Monetary Issues.** With respect to monetary disputes, 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. 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.

16.8.2 **Non-monetary Issues.** With respect to non-monetary 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.

16.9 **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 this

Article 16, provided that each party is afforded the right to cross-examine such expert or rebut such authority.

16.10 **Costs of Arbitration.** Tenant and Landlord 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.

16.11 **Amendment to Implement Judgment.** Within seven (7) days after the issuance of any award by the arbitrator becomes final, the Landlord will draft a proposed amendment to the Lease setting forth the relevant terms of such award. Within seven (7) days after delivery of a copy of the amendment to Tenant, Tenant will sign the amendment (with any revisions to the proposed amendment necessary to accurately reflect the arbitration award) and return the executed copy to the Landlord, which shall thereafter be executed by Landlord as soon as reasonably practicable.

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

16.12.1 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.

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

16.12.3 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.

16.13 **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 Tenant

\_\_\_\_\_  
Initials of Landlord

17. **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 Landlord and Tenant 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 **Compliance with Code.** Landlord and Tenant agree and acknowledge that this Lease satisfies the requirements of Section 25536 and 25907 of the California Government Code as a result of various provisions contained herein.

17.7 **No Recordation.** Neither this Lease nor any memorandum thereof shall be recorded.

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

THE COUNTY OF LOS ANGELES

SANTA MONICA YACHT CLUB, a  
California corporation

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

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

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

ATTEST:

SACHI HAMAI,  
Executive Officer of the  
Board of Supervisors

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

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.  
County Counsel

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

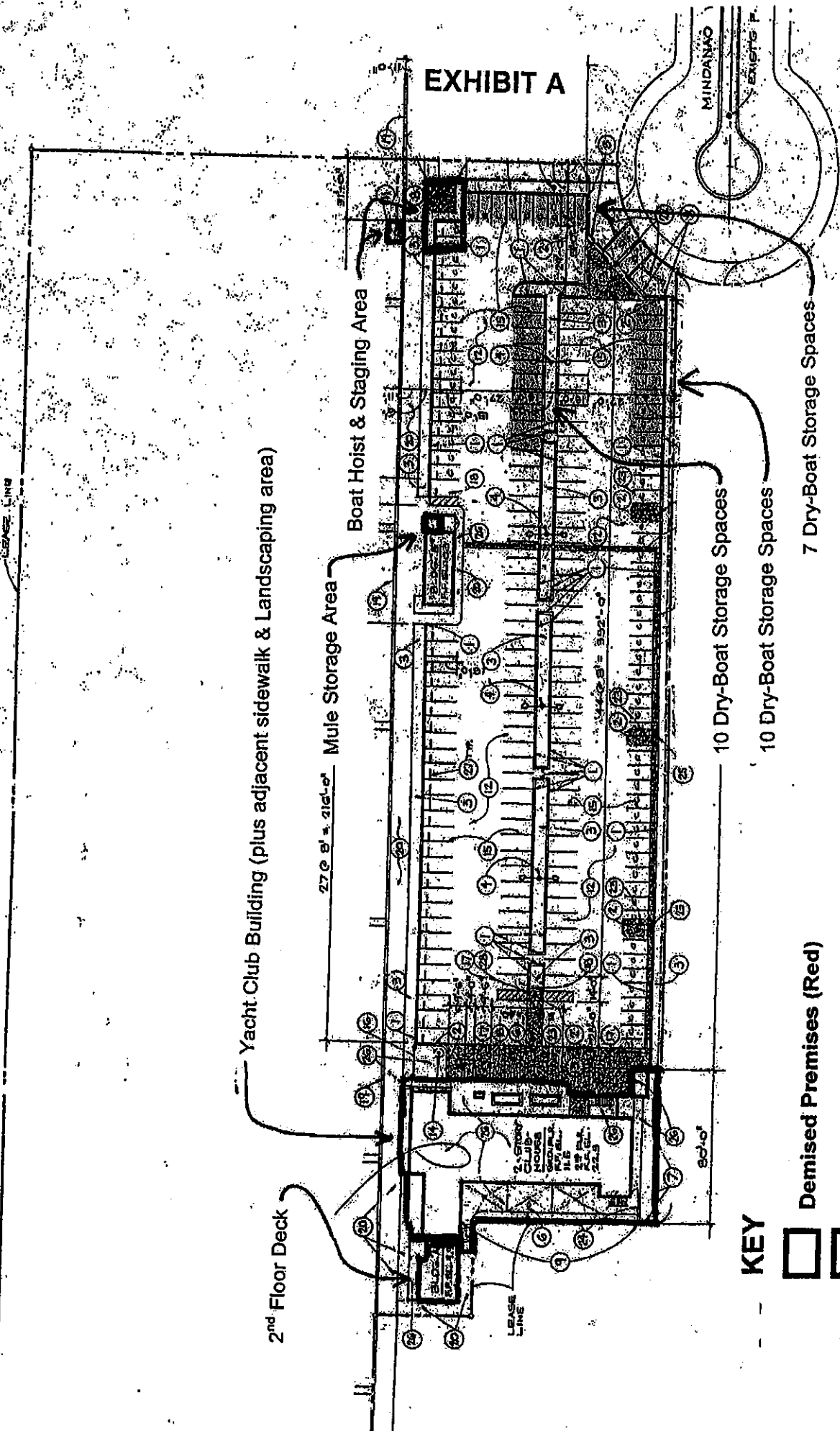
APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

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



EXHIBIT A



Yacht Club Building (plus adjacent sidewalk & Landscaping area)

Mule Storage Area

Boat Hoist & Staging Area

MINDANAO

EXISTING P.

KEY

- Demised Premises (Red)
- 2<sup>nd</sup> Floor Deck (Blue)
- Boat Dry-Storage Space

10 Dry-Boat Storage Spaces

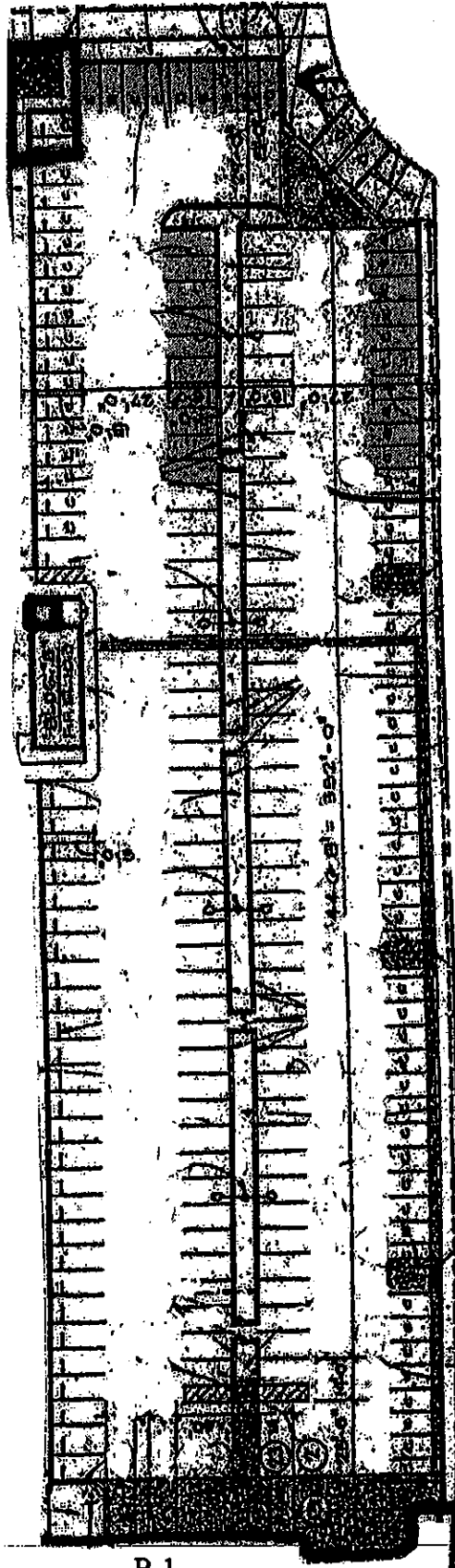
10 Dry-Boat Storage Spaces

7 Dry-Boat Storage Spaces

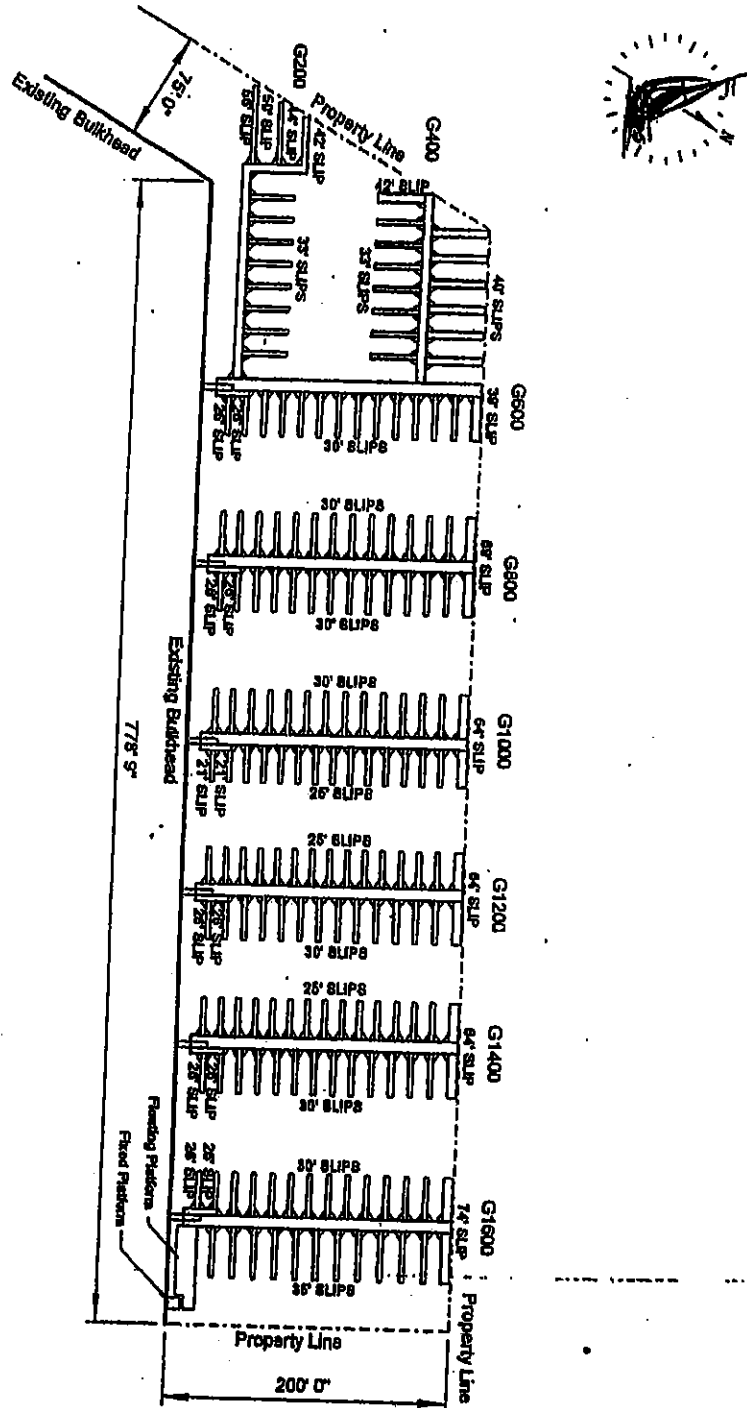
110  
12

**EXHIBIT B**

**PARKING LOT**



**EXHIBIT C**  
**ANCHORAGE**





*To enrich lives through effective and caring service*



**Stan Wisniewski**  
Director

**Kerry Silverstrom**  
Chief Deputy

February 7, 2008

TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director *Stan Wisniewski*

SUBJECT: **AGENDA ITEM 5b – 15 MINUTE VIDEO PRESENTATION  
REGARDING JANUARY 2008 COASTAL COMMISSION  
MEETING**

At the last Small Craft Harbor Commission meeting, your Commission directed the Department of Beaches and Harbors staff to arrange the viewing of a 15 minute video by John Nahhas.

SW:rf



*To enrich lives through effective and caring service*

February 7, 2008



TO: Small Craft Harbor Commission

FROM: Stan Wisniewski, Director

**Stan Wisniewski**  
Director

**Kerry Silverstrom**  
Chief Deputy

SUBJECT: **ITEM 6a - ONGOING ACTIVITIES REPORT**

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

At its February 6, 2008 meeting, the Board of Supervisors approved a motion directing the Chief Executive Office (CEO) and County Counsel (CC) to negotiate a settlement agreement with the Housing Advocates to include a 15% inclusionary affordable housing goal into the policy with 1/3 reserved for very low, 1/3 for low, and 1/3 for moderate income persons and families. The percentage goal is to be calculated based on the net new units and is subject to a determination of feasibility on a case-by-case basis.

In addition, the draft policy is to be revised to include reasonable notice and priority on affordable unit waiting lists for former occupants; a definition of "substantial rehabilitation"; and inclusion of studios in the "unit" definition. The CEO and CC are to return to the Board within 30 days with the settlement agreement, the revised policy, and any revisions to the environmental document.

In consultation with the housing advocates and lessees, the original motion also requires the County to prepare a handbook for implementing the affordable housing policy that addresses such issues as rental rules and regulations, income surveys, waiting lists, and other appropriate landlord/tenant issues and report back to the Board within 90 days.

An amendment to the original motion was also unanimously approved that directed the CEO and Department of Beaches and Harbors (DBH) to renegotiate within 45 days the affordable housing component for impacted developments with the cost of providing the units to be covered by the County based on rent and cost projections, assumptions and methodologies established during the previous negotiations for each project. Finally, the amendment requires the County is to pay its own consultant and legal fees for revising the documents so as not to pass on the costs to the lessees.

### **LOCAL COASTAL PROGRAM PERIODIC REVIEW—UPDATE**

Once the California Coastal Commission adopts its report on the periodic review of the Marina del Rey Local Coastal Program (LCP), the County will have one year to respond to the report's findings and recommendations. The County's Department of Regional Planning will be the lead in conducting public meetings to consider these findings and recommendations and will develop the County's response thereto for consideration by the Regional Planning Commission and the Board of Supervisors. Regional Planning representatives will appear before your Commission in the near future to explain the proposed process.

### **REGIONAL PLANNING COMMISSION'S CALENDAR**

Currently, there are no Marina del Rey matters scheduled for consideration by the Regional Planning Commission.

### **DISCUSS FOUNDATION ALLEGATION REGARDING PARCEL 12 (ESPRIT I)**

As you requested at last month's meeting, there will be a Department of Public Works representative present at your meeting to discuss the allegations that the Esprit I buildings are sinking and water is flooding the subterranean garages during high tide. We have previously been informed that there is no truth to the allegations and there is no evidence of the water intrusion within the garage.

### **REPORT ON BOAT SLIPS COMING ONLINE AND OFFLINE**

As previously reported, the Esprit I development is expected to open for business in April 2008 and place 227 new concrete docks online, thus increasing the slip count in the Marina from 4,737 to 4,964 boat slips. In January 2009, the Esprit II development is scheduled to begin construction, which will place offline 215 existing slips, reducing available docks in the marina to 4,749 boat slips. The construction of the 212 new concrete docks is expected to be completed in November 2010, at which time 4,961 boat slips will be available in the Marina. When slips are scheduled to go offline, we will report to your Commission on the efforts to address impacts on slip tenants. Our first report will be on the measures to address impacts on those Esprit II slip tenants where slips will be going offline in January 2009.

### **REPORT ON MINIMUM RENT PAYMENT FOR PARCEL 12**

This is in response to several inquiries on the part of the public regarding the abatement of minimum rent for Parcel 12. Although the lessee will be obligated to pay both minimum and percentage rent upon construction completion, during

construction, when both the apartments and slips are out of service, the lease provides for the rent to be fully abated. If only a portion of the improvements are out of service, then only the applicable portion of the minimum rent shall be abated.

Each deal negotiated by the County has intricacies that are different from all others. In this instance, in exchange for abatement of rent during the construction period, the County negotiated for full percentage rent participation on the first day the units are occupied, as opposed to the ramp-up of rent levels over multiple years. This immediate rent on the larger number of units in the newly constructed project was determined by our economic consultant to substantially benefit the County.

We have invited our economic consultant to appear at your meeting to answer any questions.

#### **DESIGN CONTROL BOARD MINUTES**

The minutes from the Design Control Board meetings for December 2007 and January 2008 have not been finalized.

SW:SHK:PW:jg